

GOODS AND SERVICES TAX – TRAFFIC ENFORCEMENT ACTIVITIES BY LOCAL AUTHORITIES - GST OUTPUT TAX ON INFRINGEMENT FEES RETAINED - TREATMENT OF FINES – GST INPUT TAX ON ACQUISITION OF GOODS AND SERVICES

PUBLIC RULING - BR Pub 17/03

This is a Public Ruling made under s 91D of the Tax Administration Act 1994.

Taxation Laws

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of ss 3A(1), 6(1)(b), 8(1), 14(1), 20(3), 20(3C) and 21–21G.

The Arrangement to which this Ruling applies

This Ruling applies to a “local authority” (as defined in s 2(1)) that is a registered person under the Act.

The Arrangement concerns local authority traffic law enforcement activities under the Land Transport Act 1998 where:

- A local authority issues infringement notices and subsequently receives infringement fees under s 141 of the Land Transport Act 1998. The infringement fees received by a local authority are paid into the Crown bank account or retained under s 141(3)–(5) of the Land Transport Act 1998. The infringement fees retained under s 141 of the Land Transport Act 1998 are a debt owing to a local authority when imposed; and
- A local authority acquires goods and services, on which tax is charged under s 8, that are applied in its traffic law enforcement activities under the Land Transport Act 1998.

The Arrangement does not include any activities that involve making an “exempt supply” as defined in s 14(1).

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- All the activities that a local authority undertakes in enforcing traffic laws in its area are **part of its “taxable activity”** under s 6(1)(b).
- GST under s 8(1) is not charged on any amounts of infringement fees retained by a local authority under s 141(3)–(5) of the Land Transport Act 1998.
- GST charged under s 8(1) on goods and services that the local authority acquires for use in its traffic law enforcement activities is **“input tax” as defined in s 3A(1)**. When calculating its **“output tax”**, under s 20(3) and (3C), a local authority may deduct the full amount of **“input tax”** charged on acquiring these goods and services.

- No apportionment or adjustment (in the terms of ss 20(3C) and 21–21G) to the amount of input tax deduction is required for goods and services applied to the issuing of infringement notices and the retention of the infringement fees.

The period or tax year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 14 February 2017.

This Ruling is signed by me on 14 February 2017.

Susan Price

Director, Public Rulings

COMMENTARY ON PUBLIC RULING BR PUB 17/03

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Ruling BR Pub 17/03 ("the Ruling").

Legislative references are to the Goods and Services Tax Act 1985 (GST Act) unless otherwise stated. Relevant legislative provisions are reproduced in the Appendix to this commentary.

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Summary

1. This Ruling and Commentary explains the GST treatment of local **authorities'** traffic law enforcement activities under the Land Transport Act 1998 (LTA).
2. Local authorities undertake a broad range of activities for the benefit of their communities. These activities, including traffic law enforcement, are **deemed to be part of a local authority's** taxable activity under s 6(1)(b).
3. The Ruling confirms that GST under s 8(1) is not charged on any amounts of infringement fees received or retained by a local authority under s 141(3)–(5) of the LTA. This conclusion is based on the infringement fee being a debt due to the local authority on imposition and not a debt due to the Crown.
4. Broadly, GST output tax is not payable on infringement fees because infringement fees are a penalty for an offence imposed under a statute. Consequently, **infringement fees received as part of a local authority's** traffic law enforcement activities are not consideration paid by the offender for any supply provided by the local authority.
5. The Ruling also confirms that GST charged on goods and services that a local authority acquires to use for its traffic law enforcement activities is input tax. A local authority may deduct the input tax when calculating its output tax.
6. The issuing of infringement notices and the retention of infringement fees under the LTA is a necessary and incidental part of providing traffic law enforcement services. These activities do not represent a separate use of the goods and services. There is no separate supply and no apportionment or adjustment (in terms of ss 20(3C) and 21–21G) is required when calculating input tax.

Background

7. There has been some uncertainty as to the correct GST treatment of parking infringement fees and the Commissioner has decided to issue a Public Ruling to provide on-going clarification.
8. The Ruling applies to local authorities as defined by s 2(1). This definition has two parts: it includes local authorities within the meaning of s 5(1) of the Local Government Act 2002, and it lists other entities considered to be local authorities under the Goods and Services Tax Act.
9. For the purposes of this Ruling, a local authority is also required to be a **"registered person"** as defined in s 2(1).
10. The Ruling addresses the GST treatment of infringement fees arising from the issuing of infringement notices under the LTA. The LTA empowers local authorities to issue infringement notices for infringement offences. In each case, an Act, regulation or bylaw prescribes the infringement fee or penalty.
11. The Ruling also considers input tax charged on goods and services acquired by a local authority that are used or applied to its traffic law enforcement activities under the LTA. The Commissioner understands such traffic law enforcement activities include:
 - preventing the obstruction of roadways by double-parked vehicles;

- preventing the obstruction of drivers' vision at intersections;
 - enforcing loading and clearway zones;
 - enforcing the restriction on parking at bus stops;
 - enforcing non-parking on mobility parks; and
 - enforcing the restriction on parking over access-ways.
12. These activities are "stationary vehicle offences" under the LTA. This term is defined widely by s 2(1) of the LTA and essentially includes parking in breach of any Act, regulation or bylaw.

