

Regulatory Impact Statement: GST status of statutory and regulatory charges

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions
Advising agencies:	Inland Revenue
Proposing Ministers:	Hon David Parker, Minister of Revenue
Date finalised:	26 May 2022
Problem Definition	
<p>The GST treatment of statutory and regulatory charges (being amounts payable under any enactments or regulations) can at times be unclear, and/or does not always align with intended GST policy outcomes because of a deficiency with the Goods and Services Tax Act 1985 (the GST Act).</p>	
Executive Summary	
<p>GST applies to the broadest possible range of goods and services supplied in New Zealand. This keeps the tax fair, simple, and efficient. Because of this principle, determining whether GST applies to specific statutory and regulatory charges (being any amount payable under an enactment or a regulation) is often straightforward. For example, fees paid for licencing, registration, and permits are usually unambiguously subject to GST.</p> <p>For some statutory and regulatory charges, however, the GST treatment can be unclear, or the general GST rules do not result in outcomes which are desirable from a GST policy perspective. In these situations, the approach taken to date has been for the GST Act to be amended with piecemeal provisions that apply in respect of specific statutory and regulatory charges. This approach lacks transparency, results in further uncertainty, and exacerbates the existing inconsistent and incoherent approach to GST and statutory and regulatory charges.</p> <p>The preferred solution should resolve these inconsistencies and provide transparency and certainty as to the GST status of statutory and regulatory charges in the future. This should, where applicable, decrease compliance and administration costs on government agencies with administrative responsibility for statutory and regulatory charges, and for Inland Revenue and the Treasury who typically advise on the GST implications of statutory and regulatory charges.</p> <p>The preferred approach is to enact a specific legislative provision (the “default rule”) that deems all statutory and regulatory charges (excluding fines, penalties, interest, and general taxes) to be consideration for a supply of goods and services from the recipient of the charge. This would apply to all new (and renewed) statutory and regulatory charges that come into force after a fixed future date. It would also apply to all statutory and</p>	

regulatory charges that had not otherwise been renewed in three years' time, to ensure consistency.

The rationale for excluding fines, penalties, and interest is because these amounts do not typically correspond to the supply of any goods and services and therefore should not be subject to GST. In the case of general taxes, while they may be used to fund goods and services, it is not proposed that GST apply to these.

The default rule would mirror existing deeming provisions for specific statutory and regulatory charges that have been included in the GST Act such as those for rates payable to local authorities, the waste minimisation levy, the levy payable under the Infrastructure Funding and Financing Act, fuel excise, road user charges, etc.

It is also proposed that a schedule of non-taxable statutory and regulatory charges is included in the GST Act. Where the GST treatment under the default rule is not considered appropriate from a GST policy perspective, the Minister of Revenue (during a transitional period, through an Order in Council process) or Parliament could amend the schedule which would result in GST not applying to those specific charges contained on the schedule.

Most common charges paid under enactments and regulations are currently subject to GST, so this is expected to have no impact on most of the population. For those who are affected, it is expected that there will be only minor and limited impacts.

To the extent that it results in GST applying to statutory or regulatory charges where GST is not currently collected:

- government agencies and their Ministers will need to ensure they are compliant with the new rules on renewal of statutory and regulatory charges that come into force once the default rule applies.
- persons paying the charges should notice a cost increase (to account for GST) if they are not registered for GST; or, if they are registered for GST and the charges are paid as part of their taxable activity, there should be no material change (as a GST credit will be available).

Inland Revenue officials consulted on the issue and the proposed solution with the Treasury, the Parliamentary Counsel Office, and GST experts at Deloitte, KPMG, and PwC. To understand the impact of the changes, officials also consulted with the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Transport, the Ministry of Justice, and the Department of Internal Affairs.¹ No substantive issues that affect the analysis in this statement were identified during these discussions.

Most common charges paid under enactments and regulations are currently subject to GST, so the default rule approach discussed in this statement is expected to have only a limited or minor impact on both those paying statutory and regulatory charges, and those responsible for the administration of them.

¹ These government agencies are have administrative responsibility for the largest number of statutory and regulatory charges.

Limitations and Constraints on Analysis

It has not been possible to review the GST treatment of all statutory and regulatory charges that exist currently, or which are in the early stages of policy development. Even if this were possible, it is not expected that this would change the preferred option in this statement.

