

# Land Transport Management (Regional Fuel Tax) Amendment Bill

Government Bill

## Explanatory note

### General policy statement

This Bill proposes to introduce a mechanism under which regional fuel taxes can be established to provide a way for regions to fund transport infrastructure programmes that would otherwise be delayed or not funded. The revenue from a regional fuel tax is to go to the regional council (or unitary council) (the **council**) responsible for the region where the taxed fuel is delivered for sale or consumption.

The Bill will insert a *new subpart 3* into Part 2 of the Land Transport Management Act 2003 that provides a process for establishing a regional fuel tax. The process includes—

- a council making a proposal that sets out the proposed tax rate, the duration of the tax, the transport programme and projects that the tax will fund, and how the proposal contributes to the relevant regional transport plan, the relevant Government Policy Statement on land transport, and any other relevant document specified by the Minister of Finance and the Minister of Transport (the **joint Ministers**) that sets out transport priorities for the region:
- a council consulting the community before finalising a proposal:
- a council submitting its proposal to the joint Ministers:
- the joint Ministers accepting or rejecting the proposal and, if accepting it, recommending the making of an Order in Council to implement a regional fuel tax in that region.

The Bill implements the following policy decisions relating to the introduction of a regional fuel tax:

- the regional fuel tax is to—

- apply to petrol and diesel (**fuel**) but not to compressed natural gas and liquefied petroleum gas:
- be collected at the distribution level (meaning the point where fuel is supplied by a distributor to service stations and commercial storage facilities, such as those on farms):
- be used toward the funding of capital expenditure, associated debt repayment, and operational expenditure when it is associated with the delivery of a package or programme of projects:
- have a maximum rate of 10 cents per litre of fuel:
- have a maximum initial duration of 10 years:
- be reviewed by a council before its expiry if the council wishes to replace or extend it beyond 10 years:
- be available initially only to the Auckland region and to the other regions from 1 January 2021:
- have similar exclusions to those in the local authorities fuel tax provisions in Part 11 of the Local Government Act 1974:
- allow for rebates consistent with those available for fuel excise duty for off-road use of fuel:
- be subject to goods and services tax:
- the joint Ministers may—
  - accept or reject a proposal from a council under a broad discretion:
  - review the regional fuel tax at any time:
- the New Zealand Transport Agency has—
  - administrative, monitoring and enforcement functions, including collecting the tax and processing refunds:
  - the power to charge ongoing costs of administering the regional fuel tax scheme against the tax revenue from it.

### Departmental disclosure statement

The Ministry of Transport is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=38>

### Regulatory impact assessment

The Ministry of Transport produced a regulatory impact assessment on 20 December 2017 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <http://www.transport.govt.nz/about/publications/ris-bccs/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides for the Bill to come into force on the day after it receives the Royal assent.

## Part 1

### Amendments to Land Transport Management Act 2003

*Clause 3* sets out that the principal Act being amended is the Land Transport Management Act 2003 (the **Act**).

*Clause 4* inserts a provision providing for transitional provisions.

*Clause 5* amends the Act to insert *new subpart 3 of Part 2* (the **new subpart**), including *new sections 65A to 65ZF*, enabling the establishment of regional fuel tax schemes.

*New section 65A* defines certain expressions for the purpose of the new subpart.

*New section 65B* provides an overview of the new subpart.

*New section 65C* sets out requirements for a regional fuel tax scheme (an **RFT scheme**).

*New section 65D* authorises a regional council to prepare a proposal to establish or replace an RFT scheme.

*New section 65E* sets out the content requirements for a proposal to establish or replace an RFT scheme.

*New section 65F* sets out the consultation requirements for regional councils when preparing a proposal for an RFT scheme.

*New section 65G* authorises a regional council to prepare a proposal to vary an RFT scheme if it considers that some aspect of the scheme should be changed.

*New section 65H* sets out certain procedural and content requirements for a proposal to vary an RFT scheme.