Summary of the legislation

13. This part of the commentary summarises the relevant provisions of the LTA and the GST Act.
14. The LTA is the principal Act in the area of transport and addresses a wide variety of issues. Relevantly, for the purposes of this Ruling and commentary, the LTA allows local authority parking wardens to issue infringement notices (which give rise to infringement fees) for certain infringement offences. The LTA also specifies when infringement fees received by the local authority can be retained and when the infringement fees must be paid to the Crown.

Scheme of the Land Transport Act 1998

15. The issuing of infringement notices and retention of infringement fees under the LTA are relevant to understanding the nature of the transaction. Section 138 of the LTA sets out how a person who is alleged to have committed an "infringement offence" may be proceeded against in court or be issued with an infringement notice.
16. An "infringement offence" is defined in s 2(1) of the LTA as being:
- infringement offence** means—
- (a) a moving vehicle offence;
 - (ab) a stationary vehicle offence;
 - (b) an overloading offence;
 - (ba) an offence against this Act concerning logbooks that is committed by a transport service driver;
 - (c) an infringement offence specified in regulations made under this Act;
 - (ca) a toll offence;
 - (d) any other offence against this Act or any other enactment that is specified as an infringement offence against this Act (other than an offence that carries a penalty of imprisonment or mandatory disqualification from holding or obtaining a driver licence)
17. Section 139 of the LTA prescribes when and how infringement notices can be issued, and s 140 of the LTA sets out the content requirements.
18. Section 141 of the LTA deals with infringement fees and, in particular, when they can be retained. Relevant to this commentary are subss (1) and (3)–(5):
- Section 141(1) of the LTA provides that the infringement fee payable for an infringement offence is the appropriate fee prescribed for the offence under the LTA.

- Section 141(3) of the LTA provides (subject to subs (4) and (5)) that all infringement fees must be paid into a Crown bank account. An exception allows the retention of a portion of fees (that the Minister of Finance from time to time approves) being the expenses incidental to their collection.
 - Section 141(4) of the LTA allows the Minister of Finance to approve a retention (by an enforcement authority) of a portion of the infringement fees received from infringement offences in relation to the use of special vehicle lanes.
 - Section 141(5) of the LTA provides for the retention of infringement fees received in respect of certain offences that involve parking in breach of a local authority bylaw. This subsection also allows for the retention of towage fees received and a portion of all other infringement fees received by an enforcement authority that the Minister of Finance from time to time approves.
19. Section 141 of the LTA is largely drafted in terms of an **“enforcement authority”** rather than a **“local authority”**. However, the definition of an **“enforcement authority”** in s 2(1) of the LTA includes a **“local authority”** which is in turn defined by reference to a regional council or territorial authority under the Local Government Act 2002. The term **“road controlling authority”** is also used in the relevant sections of the LTA and, ultimately, includes local authorities.

Imposition of GST under the Act

20. Section 8(1) imposes GST on the supply of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person. GST is charged on the value of that supply. The value of a supply is the **“consideration” paid for the supply** (ss 2(1) (definition of “consideration”) and 10).
21. The term **“supply”** is defined very broadly in s 5(1) as including **“all forms of supply”**. In *Databank Systems Ltd v CIR* (1987) 9 NZTC 6,213 this was interpreted as meaning **“to furnish with or provide”**.
22. The approach of the courts is that a supply of a service requires that some kind of benefit is provided to a recipient (per Blanchard **J’s majority** judgment in *Chatham Islands Enterprise Trust v CIR* (1999) 19 NZTC 15,075 and see *Case S65* (1996) 17 NZTC 7,408).
23. For GST to apply to a payment, it must be more than just a payment to a registered person in the course or furtherance of their taxable activity. For GST to apply, the payment must also be consideration for a supply. To determine whether a payment satisfies this test, a relevant supply must be identified. Then it must be determined whether a payment is made for that identified supply (see *CIR v Databank Systems Ltd* (1989) 11 NZTC 6,093 (CA)).
24. When analysing transactions for GST purposes, the focus is on the legal rights and obligations created by the parties. The important question is whether a sufficient nexus or reciprocity exists between the supply of the goods or services and the consideration (see *CIR v NZ Refining Co Ltd* (1997) 18 NZTC 13,187 (CA), *Chatham Islands* and *Rotorua Regional Airport v CIR* (2010) 24 NZTC 23,979).