There were no other limitations or constraints on the analysis in this statement.

Responsible Manager (signature and date):

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2 June 2022

Quality Assurance

Reviewing Agency:	Inland Revenue
Panel Assessment & Comment:	The Quality Assurance reviewer at Inland Revenue has reviewed the <i>GST status of statutory and regulatory charges</i> Regulatory Impact Statement prepared by Inland Revenue, and considers that the information and analysis summarised in the Regulatory Impact Statement meets the quality assurance criteria.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The GST treatment of many statutory and regulatory charges (being any amount payable under an enactment or a regulation) is clear under existing principles in New Zealand's GST laws. For a subset of statutory and regulatory charges, however, the GST treatment is not so clear.

This has led to specific amendments being made to the Goods and Services Tax Act 1985 (the GST Act) which ensure GST applies to statutory and regulatory charges which are collected for specific government objectives or purposes. This generally occurs when officials at Inland Revenue and the Treasury become aware of new statutory and regulatory charges and are involved in the early stages of policy development.

The problem with this approach is that:

- it requires piecemeal amendments be made to the GST Act every time a new statutory or regulatory charge is being developed (which is generally the position of Inland Revenue and the Treasury when they are engaged in the policy development process on the GST implications)
- it can result in uncertainty (that is, if there is no specific provision in the GST Act that shows GST applies, is it not always clear whether the charge is subject to GST under the general GST rules or is not subject to GST at all), and
- it can result in statutory and regulatory charges that are not subject to GST, because under the existing law, GST would not apply (even though, from a GST policy perspective it should apply).

This leads to an incoherent and inconsistent approach to GST and statutory and regulatory charges. There are over 250 statutory and regulatory charges across New Zealand's Acts and regulations, and it is important for the integrity of the GST system that the GST treatment of these charges follows a consistent and coherent framework.

These problems will continue unless a different approach is taken to address the issue that gives rise to them.

What is the policy problem or opportunity?

The current rules in the GST Act do not always result in the appropriate GST policy outcome in respect of some statutory and regulatory charges.

This has resulted in piecemeal amendments being made to the GST Act to ensure that GST does apply to statutory and regulatory charges that are used for specific government objectives or purposes, or which are used to recover the costs associated with performing the functions of bodies within specific regulatory systems.

The problems with this approach could be addressed if the GST Act contained rules which made the GST treatment of all statutory and regulatory charges clear.

This would ensure that government agencies with administrative responsibility for statutory and regulatory charges had clarity on the GST treatment of new and existing charges which could help minimise their compliance costs.

Stakeholder views

Inland Revenue officials consulted with the Treasury and the Parliamentary Counsel Office, and GST experts at Deloitte, KPMG, and PwC on the issue and the potential solutions. The Treasury and the Parliamentary Counsel Office support the preferred option (the introduction of a new default rule). GST experts at Deloitte and KPMG acknowledged the proposal made sense in the context of New Zealand's GST system which included within the base the activities of government agencies and the Crown. GST experts at PwC disagreed with the preferred solution and considered that deemed supplies in the GST Act should generally be avoided.

Officials consider the preferred option an improvement over the status quo, where there is a mixed GST treatment of statutory and regulatory charges which is caused by a lack of certainty about how GST should apply to them. Repealing the current deeming provisions would come at a fiscal cost, would be disruptive in circumstances where GST was being collected, and would be inconsistent with New Zealand's broad based GST system.

To understand the impact of the proposal on existing statutory and regulatory charges, Inland Revenue officials consulted with the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Transport, the Ministry of Justice, and the Department of Internal Affairs. No material issues were identified during this consultation.

What objectives are sought in relation to the policy problem?

The GST treatment of statutory and regulatory charges should be clear for government agencies with administrative responsibility for them (as they will need to know whether GST applies or not) and for those who have to pay them.

To address the problems with the current approach and ensure consistency and greater clarity in the future, it is necessary for changes to be made to the GST Act that apply broadly.

