



Progress on improving the regional fuel tax rebate and fuel excise duty refund entitlements

Reason for this briefing	You requested work to improve the entitlements for regional fuel tax rebates and fuel excise duty refunds. This briefing sets out the proposed approach to this work and seeks your agreement to a Cabinet paper requesting policy approval to four entitlement proposals.
Action required	Agree to the recommendations. Discuss with officials, if desired.
Deadline	8 October 2018.
Reason for deadline	This is the date we will submit a draft Cabinet paper to your Office for your consideration.

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

Contact for telephone discussion (if required)

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MINISTER'S COMMENTS:

Date:	27 September 2018	Briefing number:	OC180741
Attention:	Hon Phil Twyford (Minister of Transport)	Security level:	In-confidence
Copy to:	Hon James Shaw (Acting Associate Minister of Transport)		

Minister of Transport's office actions

- | | | |
|---------------------------------------|---|--|
| <input type="checkbox"/> Noted | <input type="checkbox"/> Seen | <input checked="" type="checkbox"/> Approved |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Referred to | |
| <input type="checkbox"/> Withdrawn | <input type="checkbox"/> Not seen by Minister | <input type="checkbox"/> Overtaken by events |

Purpose

1. This briefing provides an outline of the work to improve entitlements to fuel excise duty refunds and regional fuel tax rebates. To help ensure the smooth implementation of the regional fuel tax in Auckland, the work is being progressed in three 'tranches'. This is to ensure straightforward issues are addressed as soon as possible and issues that are more complex are worked through between now and 28 June 2019.
2. Tranche one, which dealt with fuel exported from Auckland, is complete. We now seek your feedback on tranche two. Should you agree to the tranche two proposals, we will prepare a Cabinet paper and submit it your Office on 8 October 2018. A proposed timetable for the tranche two proposals is contained in annex one.
3. We also provide further information about tranche three, due to be completed by 28 June 2019.

You asked for work to improve the rebate and refund entitlements for fuel used off road

4. Beginning on 1 July 2018, a 10 cent per litre regional fuel tax 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 benefit the region. A regional fuel tax is intended to be a 'road tax' that relates to the use of a region's roads. A regional fuel tax is not a consumption tax on all fuel used across the economy and society.
5. As not all fuel is used on-road, exemptions and rebates are provided for off-road uses of fuel. This means people who use fuel off-road may:
 - 5.1. register a site as exempt – this means the fuel distributor will not pay regional fuel tax on the fuel delivered to the site
 - 5.2. claim a regional fuel tax rebate – this means the end user makes a claim for regional tax paid by the distributor.
6. On 20 December 2017, Cabinet decided that the entitlement for a rebate for regional fuel tax should be similar to that provided for the refund of fuel excise duty and to similar exclusions provided in the Local Authorities Fuel Tax provisions in the Local Government Act 1974 [CBC-17-MIN-0088 refers].
7. 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 used off-road. 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 which are weight and distance based.
8. On 13 June 2018 and 15 August 2018, the Cabinet Economic Development Committee (DEV) noted that:
 - 8.1. you 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 [28 June 2019] for completion of the review [DEV-18-MIN-0119 refers]
 - 8.2. 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].

The work is being undertaken in three tranches

9. We are doing this work in tranches. This is to ensure that urgent and straightforward issues are addressed as soon as possible, and issues that are more complex are worked through over the twelve month timeframe, as set out in the table below.