Analysis

25. Against this background, four main areas need to be considered in answering the issues addressed in the Ruling. These areas are:
- the scope of a local authority's taxable activity;
 - whether GST output tax is payable on infringement fees;
 - whether GST input tax deductions are available; and
 - the extent to which GST input tax deductions have to be apportioned or adjusted if output tax is not payable on infringement fees.

Scope of a local authority's taxable activity

Services provided by local authorities and taxable activity generally

26. Local authorities provide a wide variety of services to their ratepayers and community. Undertaking services to benefit the community is consistent with the purposes of local government generally and s 10 of the Local Government Act 2002. This section specifies the purposes of a local authority include promoting the social, economic, environmental, and cultural well-being of communities.
27. In return for the local authority providing services, households and businesses are required to pay rates. Rates are generally levied to pay for many of the services that local authorities provide.
28. One service local authorities might provide is traffic law enforcement. Traffic law enforcement activities likely represent a small part of the overall services local authorities provide to benefit their communities. The broad purpose of traffic law enforcement services is to provide safe and efficient roads for ratepayers and the community. This purpose is consistent with promoting the social, economic, environmental, and cultural well-being of communities.
29. Local authorities make, administer and enforce traffic laws. Section 22AB of the LTA allows a local authority (as a road controlling authority) to make a wide variety of bylaws in relation to the roads under its control. For parking bylaws the local authority must designate the area of road affected and determine how the restrictions in the bylaw will apply. This also involves the local authority providing appropriate signage, road markings and meters as required.
30. Local authorities also undertake various administration activities such as publishing bylaws, tracing and recording payments from offenders, dealing with complaints, and responding to offenders disputing infringement notices. Under s 128D of the LTA, a local authority can also appoint parking wardens to monitor compliance and enforce traffic laws on the local authority's roads.

Specific provisions

31. Section 6(1) defines "taxable activity" as:
- (1) For the purposes of this Act, the term **taxable activity** means—
- (a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any

- such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:
- (b) without limiting the generality of paragraph (a), the activities of any public authority or any local authority.
32. Section 6(1)(b) deems all of a local authority's activities (except exempt activities) to be part of its taxable activity. Local authorities are deemed to have a taxable activity without reference to any of the requirements in s 6(1)(a) such as a "supply of goods and services" and "consideration".
33. For the sake of completeness, s 6(3)(d) provides an exception to s 6(1)(b) for any activity to the extent to which it involves making **exempt supplies**. It is difficult to identify any "exempt supplies" in the context of the Arrangement and this Ruling. However, for the avoidance of doubt, any activities involving making exempt supplies are excluded from the Arrangement.
34. Section 5(7)(a) also applies specifically to local authorities. This section provides:
- (7) For the purposes of this Act—
- (a) every local authority is deemed to supply goods and services to any person where any amount of rates is payable by that person to that local authority:
35. The effect of s 5(7)(a) is to bring local authority rates within the GST regime.
36. Sections 6(1)(b) and 5(7)(a) are recognition by Parliament that local authorities are in a unique position of undertaking an array of activities for the benefit of their communities. In return, the ratepayers of the community are required to pay rates. The broad deeming provisions indicate that local authorities' activities and the rates paid are subject to GST.
37. In summary, all of a local authority's activities that are not exempt supplies, including traffic law enforcement, are taxable activities under the Act.

Is GST output tax payable on infringement fees?

38. Infringement fees arise out of the broad traffic law enforcement activities a local authority undertakes. To understand the GST treatment of infringement fees it is necessary to appreciate how they are imposed and treated under the LTA.

Imposition of infringement fees

39. Infringement fees are imposed under statute. Section 138 of the LTA provides that if a person commits an infringement offence they may be proceeded against under the Criminal Procedure Act 2011 or be served with an infringement notice as provided in s 139 of the LTA.
40. As "enforcement authorities" under the LTA, local authorities can appoint parking wardens to issue infringement notices (ss 128D, 128E and 139 of the LTA) for certain infringement offences.
41. The term "infringement offence" is defined in s 2(1) of the LTA by reference to broad categories of offences (see [16]). In each case, further specific offences are defined by reference to other provisions. Many of the specific infringement offences are listed in the schedules to the Land Transport (Offences and Penalties) Regulations 1999 (the

Schedules). Schedule 1 identifies the offence, the provision under which it arises, and the amount of the infringement fee payable in each case.