*New section 65I* provides for the submission of a proposal for the establishment, replacement, or variation of an RFT scheme to the Minister of Finance and the respon-

sible Minister and requires that it be accompanied by a report of the consultation on the proposal and any other information reasonably required by the Ministers.

*New section 65J* provides for the Minister of Finance and the responsible Minister to have complete discretion whether to recommend that an RFT scheme be established, replaced, or varied in the manner set out in a proposal.

*New section 65K* authorises the Governor-General to make Orders in Council to establish, replace, or vary an RFT scheme on the recommendation of the Minister of Finance and the responsible Minister and to prescribe the duration of the scheme, the rate or rates of regional fuel tax to apply during the scheme, and the period during which each rate applies and, in addition,—

- requires that the relevant proposal be identified:
- requires that the order include in a schedule a list of the capital projects supported by the RFT scheme and their proposed completion dates:
- limits any extension in the duration of an RFT scheme to 10 years or less:
- requires that the relevant proposal be made accessible in accordance with section 108 of the Act:
- provides that an order is a legislative instrument and disallowable instrument.

*New section 65L* limits the power to terminate an RFT scheme or advance its end date. These changes are permitted only on the proposal of the regional council or on the initiative of the Minister of Finance and the responsible Minister if they are satisfied, after due warning, that the regional council is not carrying out the proposal on which the RFT scheme was based.

*New section 65M* requires a regional council of a region subject to an RFT scheme (an **RFT region**) to review the RFT scheme at least 1 year before the end date of the scheme if it wishes to replace it or extend its duration.

*New section 65N* sets out the functions of the New Zealand Transport Agency (the **Agency**) under the new subpart.

*New section 65O* establishes the liability of RF taxpayers to pay regional fuel tax on supplies of fuel in an RFT region.

*New section 65P* requires the keeping of records relevant to an RFT scheme.

*New section 65Q* requires an RF taxpayer to file a return in respect of each month in which regional fuel tax is payable by the RF taxpayer.

*New section 65R* provides for the Agency to assess the regional fuel tax payable by an RF taxpayer for any month.

*New section 65S* sets out the requirement to pay any regional fuel tax to the Agency and the time frame within which this must be done.

*New section 65T* requires the Agency to account for various financial aspects of its administration of an RFT scheme.

*New section 65U* sets out how the Agency must apply the proceeds of regional fuel tax received by it under an RFT scheme.

*New section 65V* sets out the requirements for regional councils that receive funding from an RFT scheme with regard to how they deal with and account for that funding.

*New section 65W* provides for rebates related to regional fuel tax in certain circumstances.

*New section 65X* sets out the provisions related to applications for a rebate related to regional fuel tax, decisions on applications, and payment of rebates.

*New section 65Y* permits an RF taxpayer to appeal to the District Court against an assessment of regional fuel tax by the Agency or a decision of the Agency on a rebate application.

*New section 65Z* provides for the right of the Agency and the Auditor-General to require the provision of information relevant to the administration or enforcement of an RFT scheme.

*New section 65ZA* provides for the Agency's power to require any person to produce for inspection any relevant records and other relevant information in that person's possession or control.

*New section 65ZB* provides for a constable or other enforcement officer to be able to apply for, obtain, and execute a search warrant for suspected offences against the Act in accordance with the Search and Surveillance Act 2012.

*New section 65ZC* establishes certain offences related to RFT schemes and the related fines.

*New section 65ZD* authorises the making of an Order in Council to change the maximum rate of regional fuel tax under an RFT scheme.

*New section 65ZE* authorises the making of regulations relating to regional fuel tax and RFT schemes.

*New section 65ZF* provides that the Limitation Act 2010 does not apply to a claim to recover regional fuel tax.

*Clause 6* inserts *new Schedule IAA*, which contains transitional provisions, including one to validate certain steps to establish an RFT scheme that may be taken before the Bill comes into force if those steps otherwise would have complied with it had it been in force.

## **Part 2**

### **Amendments to other Acts**

*Clause 7* amends the Goods and Services Tax Act 1985 to provide for the treatment of regional fuel tax under that Act.

