

- 10.001 In January 1998, we received an enquiry from a ratepayer disputing the basis on which they had to pay particular rates. In order to clarify the situation, we sought an opinion from the Crown Law Office. The opinion was that the particular way in which the local authority had levied separate rates was illegal.
- 10.002 The main point of the opinion was that a local authority cannot levy separate charges on apportionments of a single property. Any rates levied in excess of those applicable to a single property are illegally imposed. The local authority in question had followed the practice for five years.
- 10.003 This opinion has implications for all other local authorities that have applied a similar approach. Local Government New Zealand has indicated that over 40 local authorities have taken the same approach, with the amount involved being as high as \$20 million in one case.
- 10.004 Because many local authorities were concerned about the ramifications of the legal opinion, they met in May 1998 to discuss the situation. From the discussion, it appears that a combination of reasons underlies the practice:
- local authorities applying or interpreting the legislation incorrectly;
  - aspects of the legislation that are confusing; and
  - different approaches by valuers.
- 10.005 One of the main matters of contention is the correct interpretation of the categorisations of different types of apportionments as separately rateable properties. Also, the Crown Law Office opinion and the Rating Powers Act 1988 are both silent on the subject of refunding rate money collected illegally. Consequently, the legal obligation to refund such money is unclear.
- 10.006 As the auditor, we were required to consider the appropriate disclosure of such an uncertain event in the annual reports of all local authorities that had rated in this manner. We accepted disclosure of the value of the excess rates as a contingent liability in the form of a note to the financial statements of the authorities concerned.

10.007 The note also stated:

- the council's practice and its view;
- the Crown Law Office view;
- the fact that many councils are in a similar situation;
- the dollar amount; and
- the approach that Local Government New Zealand is taking to resolve the issue (see paragraph 10.009).

10.008 Our view is that this is the best way for local authorities to inform the public on a situation which currently has a high level of uncertainty about it.

10.009 In order to obtain some clarity on the situation, Local Government New Zealand filed a Statement of Claim in the High Court in January 1999. The claim, which has yet to be heard, asks the Court to determine whether the Valuer-General's treatment of different types of apportionments meets legislative requirements. The desired result for local government is that properties currently treated as apportionments can be treated as separate rateable properties, in which case the levying of separate charges on these properties would be lawful.

10.010 Both Local Government New Zealand and the Valuer-General have indicated that they would welcome the certainty that a judicial decision would bring. It is hoped that the Court's decision will provide local authorities with some firmer rules on which to levy rates.