42. The Ruling applies to infringement fees imposed for stationary vehicle and special lane infringement offences.
43. Parking on a road where parking is governed by parking meters and not paying the required fee is an example of where an infringement notice might be issued by a parking warden. If the person did not pay the stipulated fee for the metered parking space, they would be committing an infringement offence under s 2(1) of the LTA, being a “stationary vehicle offence”. This is further defined under the LTA to include parking in breach of a bylaw made under s 22AB(1)(m) of the LTA.
44. If a parking warden issues an infringement notice, the infringement fee payable under the Schedules depends on the length of time the car has been parked in breach of the bylaw. The Schedules provide a scale of \$12 for offences less than 30 minutes to \$57 for offences over 6 hours. In each case, the Schedules allow the local authority to fix a lesser amount.
45. In determining whether GST output tax is payable on infringement fees, it is necessary to determine whether infringement fees are consideration for a supply. An infringement fee can be analysed in three main ways:
 - It might be regarded as consideration paid by the offender in return for a supply of services from the local authority.
 - It might be regarded as consideration for a supply of services by the local authority to the community.
 - It might be regarded as consideration received by the local authority for a supply of services to the Crown.

Whether an infringement fee is consideration for a supply to the offender

46. Infringement offences and infringement fees are prescribed under specific statutory provisions. An infringement offence involves a breach of the LTA or another Act, regulation or bylaw. Likewise, an infringement fee is also specifically imposed by legislation, in most cases, the Schedules. Infringement fees are a penalty arising under statute for an unlawful act; they are not consideration for a supply of services.
47. The imposition of the infringement is not a supply of a service. A supply of a service to a person for the purposes of GST must be something that benefits another person in some way. Judge Willy in *Case S65* considered that a supply of a service must be for (rather than against) a person. The imposition of a fine by way of an infringement fee punishes rather than benefits the offender, so cannot be the supply of a service. Consequently, the imposition of infringement fee on the offender cannot be a service to the offender (for which the infringement fees paid to the local authority is consideration).
48. Neither can the infringement fee (nor any part of it) be consideration paid by the offender for the provision of a car-parking space. This situation might arise, for example, when a person parks their car in a metered space but does not pay the stipulated fee for the space. The person then receives an infringement notice and is required to pay an infringement fee.

49. In this situation, the Commissioner considers that no part of the infringement fee is being imposed or paid for the provision of a parking space. The infringement fee does not have the legal character of being imposed or paid for the provision of a car-parking space. Rather, the payment is a penalty imposed by the local authority under the LTA.
50. The conclusion that penalties are not consideration for a supply is **consistent with the Commissioner's previously published material** ("GST Treatment of Court Awards and Out of Court Settlements", *Tax Information Bulletin* Vol 14, No 10 (October 2002): 21 (QB 14/06), "QB 14/06: GST – hire firm security bonds", *Tax Information Bulletin* Vol 26 No 7 (August 2014): 131, and "QB 14/14: GST – late return charges (including library fines and parking overstay charges)", *Tax Information Bulletin* Vol 27, No 1 (February 2015): 40).

Whether an infringement fee is consideration for a supply to the community

51. As noted above, infringement fees are imposed under statute. The requirement to pay an infringement fee is a consequence of committing an infringement offence. The infringement fee is separate and distinct from the supply of traffic enforcement services by a local authority to its community.
52. The infringement fee is not consideration paid by the offender for the provision of traffic law enforcement services to the community by a local authority. For GST to arise there must be an element of reciprocity in the transactions between the parties (*Chatham Islands Enterprise Trust v CIR*). In *CIR v NZ Refining*, the court held that a direct link between a supply and the consideration was required and that to be consideration for a supply a payment must be made for that supply.
53. The payment of an infringement fee is a consequence of committing an offence. **It is the offender's actions in committing the offence that brings about the requirement to make payment.** The payment is not made by the offender in exchange for the provision of services from the local authority; **nor can the offender's payment be said to be in response to** and for the inducement of the supply of a services provided by the local authority (*Turakina Maori Girls College Board of Trustees v CIR* (1993) 15 NZTC 10,032).
54. Accordingly, an insufficient connection exists between the supply of traffic enforcement services by the local authority and the consideration paid by the offender.
55. In conclusion, the local authority cannot be said to provide services, to either the offender or community, for consideration paid by the offender (in the form of the infringement fees). This is consistent with the approach taken on similar facts in the UK case of *Bristol City Council v C&E Commissioners* (VAT and Duties Tribunal, Decision No 17665, 15 May 2002). Assuming the infringement fee is not consideration for a supply to the Crown, GST under s 8(1) is not charged on any amounts of "**infringement fees" retained by a local authority under s 141(3)–(5)** of the LTA.