Tranche	Description	Entitlement examples	Target date
Tranche one	Urgent issues arising immediately following the implementation of a regional fuel tax in Auckland.	<ul style="list-style-type: none"> Fuel exported from Auckland Fuel delivered to Great Barrier Island 	August 2018 (now complete)
Tranche two	Further issues that have arisen that can be immediately addressed and do not pose significant implementation issues for the NZ Transport Agency.	<ul style="list-style-type: none"> Home heating Electricity generation Road registered vehicles used predominately off-road Mini tankers 	December 2018
Tranche three	Design issues and more complicated issues that need to be thoroughly worked through.		28 June 2019

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

Tranche one is complete

10. The first tranche of the work is now complete. Soon after the regional fuel tax was implemented in Auckland it came to our attention that the broad liability provisions in the legislation meant that fuel that was taken out of New Zealand (for example, exported to the Pacific Islands from Auckland) or to an island excluded from the regional fuel tax region (for example, Great Barrier Island) was subject to the regional fuel tax. It was not intended that a regional fuel tax in Auckland would have a cost impact in these two situations so urgent work was undertaken to remedy the situation. On 24 August 2018 amendment regulations came into force providing a rebate entitlement for these two situations.¹

Tranche two is now underway: we seek your feedback on progressing four entitlement proposals

11. Work on tranche two is now underway and we seek your feedback on four entitlement proposals. We think it would advantageous to advance these proposals as soon as possible rather than at the end of the twelve month period. This will help to ensure the sustainability of the regional fuel tax as a short to medium term funding tool and demonstrate that a responsive approach is taken to issues that arise.

¹ Land Transport Management (Regional Fuel Tax) Amendment Regulations 2018.

12. Tranche two aims to address further issues that have emerged since the implementation of the regional fuel tax in Auckland. To be part of tranche two the issue/proposal must:
 - 12.1. be an off-road use of fuel
 - 12.2. not impact on the revenue projections for the regional fuel tax scheme in Auckland
 - 12.3. not pose significant compliance risks (in terms of avoidance)
 - 12.4. be able to be readily implemented by the NZ Transport Agency either by providing a rebate or an exemption.
13. The four proposals set out below meet these criteria.
14. By way of explanation, in regard to para 12.2, the revenue projections for regional fuel tax in Auckland were based on road use. This means providing an entitlement in these off-road situations will not materially impact the projected revenue from the regional fuel tax in Auckland. Extending the entitlement provision will have a cost as the NZ Transport Agency will have to administer each rebate or exempt site application claim made.
15. In regard to para 12.4, the NZ Transport Agency has advised in some cases it may wish to register a site as exempt instead of providing a rebate. For the NZ Transport Agency to register a site as exempt it must be satisfied that the fuel be exclusively for an exempt use. If the site is not registered the user will be entitled to a rebate.

Entitlement proposal one: entitlement for diesel used for home heating

16. Currently there is no entitlement for fuel used for private or domestic purposes including diesel used for home heating.
17. Home heating came to our attention through correspondence you received from a member of the public who expressed concern that the regional fuel tax in Auckland would increase winter energy heating costs and lessen the impact of their Winter Energy Payment. The person has a diesel central heating system and the fuel delivered to is subject to regional fuel tax.
18. We consider that people who use diesel for home heating should be entitled to a rebate or exemption. We also understand that in some cases diesel is used for water heating, so propose this use also be entitled to a rebate or exemption.
19. 
20. To mitigate the risk of fraudulent claims, we suggest that the entitlement is only for diesel delivered by a distributor to a fixed tank connected to a heating system. The entitlement would not extend to diesel bought from a service station used for home heating. This is to mitigate the risk of fraudulent claims being made for diesel that is actually used in a vehicle on-road. Consideration will be given to what, if any, further safeguards may be put in place to mitigate this risk.

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

Entitlement proposal two: entitlement for diesel used for electricity generation

21. Currently, fuel used in the generation of electricity for public use at a power station or gas works is an exempt use.² There is a rebate entitlement for fuel used for “commercial purposes otherwise than as fuel in any motor vehicle, vessel, or aircraft” in the existing regulations.
22. The NZ Transport Agency currently interprets “commercial purposes” to include fuel used off-road by public/community organisations, including for electricity generation. However, given that the regional fuel tax also applies to diesel, and the extensive use of diesel for back-up electricity generation, it would be desirable to make it unambiguous that non-commercial users are entitled to a rebate or an exemption for diesel used for electricity generation, should the NZ Transport Agency be satisfied that the fuel is used exclusively for electricity generation.
23. There is likely to be a low risk of fraud as the entitlement will only apply to fuel that is bulk delivered. The entitlement will not extend to private individuals or domestic uses. Extending any entitlement to private parties who use fuel for electricity generation will be considered as part of tranche three.