*Clause 8* amends section 208 of the Land Transport Act 1998 to enable the Agency, by warrant, to appoint an employee of the Agency to be an enforcement officer for the purposes of the new subpart.

*Clause 9* amends Schedule 2 of the Legislation Act 2012 to add a reference to *new section 65ZD(1)* to provide that an Order in Council made under that section is a confirmable instrument.

*Clause 10* amends the Local Government Act 2002 to add references to regional fuel tax in 2 places.

*Clause 11* amends the Schedule of the Search and Surveillance Act 2012. The amendment adds a reference in the Schedule to *new section 65ZB*.

*Hon Phil Twyford*

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**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.

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**Part 1****Amendments to Land Transport Management Act 2003****3 Principal Act**

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

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**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.

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**5 New subpart 3 of Part 2 inserted**

After section 65, insert:

## Subpart 3—Regional fuel tax

*Preliminary provisions***65A Definitions**

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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

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**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

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**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

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**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

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**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 for which an RFT scheme has been established

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

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#### **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 RFT regions; and
- (d) the application for, and payment of, RFT rebates; and
- (e) the administration and enforcement of RFT schemes.

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#### *Requirements: RFT schemes*

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#### **65C Requirements relating to RFT scheme**

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

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*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 if the council, having regard to the views of the regional land transport committee, considers that there are 1 or more capital projects that—

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- (a) would benefit the region; but
- (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—

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- (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, the relevant GPS on land transport, and any other document that sets out transport priorities for the region and that the Minister of Finance and the responsible Minister specify; 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 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

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- (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
- (g) include any other information or other matter that may be prescribed by regulations made under this subpart. 5

**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 10
  - (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)**. 15
- (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 20
  - (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: 25

- (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: 30
- (d) the end date of the RFT scheme (but *see* **section 65M**).

**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 35

<ul style="list-style-type: none"> <li>(b) must not propose an amended end date for the RFT scheme that extends it by more than 10 years; and</li> <li>(c) must carry out consultation on the proposal in accordance with <b>section 65F</b> as if it were a proposal to establish or replace an RFT scheme.</li> </ul>	5
<i>Submission of proposals to Minister of Finance and responsible Minister</i>	
<b>65I Submission of proposal and accompanying report</b>	
<ul style="list-style-type: none"> <li>(1) After a proposal to establish, replace, or vary an RFT scheme has been consulted on, the regional council may submit it to the Minister of Finance and the responsible Minister.</li> <li>(2) A proposal submitted to the Minister of Finance and the responsible Minister must be accompanied by— <ul style="list-style-type: none"> <li>(a) a report of the consultation carried out in accordance with <b>section 65F</b>, including a summary of the submissions made during the consultation; and</li> <li>(b) any other information that the Minister of Finance and the responsible Minister reasonably require.</li> </ul> </li> </ul>	10 15
<i>Decisions of Ministers regarding proposals</i>	
<b>65J Decisions of Minister of Finance and responsible Minister concerning proposed RFT scheme</b>	
<p>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,—</p> <ul style="list-style-type: none"> <li>(a) recommend to the Governor-General that the RFT scheme be established, replaced, or varied in the manner set out in the proposal; or</li> <li>(b) refer the proposal back to the regional council, requesting it to reconsider 1 or more of the aspects of the proposal; or</li> <li>(c) decline to recommend the establishment, replacement, or variation of the RFT scheme in the manner set out in the proposal.</li> </ul>	20 25
<i>Orders in Council regarding RFT schemes</i>	
<b>65K Orders in Council establishing, replacing, or varying RFT scheme</b>	
<ul style="list-style-type: none"> <li>(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Finance and the responsible Minister,— <ul style="list-style-type: none"> <li>(a) establish or replace a regional fuel tax scheme; and</li> <li>(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.</li> </ul> </li> </ul>	30 35