Whether an infringement fee is consideration for a supply to the Crown

56. An infringement fee could still be subject to GST, if it were consideration from the Crown for a supply of services from the local authority. The

central issue is whether the infringement fee is a debt owing to the Crown or local authority. If the infringement fee is a debt due to the Crown, then by allowing the local authority to retain the fee there is, arguably, a payment from the Crown to the local authority. This payment could be characterised as consideration for a supply of services. However, if the infringement fee already belongs to the local authority, it cannot also be payment from the Crown to the local authority.

57. The infringement fee is paid by the offender to the local authority. Infringement fees will usually be paid on to the Crown but in some cases the local authority may retain them. Section 141 of the LTA sets out the arrangements between the local authority and Crown for infringement fees:

141 Provisions relating to infringement fees

- (1) The infringement fee payable in respect of an infringement offence is the appropriate infringement fee prescribed in respect of the relevant offence by or under this Act.
 - (2) If an infringement fee is paid to an enforcement authority other than the Police, the enforcement authority must give the Commissioner the particulars of the infringement and of the payment that the Commissioner requires.
 - (3) Subject to subsections (4) and (5), all infringement fees received under this Act by an enforcement authority or recovered under the Summary Proceedings Act 1957 must be paid into a Crown Bank Account, except that the enforcement authority may retain any portion of the fees so received that the Minister of Finance from time to time approves as being the expenses incidental to their collection.
 - (4) An enforcement authority that is the Agency or a local authority may retain the portion of the infringement fees received by it under this Act—
 - (a) that the Minister of Finance from time to time approves; and
 - (b) that is received in respect of an infringement offence in relation to the use of a special vehicle lane.
 - (5) An enforcement authority that is a road controlling authority may retain—
 - (a) all infringement fees that it receives in respect of offences that involve—
 - (i) parking in breach of a bylaw of the road controlling authority on any portion of a road where parking is for the time being governed by the location of parking meters placed pursuant to a bylaw of the road controlling authority; or
 - (ii) parking on any other portion of a road in breach of a bylaw of the road controlling authority that prohibits parking for a period in excess of the period fixed by the bylaw where the infringement notice in respect of the offence was issued by an officer or other person appointed by the road controlling authority; and
 - (b) all towage fees received by it; and
 - (c) the portion of all other infringement fees received by it that the Minister of Finance from time to time approves.
 - (6) The Commissioner must from time to time, out of money appropriated by Parliament for the purpose, pay to a road controlling authority the portions of the infringement fees (other than towage fees) that the Minister of Finance from time to time approves and that the Commissioner receives in respect of **other offences that involve breaches of the road controlling authority's bylaws** (not being offences that are also offences against an Act or a regulation).
 - (7) For the purposes of subsections (4) and (5), the Minister of Finance may approve the retention of different portions for road controlling authorities or enforcement authorities and different categories of infringement offences.
58. Under s 141(3) of the LTA, the default position is that all infringement fees received are paid into the Crown bank account except for amounts retained to cover collection costs. If all infringement fees are a debt

owing to the Crown, this raises the possibility that fees retained by the local authority are consideration from the Crown for the supply of services.

59. In this case, the retention of infringement fees under s 141 of the LTA is not consideration received from the Crown. Instead, where infringement fees are “retained” under s 141(3)–(5), they are a debt owing to the local authority on imposition. As the infringement fees are due directly to the local authority, **they cannot also be a “payment” from the Crown to the local authority.**
60. **The word “retain” is defined in the *Concise Oxford English Dictionary* (12th ed, Oxford University Press, 2011) as:**

Retain v. 1 continue to have; keep possession of ...
61. **The word “retain” is used** several times in the LTA (ss 19(3), 30ZH(1)(a) and 96(2)(e)). In each case, the use is consistent with receiving or holding something and continuing to have or keep possession of that thing. **The use of the word “retain” on its own could still support the view** that the local authority is merely collecting the infringement fees that it then remits to the Crown.
62. However, reading the word **“retain” in the context of the scheme of the LTA** supports the conclusion that the infringement fees (under s 141(3)–(5)) are derived by the local authority. Section 141 of the LTA is structured so that the starting point is the general rule in s 141(3), requiring infringement fees to be paid into the Crown bank account. However, this is subject to specific exceptions in s 141(3)–(5).
63. Under these exceptions, an enforcement authority (which includes a local authority) is entitled to retain certain payments. Section 141(3) of the LTA requires only a proportion of infringement fees received to be paid into the Crown bank account. The enforcement authority may retain such portion of the fees as the Minister of Finance from time to time approves as being expenses incidental to their collection.
64. Section 141(4) of the LTA provides the Minister of Finance can approve the retention of a portion of infringement fees arising from an offence in relation to a special vehicle lane. Section 141(5) of the LTA provides that an enforcement authority is entitled to retain all infringement fees received by it for certain stationary vehicle offences. These offences generally involve parking in breach of a bylaw of the local authority. Section 141(5)(c) also allows the Minister of Finance to approve the **retention of a portion of “other” infringement fees.**
65. In summary, infringement fees under s 141(3)–(5) are derived by a local authority in its own right carrying out its traffic law enforcement activities. All infringement fees that the local authority is entitled to retain under s 141 of the LTA are a debt due to the local authority when imposed. Because these infringement fees belong to the local authority in the first place, they cannot be a payment from the Crown to the local authority. Therefore, the Crown cannot be providing consideration for the supply of traffic law enforcement services from the local authority.
66. This conclusion is broadly consistent with other legislation. For instance, s 73 of the Public Finance Act 1989 provides that where a local authority prosecutes a person in court, the fine is paid to the local authority. This is subject to an amount equal to 10% being deducted and credited to the Crown bank account.

