

In Confidence

Office of the Minister of Transport

Chair, Cabinet Economic Development Committee

REGIONAL FUEL TAX REBATE ENTITLEMENT EXTENSION

Proposal

1. This paper seeks Cabinet's agreement to extend the regional fuel tax rebate entitlement.

Executive Summary

2. On 1 July 2018, a 10 cent per litre regional fuel tax was applied to both petrol and diesel distributed within the Auckland region. The purpose of a regional fuel tax is to raise revenue from road users for transport projects that would not otherwise be able to be funded. A regional fuel tax, like fuel excise duty, is intended to be a 'road tax' on fuel used on-road. As not all fuel is used on-road, exemptions and rebates are provided for in legislation.
3. The Ministry of Transport (the Ministry) is undertaking work to improve the entitlements for regional fuel tax rebates and fuel excise duty refunds with a target date for completion of 30 June 2019.
4. Cabinet noted if there were situations where it was obvious that neither fuel excise duty nor regional fuel tax should apply, and where it might make sense to address sooner than the end of the proposed twelve month review period, then the Minister of Transport may bring them to Cabinet as a package, prior to the completion of the work [DEV-18-MIN-0162, CAB-18-MIN-0399 refers].
5. Four situations have been identified that I consider ought to be addressed earlier. I recommend extending the eligibility for exemptions or rebates for regional fuel tax to include:
 - 5.1. diesel used for home heating by private individuals
 - 5.2. diesel used for electricity generation by non-commercial organisations (for example, local and central government agencies, charities)
 - 5.3. petrol and diesel used in road registered vehicles that are used exclusively or predominately off-road
 - 5.4. petrol and diesel supplied inside a regional fuel tax region but subsequently distributed outside the regional fuel tax region.

6. The proposals are consistent with the policy intent that regional fuel tax should only be paid by those who use fuel on public roads. The proposals do not impact on the revenue projected to be raised from the regional fuel tax in Auckland as it was based on fuel used on-road.
7. Subject to Cabinet's agreement, I expect to bring a paper to the Cabinet Legislation Committee on 29 November 2018 to regulation changes to give effect to the proposals outlined in this paper.

Context

8. On 1 July 2018, a 10 cent per litre regional fuel tax was applied to both petrol and diesel distributed within the Auckland region. The purpose of a regional fuel tax is to raise revenue from road users for transport projects that would not otherwise be able to be funded. A regional fuel tax, like fuel excise duty, is intended to be a 'road tax' on fuel used on-road. As not all fuel is used on-road, exemptions and rebates are provided for in legislation.
9. On 20 December 2017, Cabinet agreed that the entitlement for a rebate of regional fuel tax should be similar to that provided for refunds of fuel excise duty [CBC-17-MIN-0088 refers]. Cabinet also agreed to similar exclusions provided in the Local Authorities Fuel Tax provisions contained in the Local Government Act 1974.
10. The regulations for the refund of fuel excise duty were designed primarily for petrol, with a strong focus on petrol used in the agricultural sector. As such, they are not well suited to diesel being used for non-road purposes. Prior to the introduction of the regional fuel tax in Auckland, there was no transport fuel tax on diesel as diesel vehicles are subject to Road User Charges (RUC), which are weight and distance based.
11. On 13 June 2018 and 15 August 2018, the Cabinet Economic Development Committee (DEV) noted that:
 - 11.1. the Minister of Transport intended to instruct the Ministry of Transport to review entitlements to both fuel excise duty refunds and regional fuel tax rebates, with a target date of twelve months for completion of the review [DEV-18-MIN-0119 refers]
 - 11.2. if there were other situations where it was obvious that neither fuel excise duty nor regional fuel tax should apply, and which it might make sense to address sooner than the end of the proposed twelve month period, then the Minister of Transport may bring them to Cabinet as a package, prior to the completion of the work [DEV-18-MIN-0162 refers].
12. Claims for regional fuel tax rebates and fuel excise duty refunds are made to the New Zealand Transport Agency (NZ Transport Agency). The NZ Transport Agency assesses each claim, and if the claim is valid, provides a refund or rebate.