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

24. The existing regulations provide a refund and rebate entitlement for some motor vehicles (known as “exempted vehicles”). Currently, exempted vehicles are 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).
25. The definition of “exempted vehicles” does not include vehicles that are often used in the construction sector that are road registered but used predominately or exclusively off-road (for example, road rollers and road scrapers). This is because the existing fuel excise duty regulations (on which regional fuel tax is based) were designed to exempt petrol vehicles used off-road. No fuel excise duty is paid on solely diesel-powered vehicles and therefore no provision is made in the fuel excise duty regulations for refunds.
26. These diesel-powered vehicles are already exempt from road user charges under the Road User Charges (Classes of RUC Vehicles) Exemption Order 2012. It is proposed that those vehicles already exempt from Road User Charges should be entitled to a rebate or exemption for regional fuel tax.
27. The vehicles we propose to be included tend to consume a large amount of fuel. They are road-registered because they sometimes go on-road or are registered for ownership purposes.
28. Including these vehicles will not mean the owner of every vehicle will be able to claim off-road fuel use. The vehicle types will be specified in the regulation, and will be those used either exclusively or predominately off-road. Claimants will need to provide information to the NZ Transport Agency to verify the off-road use.
29. We are currently engaging with Civil Contractors New Zealand, to understand what additional types of vehicles used exclusively or predominately off-road could be added to

² This is a similar exclusion to that provided in the Local Authorities Fuel Tax provisions in the Local Government Act 1974.

the list (for example, off-road dump trucks and machinery permanently affixed to a motor vehicle).

Entitlement proposal four: regional fuel tax on fuel supplied inside the Auckland region but subsequently distributed outside the Auckland region is rebated

30. Following the implementation of the regional fuel tax, it was brought to our attention that a fuel company delivers fuel to sites inside Auckland but then (using mini-tankers) distributes the fuel to customers outside the Auckland region (for example, to customers in the Waikato region).
31. Regional fuel tax is intended to raise funds from road users in that region for transport projects within that region. In this situation there is the real risk that the costs of the tax will be passed on to fuel users outside the Auckland region. This risk can be mitigated by providing a rebate to those users.
32. We have previously discussed this situation with your Office and a decision was made not to progress it as part of tranche one. We therefore propose to progress it as part of tranche two. Further details of this proposal are provided in annex two.

We will prepare a draft Cabinet paper reflecting your feedback to these proposals

33. A proposed timetable is attached (annex one) for your consideration to advance these tranche two proposals. Information withheld under section 9(2)(h) of the OIA.
34. We are seeking advice from Crown Law about [REDACTED]
35. [REDACTED]

Planning for tranche three is underway

36. We propose that tranche three will look at how to improve the existing regulations for refunding fuel excise duty and rebating regional fuel tax. We propose that tranche three looks at:
 - 36.1. further extending the refund and rebate entitlements, for example, [REDACTED]
 - 36.2. regulatory design Information withheld under section 9(2)(f)(iv) of the OIA.
 - 36.3. administrative improvements.
37. We will keep you updated on any significant issues through the weekly report.

Extending the entitlement for rebates and refunds

38.

[Redacted]

38.1.

[Redacted]

38.2.

38.3.

38.4.

39.

[Redacted]

40.

[Redacted]

41. Extending the entitlement will have implications for the NZ Transport Agency in terms of the number of additional rebate claims that will need to be handled. This will need to be worked through with the NZ Transport Agency. In the last ten years the volume of rebate claims for fuel excise have almost quadrupled (in 2009/10 there were over 21,000 claims; in 2015/16 there were over 77,000 claims).