Are GST input tax deductions available?

67. Input tax is defined in s 3A. For the purposes of this Ruling and commentary, input tax means the GST local authorities pay on the goods and services they acquire for their traffic law enforcement activities.
68. A deduction is allowed for input tax paid, under s 20(3C), only to the extent that the goods or services are used for or are available for use in making taxable supplies. “**Taxable supply**” is defined in s 2(1) as “a supply of goods and services in New Zealand that is charged with tax under section 8”.
69. **The following elements need to be satisfied for there to be a “taxable supply”:**
 - There must be a supply of a good or service.
 - The good or service must be supplied in New Zealand.
 - The good or service must be charged with tax under s 8.

Supply of a good or service

70. As discussed above, the Commissioner considers traffic law enforcement activities to be a part of the broad services supplied by the local authority to ratepayers and the community.
71. There is a “**supply**” under s 5(1) or s 5(7)(a). Section 5(7)(a) is the broad deeming provision that deems a “**supply of goods and services**” where a person pays rates to a local authority.
72. Even in the absence of s 5(7)(a), there is still a supply under s 5(1) as the local authority is supplying a service that benefits ratepayers and the community. Without the service, transportation in the community would be negatively affected. The enforcement of traffic laws brings about both direct and voluntary compliance with such laws. Other benefits include the efficient transportation of people and goods, the efficient operation of public transport, and the protection of people’s property rights.

Good or service is supplied in New Zealand

73. A local authority carries out its traffic law enforcement activities in its respective area, and the supply of the traffic enforcement activities is performed (supplied) in New Zealand.

Good or service is charged with tax under s 8

74. Section 8(1) provides that GST is charged on the supply (but not an exempt supply) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person.
75. Therefore, four elements must be met:
 - **Supply of services:** As discussed above, a supply of traffic law enforcement services under either s 5(7)(a) or s 5(1).
 - **Supply is not an exempt supply:** It is difficult to imagine any supply of traffic law enforcement services being an exempt supply under s 14(1). In any event, exempt supplies are excluded from the Arrangement in the Ruling.

- **Supply by a registered person:** Local authorities are registered persons for GST purposes and this is a requirement of the Arrangement.
- **Supply in the furtherance of a taxable activity:** All of a local authorities' activities **are deemed to be a "taxable activity"** under s 6(1)(b).

76. As each element is met, the goods and services used (or available for use) by a local authority for the enforcement of traffic laws qualify as goods and services used in "**making taxable supplies**". **The requirements** under the definition of "taxable supply" are met, and an input tax deduction is available under s 20(3C).

Is any apportionment or adjustment required?

77. Under s 20(3C), an input tax deduction is available only to the extent that the good or service is used or is available for use in making taxable supplies. If the good or service is to be used in making exempt or non-taxable supplies, then an apportionment of input tax will be required on acquisition to reflect that intended use. Adjustments are made subsequently, if the actual use is different to the intended use.
78. As discussed above, infringement fees retained under s 141(3)–(5) are not subject to GST. An apportionment or adjustment is not required, because the issuing of infringement notices and the consequential retention of infringement fees are merely one part of the broad traffic law enforcement services supplied and are not a supply in themselves. Infringement fees are a necessary and incidental part of the taxable supplies a local authority makes in providing traffic law enforcement services to its ratepayers and community.
79. Infringement fees are necessary because traffic law enforcement would be ineffective without the ability to impose penalties. The infringement fee is incidental to the **local authority's** purpose of providing safe and efficient roads, parking spaces, public transport and so on. Local authorities want motorists to comply with the law not to breach it so they can penalise them. As such, the issuing of infringement notices and the retention of infringement fees are not a separate supply from traffic law enforcement.
80. By way of an example, if a local authority receives a submission from the community requesting a residents parking area, they may choose to pass a bylaw, designate the area affected, decide on the hours of operation, and provide road markings and signage. They may also set up a system of permits or coupons for residents. It is necessary to be able to issue infringement notices to prevent non-residents parking contrary to the bylaw. The infringement fees that arise are incidental to the provision of parking spaces for residents and those with resident permits.
81. Therefore, when goods and services are acquired for traffic law enforcement activities and applied to the issuing of infringement notices (and the consequential retention of infringement fees), there will be no separate use and no requirement to apportion input tax or make any adjustments post-acquisition.