Section 2: Deciding upon an option to address the policy problem

The criteria that will be used to assess the options are:

- **Certainty and transparency:** Does the preferred option result in greater certainty and transparency in relation to the GST treatment of statutory and regulatory charges?
- **Consistency and coherence:** Does the preferred option make sense in the context of New Zealand's GST system? Is the preferred option consistent with the broad-base low-rate tax framework?
- **Compliance costs:** Does the preferred option minimise compliance costs for those with administrative responsibility for statutory and regulatory charges (including both new and existing charges)?
- **Administration costs:** Does the preferred option reduce the administration costs associated with ensuring appropriate GST policy outcomes are achieved for Inland Revenue and the Treasury?

What are the scope of options?

The scope of feasible options has not been limited by Ministers or stakeholders.

Non-regulatory solutions (such as providing guidance and education to government agencies with administrative responsibility for statutory and regulatory charges) have been considered and will continue in the future where appropriate.

A regulatory solution is required to directly address the issues identified with the status quo because the GST Act does not always produce outcomes which are considered correct or desirable from a GST policy perspective.

What options are being considered?

Option One – status quo

Inland Revenue and the Treasury will advise government agencies on the GST treatment of newly developed statutory and regulatory charges and will often advise specific amendments to the GST Act are necessary to ensure appropriate GST policy outcomes are achieved.

This approach:

- still requires regulatory changes (being specific amendments to the GST Act for each new statutory or regulatory charge where, under existing rules in the GST Act, GST would likely not apply)
- may result in GST outcomes not being considered where Inland Revenue and the Treasury are not engaged in the policy development process, and
- does not address the GST treatment of existing statutory and regulatory charges where no GST is currently being collected.

Option Two – Require Inland Revenue and the Treasury consultation on all new and renewed statutory and regulatory charges

A new requirement that government agencies with administrative responsibility for statutory and regulatory charges consult with Inland Revenue and the Treasury on the GST implications of any new statutory or regulatory charges could be introduced. Consultation could then be required on the GST treatment of any new, amended, or renewed statutory and regulatory charges, on a case-by-case basis.

This would ensure that Inland Revenue and the Treasury can provide advice on the appropriate GST policy outcomes.

This option would likely still require amendments be made to the GST Act. These amendments would be required for specific statutory and regulatory charges that, under existing GST legislation, would not be subject to GST.

Option Three – Amend the GST Act to add a default rule

The GST Act could be amended to include a default rule that applied to all statutory and regulatory charges (excluding amounts in the nature of fines, penalties, interest, and general taxes). This rule would make it clear that statutory and regulatory charges were deemed to be consideration for the supply of goods and services from the recipient. This would put the GST treatment of these charges beyond doubt.

Recognising this default rule may not be appropriate for all future statutory and regulatory charges, therefore this option would include adding a schedule of non-taxable statutory and regulatory charges to the GST Act. This schedule could contain a list of charges to which the default rule would not apply and could be amended through primary legislation if necessary.

The default rule would apply to all new (and renewed) statutory and regulatory charges that come into force on or after a date in the future. To ensure consistency, the default rule would also apply to all statutory and regulatory charges after a three-year transition period. This transition period should provide government agencies and Ministers with sufficient time to make the necessary changes to any statutory and regulatory charges which may be affected by the default rule.

Inland Revenue and the Treasury would continue to support government agencies to understand the GST implications of their statutory and regulatory charges. The default rule would also make it easier for Inland Revenue and the Treasury to provide this assistance and guidance (as the deficiency with the current law would be addressed).

How do the options compare to the status quo?

	Option One: Status quo	Option Two: Require consultation with Inland Revenue and the Treasury	Option Three: Amend the GST Act to add a default rule	Comments
Certainty and transparency	0	+	++	Under Option Three, GST would apply to statutory and regulatory charges by default which would make the GST treatment clear from the early stages of policy development.
Consistency and coherence	0	+	+	GST currently applies to many statutory and regulatory charges because of specific provisions in the GST Act. The lack of specific provisions in the GST Act could suggest that GST should not apply to other statutory and regulatory charges which is not intended. Option Three would bring about greater consistency and coherence through creating a default starting position for all charges.
Compliance costs	0	-	+	Option Two would add to the policy development timeframe by requiring government agencies to consult with Inland Revenue and the Treasury on new statutory and regulatory charges. Option Three should reduce compliance costs associated with determining the appropriate GST treatment of statutory and regulatory charges.
Administration costs	0	-	+	Option Three should marginally reduce administration costs for Inland Revenue as no further piecemeal amendments to the GST Act would be required to ensure appropriate GST policy outcomes are achieved.
Overall assessment	0	+	++	