42. Although the volume of claims has dramatically increased it has not materially impacted revenue. The share of refunds as a percentage of gross revenue has remained relatively static since 2004/05 at between 2.3 and 2.9 percent of total of revenue. However refunds in recent years have been at the top end of this range, with refunds totalling \$65 million in 2015/16 and \$61 million in 2016/17. The majority of this total figure is in respect of LPG (where most use is not on-road). The increase in claims suggests much of the growth in volume has been in smaller and/or rejected claims.

43. The NZ Transport Agency's online system for regional fuel tax rebates will become available for claimants in October 2018. It is possible additional uses of fuel, particularly uses of diesel, not currently well provided for in the existing regulations will come to light. These will also be considered as part of tranche three.

Regulatory design

44. As part of tranche three, we propose to consider the design of the existing regulations and the best way of implementing the overall policy objectives. As part of this, consideration will be given to how a greater simplicity can be achieved through regulatory design. We propose to consider how the existing regulations can be made simpler, less ambiguous and better able to deal with different or new fuel uses or vehicle types.
45. The existing regulations, in places, are very detailed and prescriptive. Consideration will be given to whether:
 - 45.1. the current level of prescription is warranted
 - 45.2. there would be merit in the regulations providing greater flexibility to the NZ Transport Agency to deal with the various and different circumstances
 - 45.3. a design change would better achieve the overall policy objective that is sought.
46. While regulations governing fuel excise duty and regional fuel tax can be better aligned, there are fundamental differences in external linkages, the liability to pay tax and the range of vehicles and equipment covered by each scheme that have to be accommodated. For example, fuel excise duty vehicle descriptions are used by ACC to determine liability for fees, and by the NZ Transport Agency to set vehicle licensing requirements. In addition, fuel excise duty does not provide for "exempt sites" in the way regional fuel tax does, since the tax liability for fuel excise duty is when the fuel is produced or imported into New Zealand.
47. The advantages, disadvantages and risks of such a design change will have to be thoroughly worked through and will be reported back to you with options in due course.

Administrative improvements

48. The NZ Transport Agency is also considering what should be included as part of tranche three, given the interrelationship between the fuel excise duty regulations and its other functions. The NZ Transport Agency is also interested in a number of changes to facilitate its administration of the claims system. The NZ Transport Agency is keen for consideration to be given to how the system can be made 'self-administering' and for the review to look at 'the core' of the refund system rather than just at extending or widening the rebate and refund entitlement.
49. We will come back to you with some clear proposals in due course to seek your views on whether they should be progressed as part of tranche three.

Consultation on this paper

NZ Transport Agency

- 50. The NZ Transport Agency is focused on the successful launch of its online platform for rebate claims in October 2018. The NZ Transport Agency has advised that the work necessary to implement the tranche two policy proposals will not be completed until February 2019. The Ministry is discussing with the NZ Transport Agency how to strike the right balance between the implementation timetable and the commencement date of the tranche two proposals.
- 51. It has been indicated that in order to facilitate the implementation of the proposals the NZ Transport Agency may choose to register sites as an exempt use location instead of providing a rebate.
- 52. The NZ Transport Agency has indicated, in terms of providing rebates, the changes necessary to implement the tranche two proposals have been costed at \$100,000 to \$130,000. This will be deducted from the regional fuel tax revenue.

Auckland Council

- 53. Officers at Auckland Council support the progress being made on the review of regional fuel tax rebates and fuel excise duty refunds.
- 54. In May 2018, Auckland Council wrote to the Minister of Transport and expressed its view that the key principle for the application of the regional fuel tax is that it should be paid by those who drive on the region's roads.
- 55. The proposed rebates included in tranche two are a step towards Auckland Council's position that eligibility for exemptions and rebates should include all non-road uses of fuel regardless of whether the use is by a company, charity, government sector or private individual. The changes proposed for tranche three will further align exemptions and rebates with Auckland Council's position.
- 56. Auckland Council understands that any changes to the system will have one-off cost implications. Auckland Council would like to further understand the basis for the costs, 
- 57. Auckland Council looks forward to the opportunity to provide input into the tranche three topics.