- (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. 5
- (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. 10
- (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 the programme of capital projects supported by the RFT scheme, amend the schedule of the relevant order to reflect the change; and 15
  - (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. 20
- (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** 25
- (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 30
    - (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. 35
- (2) The Minister of Finance and the responsible Minister may, if they have reasonable concerns that a regional council is not duly carrying out 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* 5

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

- (1) A regional council must review the RFT scheme for 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. 10

*Functions of Agency under this subpart* 15

**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 20
- (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 25
- (c) administering the provision of RFT rebates; and
- (d) transferring the net revenue from an RFT scheme to the appropriate regional council; and
- (e) prosecuting offences under **section 65ZC**. 30

*Liability to tax*

**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,— 35



- (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. 5

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. 10

- (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 15

**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. 20

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. 25

- (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 30

**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. 35

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- (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, equipment, or vessels.
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- 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. 5
- 
- (2) However, a person is not liable to pay regional fuel tax on fuel that the person—
- (a) supplies to a person who is registered with the Agency as an RF taxpayer; or 10
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- 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. 15
- 
- (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 20
- 
- 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. 25
- 
- (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. 30
- 
- (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 35
- (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.

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**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.

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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.

*Record keeping and returns*

15

**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.

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**65Q Returns**

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

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- (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.

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

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- (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 5
  - (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: 10
    - (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. 15
- (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. 20
- (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* 25

**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 30
  - (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. 35

- (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: 5
- (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. 10
- (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. 15
- (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. 20
- (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. 25

*Dealing with proceeds of regional fuel tax*

**65T Accounting for regional fuel tax**

- (1) In respect of a regional fuel tax, the Agency must account for— 30
- (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 administers, including information on each of the items referred to in **subsection (1)** for that year. 35

**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: 5

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

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 10

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, 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 15

*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. 20

- (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. 25 30

*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. 35

**65V Regional fuel tax account**

- (1) A regional council of an RFT region must—

- (a) operate a regional fuel tax account; and
  - (b) deposit into or credit to that account all funds received by the council under **section 65U**; and
  - (c) ensure that all payments from that account 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 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 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

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- (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. 5
- (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 10
- 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 15
  - (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 20
  - (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. 25
- (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 30
  - (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.



*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. 5
- (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.
- (3) On the hearing of the appeal, the District Court may confirm or amend the assessment or the decision. 10

*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. 15
- (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, including 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** 20

- (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. 25
- (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: 30
  - (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 35

- (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. 5

**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— 10
  - (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. 15
- (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— 20
  - (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 25
  - (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 30
  - (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. 35
- (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. 5

*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. 10
- (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. 15
- (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— 20
  - (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. 25

*Regulations*

**65ZE Regulations**

- The Governor-General may from time to time, by Order in Council, make regulations for 1 or more of the following purposes: 30
- (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: 35

- (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)**: 5
- (g) providing for any other matter contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

*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— 10

- (a) the Limitation Act 2010:
- (b) any other enactment that prescribes a limitation period or other limitation defence. 15

*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**

20

*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: 25

**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: 30

- (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. 5

*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: 10  
(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. 15  
(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: 20  
(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 25  
(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 30

- (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. 10
- (2) In the Schedule, insert in its appropriate alphabetical order:

Land Transport Management Act 2003	<b>65ZB</b>	Enforcement officer may obtain and execute warrant to search for evidence of offences against <b>section 65ZC</b> of Land Transport Management Act 2003	All
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**Schedule**  
**New Schedule 1AA inserted**

**s 6**

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

**s 6A**

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

- 1 Definition** 10
- In this Part, **amending Act** means the Land Transport Management (Regional Fuel Tax) Amendment Act **2018**.
- 2 Certain provisions apply only in relation to Auckland until 1 January 2021** 15
- 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** 20
- 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 complied with the requirements of **subpart 3 of Part 2** 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:
- (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 25
  - (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**. 30
- 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

—*continued*

**section 65U**, the Agency must pay to the Crown out of the revenue from the RFT scheme the amount of \$1,000,000.