Example key for qualitative judgements:

++ much better than doing nothing/the status quo/counterfactual
 + better than doing nothing/the status quo/counterfactual
 0 about the same as doing nothing/the status quo/counterfactual

- worse than doing nothing/the status quo/counterfactual
 -- much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Introducing a new default rule that applies to all statutory and regulatory charges is the preferred option as, compared with the status quo, it ensures:

- a consistent and coherent approach to the GST treatment of statutory and regulatory charges in the future
- greater certainty and transparency as to the GST treatment of statutory and regulatory charges in the future, and
- reduced compliance and administration costs for government agencies with administrative responsibility for statutory and regulatory charges, and Inland Revenue and the Treasury who provide guidance on the tax implications of them.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Government agencies with administrative responsibility for statutory and regulatory charges (and other entities that collect statutory and regulatory charges)	May need to update charges to be compliant with the new rule. This has regulatory implications and potential systems and billing implications. There will be no changes required for agencies with charges that GST apply to (where GST should apply).	Medium	Medium
GST registered payers of statutory and regulatory charges	For charges paid that relate to their taxable activity, and where no GST was previously payable, these payers would now need to claim a GST deduction like for any other expenses incurred.	Low	High

Payers of statutory and regulatory charges who are not registered for GST, or those who are paying charges outside of their taxable activity	May experience an increase in statutory and regulatory charges they pay if they are not already subject to GST. Most charges are already subject to GST so there should be an insignificant impact.	Low	Medium
Total monetised costs	Potentially higher costs for anyone paying charges that are not currently subject to GST that would, under the proposal, result in GST being payable.	Low	Medium
Non-monetised costs	n/a	Low	Medium
Additional benefits of the preferred option compared to taking no action			
Government agencies with administrative responsibility for statutory and regulatory charges	Greater certainty of the GST treatment of statutory and regulatory charges due to clear legislative authority.	Medium	Medium
Inland Revenue and the Treasury	Will be able to better support government agencies understand the GST implications of statutory and regulatory charges without the need for piecemeal regulatory changes. An expected reduction in demand for binding rulings and other administrative support from Inland Revenue on the GST status of future charges.	Medium	Medium
Total monetised benefits		n/a	n/a
Non-monetised benefits		Medium	Medium

Section 3: Delivering an option

How will the new arrangements be implemented?

The preferred option – enacting a default rule for all statutory and regulatory charges which makes the GST status clear – would require changes to the Goods and Services Tax Act 1985. These changes could be included in an omnibus taxation bill.

To provide government agencies with administrative responsibility for statutory and regulatory charges sufficient time to make any changes that may be required as a result of the default rule, a three-year transitional period is proposed.

Any new statutory or regulatory charge that comes into force (including those that are amended through updated regulations) after the date that the default rule applies from would need to be compliant with it. Any existing statutory and regulatory charges that are not otherwise renewed within a three-year period would need to be compliant with the default rule from the beginning of the fourth year after the default rule came into force.

To the extent that there are statutory and regulatory charges where the default rule results in an inappropriate GST policy outcome, these could be included on the proposed schedule of non-taxable statutory and regulatory charges included in the GST Act.

During the transitional period, the Minister of Revenue could recommend an Order in Council to add specific charges to this schedule. This Order in Council mechanism would help support an expedient carve-out from the effect of the default rule.

If the default rule became law, there are various rules in the GST Act that would no longer be required. These rules would be identified as part of the drafting of the Bill and should be repealed following introduction of the default rule.

Inland Revenue would communicate the changes to other government agencies if the default rule became law. It would also communicate the changes in its publications (for example, in a *Tax Information Bulletin*) to improve general awareness.

How will the new arrangements be monitored, evaluated, and reviewed?

Inland Revenue would continue to monitor the outcomes of the default rule pursuant to the Generic Tax Policy Process (“GTPP”) to confirm that it met the policy objectives. The GTPP is a multi-stage policy process that has been used to design tax policy in New Zealand since 1995.

We do not expect extensive monitoring to be necessary as the proposed option should result in reduced confusion about the GST status of statutory and regulatory charges. The proposed default rule will help make working through the GST implications of new statutory and regulatory charges easier.