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

Recommendations

58. The recommendations are that you:

- (a) **provide** any feedback you have on this paper and the proposed timetable
- (b) **agree** to the proposals to provide an entitlement for fuel:
- used for home-heating and home water-heating by private individuals Yes/~~No~~
 - used for electricity generation by non-private organisations Yes/~~No~~
 - used by road registered vehicles used primarily or exclusively off-road Yes/~~No~~
 - supplied inside a regional fuel tax region but then distributed outside the regional fuel tax region Yes/~~No~~
- (c) **direct** the Ministry of Transport to prepare a Cabinet paper for consideration by the Cabinet Economic Development Committee. Yes/~~No~~

Marian Willberg
Manager, Demand Management
and Revenue

MINISTER'S SIGNATURE:



DATE: 30. 9. 18

Annex one: Proposed timetable for tranche two

8 October 2018	Ministry submits a draft Cabinet paper to Minister.
15 October 2018	Paper discussed at Official's meeting.
17 October to 26 October 2018	Cross-party consultation.
29 October to 31 October 2018	Ministry makes any changes to the paper and submits the final Cabinet paper to the Minister.
1 November 2018	Lodge paper for DEV
7 November 2018	DEV
12 November 2018	Cabinet
22 November 2018	Lodge paper for LEG
29 November 2018	LEG
3 December 2018	Cabinet
6 December 2018	Gazette
7 December 2018	Amendment Regulations in force (waiver to the 28 day rule required)

Annex two: Further information on proposal four – fuel initially supplied inside a region and then distributed outside the region

This item is a proposal to address the unintended consequence of a regional fuel tax (RFT) liability arising in the following circumstance:

- fuel is initially delivered to a retail site inside Auckland (so giving rise to a RFT liability).

Some of the fuel is subsequently transferred into a mini-tanker, and delivered to bulk customers outside the Auckland region. These customers typically have large tanks used to refuel vehicles and machinery on farms or construction projects.

The effect of this is that fuel purchased outside Auckland is subject to RFT, which does not align with the policy intent of RFT being that it should only apply to fuel which is purchased inside Auckland. Conceptually, this is the same as fuel exported to the Pacific Islands, or shipped to Great Barrier Island, both of which were addressed in tranche one.

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

[REDACTED]

The retail site and the mini-tanker business are all owned by the same fuel distributor, so the fuel distributor is effectively using its retail site as its own bulk storage facility.

If the fuel had initially been delivered to a bulk storage facility inside Auckland (and not a retail site), then no RFT liability would have arisen. The RFT liability arises here because the fuel distributor is using the retail site as a bulk storage facility. This is a commercial decision it has made to avoid the unnecessary duplication of building separate tanks.

Some key questions are addressed below.

How does this differ from people buying fuel inside the region and then taking it out? (they wouldn't be able to claim a rebate)

The difference here is that the fuel is not sold to an end user inside the Auckland region at all; the first time the fuel is sold to an end user is outside Auckland.

Why don't the minitankers pick up from a bulk storage facility inside Auckland?

The fuel distributor has made a decision about the most efficient supply chain – reducing distance driven by tankers (which has emissions and safety benefits, as well as cost benefits)

Why don't the minitankers pick up from a retail site outside Auckland?

For the same reasons as above – the fuel distributor has made decisions about the most efficient supply chain. We also understand that not all retail sites have the capacity and capability to supply minitankers.

Does this create a new avoidance risk?

This seems unlikely. The customers receiving the fuel are outside Auckland. The customer will pay no RFT. If they drive back into Auckland in road vehicles, but that is the same position as someone who filled at a retail site outside Auckland and drove into Auckland. If the customer brings bulk fuel back into Auckland, and either delivers it to a retail site or into a bulk storage facility, then a new RFT liability will apply.