I recommend extending the regional fuel tax rebate entitlement

13. The Ministry of Transport has been undertaking work to consider how to improve the entitlements for fuel excise duty refunds and regional fuel tax rebates.

14. Based on this work, I consider it would be advantageous to proceed with the following four proposals as soon as possible rather than at the end of the twelve month period. This will demonstrate that the Government is taking a responsive approach to issues that have arisen.
15. Other rebate entitlement matters have been highlighted in the media in recent times, including recreational boats and aircraft not being eligible for a rebate or a refund. Extending the entitlement to these situations is more complicated and needs to be worked through over the twelve month review period.
16. The proposals outlined below are relatively straight forward issues that can be easily resolved now.

Entitlement proposal one: diesel used for home heating

17. Currently there is no regional fuel tax rebate for diesel used for home heating. Following the introduction of the regional fuel tax in Auckland I received correspondence from homeowners expressing concern that the regional fuel tax in Auckland would result in higher winter energy heating costs for people with diesel powered heating systems. This potentially reduces the intended benefits of the Winter Energy Payment in some cases.
18. Officials have not been able to find accurate figures regarding the number of households that use diesel for home heating, [REDACTED].
[REDACTED].
Information withheld under section 9(2)(ba)(i) of the OIA.
19. I recommend that those who use diesel for home heating should be entitled to a rebate or exemption in respect of regional fuel tax. This is a non-road use of fuel and providing a rebate or exemption does not pose significant administrative challenges for the NZ Transport Agency.
20. To mitigate the risk of fraudulent claims, the entitlement should be only for diesel delivered by a fuel distributor to a fixed tank connected to a heating system, which is the normal way these are configured and supplied. The entitlement would not extend to diesel bought from a service station and used for home heating.
21. The NZ Transport Agency would undertake checks to ensure the validity and integrity of claims as part of business-as-usual practices in terms of administering the rebate system.

Entitlement proposal two: diesel used for electricity generation

22. Currently, fuel used in the generation of electricity for “public use at a power station or gas works” is exempt from regional fuel tax. Fuel used for “commercial purposes otherwise than as fuel in any motor vehicle, vessel, or aircraft” is also entitled to a rebate. For example, fuel used in an electricity generator by a company is entitled to a rebate.
23. The NZ Transport Agency currently interprets “commercial purposes” to include fuel used by public/community organisations, including for electricity generation. There are likely to be some instances that are not entirely clear and a strict reading of the existing regulations would mean that the use of fuel in this way is not entitled to a

rebate. This proposal will make it clear that non-commercial organisations are entitled to a rebate for fuel used for electricity generation. This is needed because the regional fuel tax also applies to diesel, which is used extensively for back-up electricity generation by public/community organisations.

24. I recommend regulations be made to make it clear that non-commercial organisations are entitled to a rebate or an exemption for diesel used for electricity generation. The entitlement would not extend to private individuals and domestic uses at this time, however this will be considered as part of the twelve month review.
25. There is likely to be a low risk of fraud with this proposal as the entitlement would only apply to fuel that is bulk delivered and would not extend to private individuals or domestic uses.

Entitlement proposal three: road registered vehicles that are used exclusively or predominately off-road

26. Currently some motor vehicles (known as “exempted vehicles”) are entitled to a rebate of regional fuel tax and refund of fuel excise duty (where petrol is used). “Exempted vehicles” include farm vehicles, mobile machines and various miscellaneous vehicles (for example, tractors used for cemetery purposes or for the cutting of verges of roads or vehicles used by local authorities only for maintaining stop banks and watercourses).
27. The definition of “exempted vehicles” does not include road registered vehicles that are used predominately or exclusively off-road in the construction sector (for example, road rollers and road scrapers). This is because the existing fuel excise duty regulations were designed for petrol vehicles used off-road. The types of vehicles mentioned above are solely diesel-powered.
28. These diesel-powered vehicles are already exempt from RUC under the Road User Charges (Classes of RUC Vehicles) Exemption Order 2012. A policy decision has already been made – in the context of RUC – that these vehicles’ use of the road is immaterial. Regional fuel tax similarly seeks to distinguish between road and non-road use, and it makes sense to follow the existing RUC approach. I recommend that those vehicles already exempt from RUC should be entitled to a rebate of or exemption from regional fuel tax.
29. Claimants will need to provide information to the NZ Transport Agency to verify their off-road use. Only a narrow range of highly specialised vehicles are included in the Road User Charges (Classes of RUC Vehicles) Exemption Order 2012 so the proposed entitlement will not allow diesel ute owners, for example, to claim a rebate.

