

30 October 2014

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PUB0210: GST – Late Return Charges

1. The New Zealand Law Society (Law Society) appreciates the opportunity to comment on the draft Question We've Been Asked *PUB0210: GST – Late Return Charges (QWBA)*.
2. The Law Society agrees with the approach taken in the draft QWBA to determine whether a "late return charge" (as defined) is consideration for a taxable supply.
3. As noted in the draft QWBA, this is simply an application of the general principles set out in the Commissioner's interpretation statement on "GST Treatment of Court Awards and Out of Court Settlements" in TIB Vol 14, No 10 (October 2002).
4. The Law Society does, however, have two concerns with the draft QWBA. The first relates to the use of the term "late return charges". The second relates to the application of the general principles in the examples.

The term "Late Return Charges"

5. The draft QWBA relates to library fines, vehicle parking fines and other charges for the late return of a borrowed item. The draft QWBA refers to these fines and/or charges as "late return charges". While the term "late return charges" is an appropriate description for fees incurred for the late return of a borrowed item, it is not an appropriate description for fees imposed for overstaying in a metered car park. Perhaps a better description would be "late return and overstay charges". We appreciate this description is not as elegant, but it is important that the label used throughout the draft QWBA bears some resemblance to the subject matter.

The application of the general principles in the examples

6. The examples are not particularly helpful in explaining when "overdue" fines will be treated as consideration for a supply or a penalty for breach of terms of the contract. In particular, the factual differences between example 1 (which relates to a library fine for the late return of a book) and example 4 (which relates to fine for overstaying in a "pay and display" car park) seem pretty small. Those differences are:
 - In example 4 the notice expressly states that after the parking ticket expires the person is parking unlawfully and is in breach of the terms and conditions of the agreement, and the fine is in consequence of the breach. However, it is pretty clear when you borrow library books that they are also issued for a specified period (a person would receive a printout

showing the date the books are due back). If the person keeps them longer he or she is in breach of that, and the resulting payment is described as a “fine” (we appreciate that the label used to describe the payment is not conclusive). It seems to us that the key difference is that in example 4 there is more of a ‘song and dance’ about the fact that the fine is issued as a consequence of a breach of the library’s lending terms and conditions. We query whether the GST treatment of the fine/penalty should turn on that.

- In example 4 there is a set fine, whereas in example 1 the fine is calculated as an amount per day that the book is overdue. In our opinion, the method of calculating the amount of the fine / penalty (i.e. whether it is a set amount or a daily amount) should not impact on the GST treatment of the fine/penalty.

7. In both examples the fine/penalty bears no relationship to the original borrowing/parking fee. This is considered significant in example 4, but not in example 1.
8. We are of the view that it would be helpful if the draft QWBA was clearer about why it doesn’t consider the overdue fines in example 1 to be penalties for breach of the terms of borrowing.
9. As an aside, we had a look at the website for the Christchurch City Libraries to see how the principles set out in the draft QWBA would apply in practice. In terms of overdue fines, the website (www.christchurchcitylibraries.com) states:

“Overdue fines

Fines are charged on all items that the customer fails to return to the library by the due date to reflect the inconvenience created for other customers who are unable to borrow or browse the item. Fines accrue each day the item is overdue up to a maximum per item fine of \$18.00.”

10. The website includes a table which sets the fine for adults at \$0.60 per day per item.
11. The “conditions of membership” state:
 - “2. *Most items can be borrowed for 28 days. Beyond that, overdue fines will be payable when the item is returned.*
 3. *You will be unable to borrow if you:*
 - *don’t return items within 27 days of their due date;*
 - *have unpaid fines or debts totaling \$18 or more;*
 - *have not paid fines or debts that have been outstanding for over a month.”*
12. At first blush this sounds more like an overdue fine for a breach of the terms of membership. However, the website also states:

“We do not renew items, if you want to keep an item out for longer than 4 weeks there is a charge per item per day up to a further 4 weeks.”
13. The reference to “charge per item” links to the quote for “overdue fines” above, which specifies that the rate is \$0.60 per day (as specified in the table). This extract makes the overdue fine sound more like consideration for a supply.
14. In these circumstances, the draft QWBA would not be very helpful in deciding what the correct GST treatment of the “overdue fine” is.

Conclusion

This submission was prepared with assistance from the Law Society's Tax Law Committee. If you wish to discuss this, please do not hesitate to contact the committee convenor Neil Russ, through the committee secretary Rhyn Visser (04 463 2962, rhyn.visser@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Moore', with a long horizontal flourish extending to the right.

Chris Moore
President