Examples

82. The following examples help to explain how the law applies to particular situations. The GST consequences of each example are a result of the particular facts. Any additions or variations to the facts may give rise to different GST consequences.

Example 1: GST on infringement fees

83. Ray parks his car on a street in a council-metered parking bay. Parking costs \$2 an hour, and Ray puts \$4 in the meter for 2 hours of parking. Ray is 20 minutes late returning to his car. A council parking warden has issued an infringement notice and left it under **the car's** windscreen wiper. The infringement notice is for a \$12 infringement fee for parking in a metered parking bay in breach of a bylaw. The council will retain the amount under s 141(5) of the LTA.
84. No GST is required to be charged on the infringement fee. It is a penalty arising under the LTA. The payment of the \$12 penalty is a consequence of Ray's acting contrary to local bylaws and the penalty is prescribed under the Schedules. The \$12 is not consideration for a supply of services.

Example 2: Availability of input tax deductions

85. Brambleton Council purchases 20 new handheld ticketing machines. The ticketing machines are purchased at a cost of \$460 each (inclusive of GST). The local authority uses the ticketing machines when enforcing traffic laws in its area. Each council parking warden receives a ticketing machine that they use for issuing on-the-spot infringement notices.
86. Brambleton Council, as a registered person, is able to claim an input tax deduction of \$60 per machine when calculating its output tax. The ticketing machines have been acquired for use (and are subsequently used) in traffic law enforcement activities.
87. No apportionment or adjustment to the input tax deduction is required. There is no separate supply. Infringement fees are the result of an offender breaching the terms of an Act, regulation or bylaw. The penalty itself arises under (and is prescribed in) statute and is not part of a service provided to the public. The act of issuing the infringement fee is a necessary and incidental part of the traffic law enforcement activities. The ability to enforce the traffic laws facilitates the effective provision of the **council's traffic law enforcement services**. Therefore, the ticketing machines are used in making taxable supplies being the provision of the council services.

References

Subject references

GST, infringement fee, infringement offence, local authority, penalties,

Legislative references

Criminal Procedure Act 2011

Goods and Services Tax Act 1985 – ss 2(1) (definitions of “local authority”, “registered person”, “taxable activity”, “taxable supply”, “consideration”), 3A, 5(1) and (7)(a), 6(1)(b), 8, 10, 14(1), 20(3) and (3C), 21–21G

Land Transport Act 1998 – ss 2(1) (definitions of “enforcement authority”, “infringement offence”, “stationary vehicle offence”, “road controlling authority”), 19(3), 22AB, 30ZH(1)(a), 96(2)(e), 128D, 128E, 138–141

Land Transport (Offences and Penalties) Regulations 1999 – schedules 1, 1A, 1B

Local Government Act 2002 – ss 5(1) (definition of “local authority”), 10

Public Finance Act 1989 – s 73

Case references

Case S65 (1996) 17 NZTC 7,408

Chatham Islands Enterprise Trust v CIR (1999) 19 NZTC 15,075

CIR v Databank Systems Ltd (1989) 11 NZTC 6,093 (CA)

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Databank Systems Ltd v CIR (1987) 9 NZTC 6,213

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“OB 14/06: GST – hire firm security bonds” *Tax Information Bulletin* Vol 26 No 7 (August 2014): 131

“OB 14/14: GST – late return charges (including library fines and parking overstay charges)” *Tax Information Bulletin* Vol 27, No 1 (February 2015): 40

APPENDIX 1

GST Act relevant provisions

1.1 Section 5 relevantly provides:

SECT 5 MEANING OF THE TERM SUPPLY

- (1) For the purposes of this Act, the term supply includes all forms of supply.
 - ...
- (7) For the purposes of this Act—
 - (a) Every local authority is deemed to supply goods and services to any person where any amount of rates is payable by that person to that local authority;
 - (b) the Chatham Islands Council is treated as supplying goods and services to a person if an amount of council dues, as defined in section 2 of the Chatham Islands Council Act 1995, is payable by the person to the Chatham Islands Council.