Entitlement proposal four: fuel supplied inside a regional fuel tax region but subsequently distributed outside that region

30. Following the implementation of the regional fuel tax in Auckland, it was brought to my attention that there are instances where fuel is delivered to retail sites inside Auckland but is then (using mini-tankers) distributed to customers outside the Auckland region (for example, to customers in the Waikato region). Currently

regional fuel tax applies to all fuel supplied to retail sites in Auckland and there is no rebate entitlement should the fuel be subsequently distributed outside Auckland.

31. I recommend extending the entitlement provisions for regional fuel tax rebates to include fuel that is supplied to a site inside a region with a regional fuel tax and then distributed outside that region.
32. Fuel distributors would make a rebate claim for fuel they supplied inside Auckland but then distributed to customers outside the Auckland region. Distributors would need to meet NZ Transport Agency requirements for additional recordkeeping when claiming the rebate.
33. Any rebate claim would need to be supported by evidence that the fuel was delivered to an end user outside the Auckland region. Should a fuel distributor bring fuel back into Auckland it would be liable for regional fuel tax on that fuel.

Implementation and administration of the entitlement proposals

34. Extending the entitlement provisions will have a cost and require implementation by the NZ Transport Agency.

One-off set up costs

35. The NZ Transport Agency has advised that to implement these policy proposals a number of system changes will be required to its online system. The indicative cost (including other implementation activities) is between \$100,000 to \$130,000. This cost will be paid from regional fuel tax revenue.
36. The NZ Transport Agency has advised that work necessary to implement the entitlement proposals is expected to be complete in February 2019. This is likely to mean that claimants are not able to make claims through the NZ Transport Agency online system until February 2019, regardless of the commencement date of the new regulations.
37. Auckland Council understands that the changes will have one-off cost implications. Auckland Council would like to further understand the basis for the costs, [REDACTED]

Information withheld under section 9(2)(g)(i) of the OIA.

On going costs

38. The NZ Transport Agency will have to administer each claim or exemption application. This cost will be paid from regional fuel tax revenue. Rebate claims would be also paid from the regional fuel tax revenue.
39. The policy proposals will not impact on the revenue projected to be raised from regional fuel tax in Auckland as the projections were based on fuel used on road, and non-road use was not counted. The regional fuel tax in Auckland is projected to raise between \$150 and \$170 million per year.

40. As with any rebate system, there is a risk of fraud. Substantial and widespread fraud would have the potential to impact on the revenue so I expect the NZ Transport Agency to have in place appropriate checking and auditing procedures when administering the rebate and refund system. The NZ Transport Agency has access to funding to enable it to do this.

Crown Law Office advice

Information withheld under section 9(2)(h) of the OIA.

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Consultation

Information withheld under section 9(2)(g)(i) of the OIA.

45. The Treasury, the Ministry of Business, Innovation and Employment and the NZ Transport Agency have been consulted on this paper. The Department of Prime Minister and Cabinet has been informed.
46. Auckland Council has also been consulted on the proposals and the associated costs.

Financial Implications

47. There are no financial implications for the Crown relating to these entitlement proposals. The one-off and on going costs relating to the proposals are to be funded out of regional fuel tax revenue, as outlined above.

Legislative Implications

48. In order to give effect to the policy proposals, I propose regulations be made under section 65ZK(1)(b) and (1)(d)(iii) of the LTMA to enable a rebate or exemption for regional fuel tax paid from the date the regulations come into force. This is in addition to the matters referred to at paragraph 43 above.

