Land Transport Management (Regional Fuel Tax) Amendment Act 2018

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Commencement	see section 2

Contents

		Page
1	Title	4
2	Commencement	4
	Part 1 **Amendments to Land Transport Management Act 2003**	
3	Principal Act	4
4	New section 6A inserted (Transitional, savings, and related provisions)	4
	6A Transitional, savings, and related provisions	4
5	New subpart 3 of Part 2 inserted	4
	Subpart 3—Regional fuel tax	
	Preliminary provisions	
	65A Definitions	4
	65B Overview of subpart	5
	Requirements: RFT schemes	
	65C Requirements relating to RFT scheme	6
	Proposals to establish or replace RFT scheme	
	65D Preparation of proposal to establish or replace RFT scheme	6
	65E Proposal for RFT scheme: content requirements	6
	65F Consultation on proposal	8

Proposals to vary RFT scheme

65G Proposal to vary RFT scheme 8
65H Rules applicable to proposals to vary RFT scheme 8

Submission of proposals to Minister of Finance and responsible Minister

65I Submission of proposal and accompanying report 9

Decisions of Ministers regarding proposals

65J Decisions of Minister of Finance and responsible Minister concerning proposed RFT scheme 9

Orders in Council regarding RFT schemes

65K Orders in Council establishing, replacing, or varying RFT scheme 9
65L Early termination of RFT schemes 10

Review of RFT schemes

65M Regional council must review RFT scheme before proposing to extend or replace scheme 11

Functions of Agency under this subpart

65N Functions of Agency under this subpart 11

Liability to tax

65O Intended liability 12
65P Liability to pay regional fuel tax 12
65Q Registration as RF taxpayer 14
65R Registration as user of fuel for exempt uses (and associated exempt-use-only locations) 15
65S Registration not transferable or assignable 16
65T Availability of information in registries 16

Record keeping and returns

65U Record keeping 16
65V Returns 16

Assessments

65W Assessment of tax 17

Payment of tax

65X Payment of regional fuel tax 17

Dealing with proceeds of regional fuel tax

65Y Accounting for regional fuel tax 18
65Z Disbursement of proceeds 19
65ZA Regional fuel tax reserve fund 20

Rebates

65ZB Rebate related to regional fuel tax 20
65ZC Process relating to RFT rebates 21

Internal review

65ZD Internal review 22

Appeals

65ZE Appeals 23

Administration and enforcement

65ZF Agency and Auditor-General may require information 23
65ZG Inspection of records or other information 23
65ZH Power to issue search warrant in respect of alleged offence 24

Offences

65ZI Offences and penalties 24

Change to maximum rate of regional fuel tax

65ZJ Change to maximum rate of regional fuel tax 25

Regulations

65ZK Regulations 26

No limitation

65ZL No limitation on claims by Agency to recover regional fuel tax 27

Transitional, savings, and related provisions

6 New Schedule 1AA inserted 27

Part 2
Amendments to other Acts

Amendments to Goods and Services Tax Act 1985

7 Amendments to Goods and Services Tax Act 1985 28

Amendment to Land Transport Act 1998

8 Amendment to Land Transport Act 1998 28

Amendment to Legislation Act 2012

9 Amendment to Legislation Act 2012 28

Amendments to Local Government Act 2002

10 Amendments to Local Government Act 2002 28
34B Additional information: RFT schemes 29

Amendment to Search and Surveillance Act 2012

11 Amendment to Search and Surveillance Act 2012 29

Schedule
New Schedule 1AA inserted 30

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 65P

RFT rebate means a rebate under section 65ZB

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 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 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 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; and

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

(c) 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), 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

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

(v) 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

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

(h) 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

(i) 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

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

(k) 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

(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, 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 in-

tends 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 an RFT scheme 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

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

(f) prosecuting offences under section 65ZI.

Liability to tax

65O 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 65P(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.

65P 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 in the RFT region, transfers into a fuel tank of the RF taxpayer's own vehicles or equipment.

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 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.

65Q Registration as RF taxpayer

(1) A person who is liable to pay regional fuel tax under section 65P 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 register a person as 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.

65R Registration as user of fuel for exempt uses (and associated exempt-use-only locations)

(1) A person may apply to the Agency to be registered as a user of fuel for exempt uses.

