

TAX

SEPTEMBER 2011

LATE PAYMENT FEES - ARE YOU CAUSING IRD SIGNIFICANT FISCAL RISK?

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A Tax Bill introduced to Parliament yesterday deals with a number of matters including whether GST is payable on late payment fees. If your business charges such fees this Bill is important for you.

Despite the widely held view that late payment fees are not subject to GST – it is a penalty for late payment and not part of the price of the goods or services supplied, Inland Revenue has sought to “clarify” the GST Act so that late payment fees charged by businesses to customers will be subject to GST.

Late payment fees are fixed fees charged by a business to customers who are late in paying their accounts. The Inland Revenue example involves a telephone company which charges their customers a set fee if their customers do not pay their monthly telephone bill on time. As a result of this Bill, these fees are said to be different from penalty and default interest payments which will continue to be GST exempt.

Inland Revenue advises that charging GST on late payment fees is common practice and cites in support of this contention a somewhat oblique reference in a statement on the “*GST Treatment of Interest on Overdue Accounts*” in its own 1990 *Tax Information Bulletin*. This amendment to “clarify” the law was apparently triggered by a recent interpretation which reflected

the traditional view that no GST should be charged on late payment fees and Inland Revenue has been concerned that this would result in a significant fiscal risk. Full public consultation of this change was not undertaken by Inland Revenue or Treasury as they were worried that to do so would result in “a behavioural change by taxpayers”.

The Bill effects the change by widening the definition of “supply” in the GST Act. The change will apply retrospectively – to avoid taxpayers claiming refunds of GST incorrectly paid on late payment penalties. However the Bill provides a saving provision which delays the imposition of GST on late payment fees until 1 April 2012. That saving provision will be available to those taxpayers, who before the introduction of the Bill (being yesterday, 14 September 2011) have adopted a regular practise of not charging GST on a late payment fee.

You may want to check your contracts to establish which group of taxpayers you fall into and if necessary amend your contracts so that you can recover GST on top of late payment penalties to avoid short-changing yourselves.

If we can be of assistance in this, please contact any member of the team.