Section 65ZK(1)(b) of the LTMA

49. Section 65ZK(1)(b) of the LTMA enables regulations to be made prescribing uses of fuel (other than use in a vehicle on a public road) that are exempt from regional fuel tax.
50. When considering whether to recommend the making of regulations under section 65ZK(1)(b) of the LTMA, the Minister of Transport must have regard to the principle that regional fuel tax is intended to be borne only by those who use fuel on public roads. The Minister is to list the reasons for making the recommendation in the explanatory note of the regulations.
51. I recommend regulations be made to enable an exemption from regional fuel tax for the following purposes:
- 51.1. diesel used for home heating and home water heating by private individuals
 - 51.2. diesel used for electricity generation by non-commercial organisations.
52. The regulations are consistent with the policy intent that regional fuel tax should only be paid by those who use fuel on public roads. This intent will be captured in the explanatory note of the regulations.

Section 65ZK(1)(d)(iii) of the LTMA

53. Section 65ZK(1)(d)(iii) of the LTMA enables regulations be made prescribing circumstances in which persons are entitled to a regional fuel tax rebate where it would be unjust or contrary to the policy for regional fuel tax to be collected or kept.
54. I recommend regulations be made to enable rebate entitlements for:
- 54.1. petrol and diesel used by road registered vehicles used primarily or exclusively off-road
 - 54.2. petrol and diesel supplied inside a regional fuel tax region but then distributed outside the regional fuel tax region.
55. The regulations are consistent with the policy intent underlying regional fuel tax that it is a method to fund regional transport projects by raising revenue from those who use roads in that region.

Impact Analysis

56. The Regulatory Quality Team at The Treasury agrees that no formal separate Regulatory Impact Assessment is required in support of these proposals since their impact is expected to be minor overall.

Human Rights, gender implications and disability perspectives

57. There are no such implications or perspectives relevant to the policy proposals in this paper.

Publicity

Information withheld under section 9(2)(g)(i) of the OIA.

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59. The NZ Transport Agency will update the information on its website about the entitlement to regional fuel tax rebates.

Proactive Release

60. I propose to proactively release this Cabinet paper subject to appropriate redactions.

Recommendations

61. The Minister of Transport recommends that the Committee:
- 1. **note** that the Ministry of Transport is making progress on improving the entitlements for regional fuel tax rebates and fuel excise duty refunds by 30 June 2019
 - 2. **note** that Cabinet was advised if there were other situations where it was obvious that neither fuel excise duty nor regional fuel tax should apply, and which it might make sense to address sooner than the end of the proposed twelve month review period, then the Minister of Transport may bring them to

Cabinet as a package, prior to the completion of the work [DEV-18-MIN-0162 refers]

3. **note** the Minister of Transport has identified four non-road fuel uses that he proposes be entitled to a regional fuel tax rebate or exemption prior to 30 June 2019 that are relatively straight forward to implement and consistent with the overall policy intent
4. **agree** to extend the eligibility for regional fuel tax rebates or exemptions for the following:
 - 4.1. diesel used for home heating and water heating
 - 4.2. diesel used for electricity generation by non-commercial organisations
 - 4.3. petrol and diesel used in road registered vehicles that are used exclusively or predominately off-road
 - 4.4. petrol and diesel supplied inside a regional fuel tax region but subsequently distributed outside the regional fuel tax region
5. **invite** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy approvals in Recommendation 4
6. **note** the Minister of Transport intends to take a paper to the Cabinet Legislation Committee on 29 November 2018 to give effect to the policy approvals set out in Recommendation 4 Information withheld under section 9(2)(g)(i) of the OIA.
7. **note** that the Minister of Transport intends to:
 - 7.1. [REDACTED]
 - 7.2. proactively release this Cabinet paper subject to appropriate redactions, along with the Ministry of Transport's policy briefing paper.

Authorised for lodgement

Hon Phil Twyford

Minister of Transport