(2) An application must—

(a) state the exempt uses for which fuel supplied to the applicant will be used; and

(b) describe 1 or more locations at which any fuel supplied to the applicant will be used exclusively for exempt uses (an **exempt-use-only location**); and

(c) for each exempt-use-only location, describe the systems, procedures, and practices of the applicant that will ensure—

(i) that fuel supplied to that location will be used exclusively for exempt uses; and

(ii) that adequate records will be kept that will allow the Agency to verify that fuel supplied to that location is used exclusively for exempt uses; and

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

(3) The Agency may register an applicant as a user of fuel for exempt uses, specifying 1 or more exempt-use-only locations for that person, if it is satisfied—

(a) as to any prescribed criteria for approval; and

(b) as to the matters set out in subsection (2)(c)(i) and (ii).

(4) For the purposes of a registration under this section, the Agency may treat an operator of a fuel outlet as a user of the fuel supplied to the operator at a particular location if all of that fuel will be used for exempt uses (by the operator

or by the persons to whom the operator supplies the fuel), and, in such a case, this section applies with any necessary modifications.

Example

A Ltd operates a fuel outlet located on a wharf. Fuel supplied to that wharf location is, in turn, supplied exclusively to and used exclusively in commercial ships. The Agency can treat A Ltd as a user of the fuel supplied to it at the wharf location and assess an application from it under this section.

(5) The Agency may make a registration under this section subject to any conditions, including any prescribed conditions, that it reasonably considers will ensure that the matters referred to in subsection (2)(c)(i) and (ii) are satisfied.

65S Registration not transferable or assignable

A registration under section 65Q or 65R is not transferable or assignable.

65T Availability of information in registries

The Agency must make information in the registries referred to in sections 65Q and 65R available to RF taxpayers to whom the information is relevant.

Record keeping and returns

65U 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.

65V 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

65W 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.

(2) If an RF taxpayer has failed to file a return in accordance with section 65V 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

65X 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 65W(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

65Y Accounting for regional fuel tax

(1) In respect of 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 that the Agency administers 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.

65Z 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.

65ZA Regional fuel tax reserve fund

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

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

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

(c) ensure that all payments from that 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 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

65ZB Rebate related to regional fuel tax

(1) This section applies with respect to—

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

(b) a person to whom fuel has been supplied in an RFT region in the period beginning on the start date of the RFT scheme that applies in that RFT region and ending on the end date of that 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 65ZC; 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 65P(2)(b); or

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

(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.

65ZC 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 subsections (1)(e) and (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

65ZD 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

65ZE Appeals

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

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

Administration and enforcement

65ZF 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, 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.

65ZG Inspection of records or other information

(1) For the purpose of issuing an assessment under section 65W, 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 per-

son 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.

65ZH 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 65ZI 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

65ZI 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 65V; 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 65ZG; or

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

65ZJ 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—

(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

65ZK 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 matters in relation to registrations as a registered RF taxpayer under section 65Q or registrations as a user of fuel for exempt uses under section 65R, including—

(i) prescribing details of the registries to be maintained by the Agency:

(ii) prescribing information to be provided together with, or in support of, applications for registration:

(iii) prescribing evidence that may be considered by the Agency in connection with applications for registration:

(iv) prescribing criteria that must be satisfied for registrations or factors to be considered by the Agency in making decisions related to registrations:

(v) prescribing conditions to which registrations may be made subject by the Agency, including conditions requiring periodic reporting to the Agency by the registered persons:

(vi) prescribing processes, procedures, or conditions relating to amendments to registrations, cancellations of registrations, or suspensions of registrations:

(vii) imposing duties on registered persons to inform the Agency of any change in the information provided in or with an application for registration, or in relation to a registration, or to inform the Agency of any new information relevant to a registration:

(d) 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:

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

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

(g) prescribing an amount for the purposes of section 65ZC(2)(b):

(h) prescribing types of decisions as reviewable decisions for the purposes of section 65ZD(1)(g):

(i) 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

65ZL 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 65ZC 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	65ZJ(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	65ZH	Enforcement officer may obtain and execute warrant to search for evidence of offences against section 65ZI 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, 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 65Z, 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
21 May 2018	Reported from Finance and Expenditure Committee (Bill 38–2)
12 June 2018	Second reading
20 June 2018	Committee of the whole House (Bill 38–3)
26 June 2018	Third reading
26 June 2018	Royal assent

This Act is administered by the Ministry of Transport.

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