1.2 Section 6(1) provides:

SECT 6 MEANING OF THE TERM “TAXABLE ACTIVITY”

- (1) For the purposes of this Act, the term taxable activity means—
 - (a) Any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club;
 - (b) Without limiting the generality of paragraph (a) of this subsection, the activities of any public authority or any local authority.

1.3 Section 8(1) provides as follows:

SECT 8 IMPOSITION OF GOODS AND SERVICES TAX ON SUPPLY

- (1) Subject to this Act, a tax, to be known as goods and services tax, shall be charged in accordance with the provisions of this Act at the rate of 15% on the supply (but not including an exempt supply) in New Zealand of goods and services, on or after 1 October 1986, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.
- 1.4 Section 20(3C) provides allows the deduction of input tax to the extent a good or services is used or available for use in making taxable supplies:
 - (3C) For the purposes of subsection (3), and if subsections (3D) or (3L) do not apply,—
 - (a) input tax as defined in section 3A(1)(a) or (c) may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies;
 - (b) input tax as defined in section 3A(1)(b) may be deducted to the extent to which the goods are used for, or are available for use in, making taxable supplies other than—
 - (i) the delivery of the goods to a person in New Zealand;
 - (ii) arranging or making easier the delivery of the goods to a person in New Zealand.

LTA relevant provisions

1.5 Section 2(1) relevantly provides:

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

...

enforcement authority, in relation to an infringement offence, means (except in relation to Part 17)—

- (a) the New Zealand Police, in any case;
- (b) the Agency, in the case of an infringement offence for which an infringement notice is issued by an employee of the Agency or on behalf of the Agency;
- (ba) an airport authority;
- (c) [Repealed]
- (d) a local authority, in the case of an infringement offence for which an infringement notice is issued by an employee of the local authority or on behalf of the local authority;
- (e) a public road controlling authority that is an enforcement authority for the purposes of an Order in Council made under section 46 of the Land Transport Management Act 2003, in the case of an infringement offence that is a toll offence.

...

infringement offence means—

- (a) a moving vehicle offence;
- (ab) a stationary vehicle offence;
- (b) an overloading offence;
- (ba) an offence against this Act concerning logbooks that is committed by a transport service driver;
- (c) an infringement offence specified in regulations made under this Act;
- (ca) a toll offence;
- (d) any other offence against this Act or any other enactment that is specified as an infringement offence against this Act (other than an offence that carries a penalty of imprisonment or mandatory disqualification from holding or obtaining a driver licence);

...

local authority means any regional council or territorial authority within the meaning of the Local Government Act 2002

1.6 Section 141 provides:

141 Provisions relating to infringement fees

- (1) The infringement fee payable in respect of an infringement offence is the appropriate infringement fee prescribed in respect of the relevant offence by or under this Act.
- (2) If an infringement fee is paid to an enforcement authority other than the Police, the enforcement authority must give the Commissioner the particulars of the infringement and of the payment that the Commissioner requires.
- (3) Subject to subsections (4) and (5), all infringement fees received under this Act by an enforcement authority or recovered under the Summary Proceedings Act 1957 must be paid into a Crown Bank Account, except that the enforcement authority may retain any portion of the fees so received that the Minister of Finance from time to time approves as being the expenses incidental to their collection.
- (4) An enforcement authority that is the Agency or a local authority may retain the portion of the infringement fees received by it under this Act—

- (a) that the Minister of Finance from time to time approves; and
 - (b) that is received in respect of an infringement offence in relation to the use of a special vehicle lane.
- (5) An enforcement authority that is a road controlling authority may retain—
- (a) all infringement fees that it receives in respect of offences that involve—
 - (i) parking in breach of a bylaw of the road controlling authority on any portion of a road where parking is for the time being governed by the location of parking meters placed pursuant to a bylaw of the road controlling authority; or
 - (ii) parking on any other portion of a road in breach of a bylaw of the road controlling authority that prohibits parking for a period in excess of the period fixed by the bylaw where the infringement notice in respect of the offence was issued by an officer or other person appointed by the road controlling authority; and
 - (b) all towage fees received by it; and
 - (c) the portion of all other infringement fees received by it that the Minister of Finance from time to time approves.
- (6) The Commissioner must from time to time, out of money appropriated by Parliament for the purpose, pay to a road controlling authority the portions of the infringement fees (other than towage fees) that the Minister of Finance from time to time approves and that the Commissioner receives in respect of other offences that involve breaches of the road controlling authority's bylaws (not being offences that are also offences against an Act or a regulation).
- (7) For the purposes of subsections (4) and (5), the Minister of Finance may approve the retention of different portions for road controlling authorities or enforcement authorities and different categories of infringement offences.
- (8) For the purposes of this section, **road controlling authority** includes an airport authority.