[Interpretation statement IS3385 issued by Adjudication & Rulings in November 1998]

TEMPORARY IMPORTS SUCH AS YACHTS—ZERO-RATING FOR GOODS AND SERVICES TAX

This interpretation statement sets out the Commissioner's interpretation of the application of the zero-rating provisions in section 11 of the Goods and Services Tax Act 1985 (the Act) to goods and services supplied to vessels temporarily visiting New Zealand.

The subject matter of this item was previously considered in Tax Information Bulletin Volume Six, No.3 (September 1994) at page 2 under the heading, "*GST - zero-rating and temporary imports such as yachts*." This interpretation statement supersedes that earlier statement.

Background

A number of foreign yachts visit New Zealand every year. The Act provides zero-rating for goods and services supplied in relation to temporary imports, such as yachts and other vessels. Suppliers often ask Inland Revenue and the New Zealand Customs Service how they should treat such supplies for GST purposes.

Craft, such as yachts, that do not come into New Zealand as cargo but under their own power or under sail, can be described as being imported and as imports. This is because the Customs and Excise Act 1996 definition of "importation" is broad enough to categorise them as imports.

This item sets out the Commissioner's interpretation of the provisions dealing with the zero-rating of goods and services supplied to non-residents who bring in temporary imports, especially owners of yachts and other vessels that are in New Zealand on a temporary basis. It also sets out a supplier's obligations when that person provides goods and services to a non-resident in respect of a temporary import.

This item deals with the application of the following two paragraphs only of section 11, because the other zero-rating paragraphs of section 11 are unlikely to apply:

- section 11(1)(ba)
- section 11(2)(ca)

However, please note that other paragraphs of section 11 also deal with circumstances in which the benefit of zero-rating may be obtained.

Legislation

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

Goods

A supply of goods is zero-rated under section 11(1)(ba) when:

The goods have been supplied in the course of repairing, renovating, modifying, or treating any goods to which subsection (2)(ca) of this section applies and the goods supplied-

(i) Are wrought into, affixed to, attached to, or otherwise form part of those other goods; or

(ii) Being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification, or treatment process.

Services

A supply of services is zero-rated under section 11(2)(ca) when the services:

(i) Are provided directly in connection with –

(A) Goods supplied from outside New Zealand and whose destination is outside New Zealand,
including stores for craft, provided that those goods are not removed from the ship or aircraft in which they arrived while the ship or aircraft is within New Zealand; or

(B) Goods referred to in section 116 of the Customs and Excise Act 1996; and

(ii) Are supplied to a person who is not resident in New Zealand at the time the services are performed.

Application of the Legislation

Goods

Section 11(1)(ba) applies to goods that are supplied from outside New Zealand and that have a destination outside New Zealand, and goods covered by section 116 of the Customs and Excise Act 1996. These goods may be referred to as "temporary imports" as they will be given temporary import status by the New Zealand Customs Service. Goods supplied in relation to these temporary imports may qualify for zero-rating under section 11(1)(ba).

The supply of goods will be zero-rated under section 11(1)(ba)(i) if the goods are supplied in the course of repairing, renovating, modifying, or treating a temporary import and they are wrought into, affixed to, attached to, or otherwise form part of the temporary import. Goods will qualify for zero-rating under section 11(1)(ba)(ii) if they are consumable goods supplied in the course of repairing, renovating, modifying, or treating a temporary import and become unusable or worthless as a result of the repair, renovation, modification, or treatment process.

The supplier of the goods does not need to perform this work personally. However, it will not be acceptable to zero-rate the supply of goods merely because the recipient is a non-resident. The supplier must be able to produce documentation or other evidence to show that the goods were supplied to a non-resident, and were consumed during the process of repair, etc., or were wrought into, affixed to, attached to, or otherwise formed part of the temporary import.

Non-consumable goods must be fastened to or become part of the temporary import. Goods that are loose or detachable, such as lifejackets and lifebuoys, are not considered to meet this test, and therefore are not part of a temporary import for the purposes of section 11(1)(ba)(i). Neither are they usually goods that are supplied in the course of repairing, renovating, modifying or treating the craft to which they belong. Examples of goods that satisfy this requirement are engines and cabin fittings that are installed into a vessel. Ropes are an example that may or may not qualify for zero-rating. If they are incorporated into the vessel, such as by becoming part of the rigging, then their supply will be zero-rated. If they are simply stored on board, then they will not be zero-rated.

Section 11(1)(d) also provides that zero-rating does not apply where the supplier of the goods is a GST registered person and that person (or an associated person of that person) has claimed a secondhand goods input tax deduction for those goods.

Services

Under section 11(2)(ca), services will be zero-rated if they are supplied to a person who is a non-resident at the time they are performed and are supplied "directly in connection with" a temporary import.

The Commissioner considers that the words "directly in connection with" in section 11(2)(ca) require a clear and direct relationship between the services and the temporary import. The relationship must be directly with the import and not with some other person or thing. In the context of section 11(2)(e), the High Court in *Wilson & Horton v CIR* (1994) 16 NZTC 11,221 (at page 11,224) indicated that services would not be supplied directly in connection with moveable personal property where the services were a "step" (or more) removed from the property itself. In that case the judge held that the provision of advertising services and space in a newspaper was provided directly in connection with the advertisement but not with the goods advertised.

The phrase "directly in connection with" was considered in two other cases. In *Case S88* (1996) 17 NZTC 7,551, the Taxation Review Authority considered that repair services were supplied directly in connection with the vehicles repaired. In *Auckland Regional Authority v CIR* (1994) 16 NZTC 11,080, the High Court held that runways, taxiways, and holding bays were provided directly in connection with the transportation of passengers and goods by air, but that the provision of an international terminal was not.

The answer to the question of whether there is a direct connection between two things is a matter of fact, degree and impression, and involves a common sense assessment of the factual situation.

Taking that approach and bearing in mind the above cases, if services consist of things done to a temporarily imported vessel, such as painting, mechanical work, or hull repairs, those services are supplied directly in connection with the temporary import. The services can be zero-rated, provided that the other requirements of section 11(2)(ca) are satisfied.

Furthermore, when a person provides marina space or storage facilities in New Zealand for yachts with temporary import entries, it is considered that the supply is zero-rated, provided that the recipient is not resident in New Zealand. Since holding bays for aircraft are supplied directly in connection with international transportation (as was decided in the *Auckland Regional Authority* case), the clear implication is that they are also supplied directly in connection with the aircraft themselves. By analogy, marina space and storage facilities for overseas yachts are also supplied directly in connection with the vessels themselves.

Evidential requirements

Because the supplier is seeking to zero-rate a supply of goods or services, he or she must be able to show that the supply was made to a non-resident in respect of a temporary import.

In the case of a claim for zero-rating under section 11(1)(ba)(i), the supplier of goods must be able to show that the goods were wrought into, affixed to, attached to, or otherwise formed part of the temporary import. If section 11(1)(ba)(ii) applies to consumable goods, the supplier must show that the goods were consumed in the process of repair, etc. The supplier need not perform this work personally, but must be able to show that the supply was made to a non-resident in respect of a temporary import. Evidence will be required to support a claim for zero-rating. The evidence that is appropriate in any particular case may vary, but could include:

- a copy of the recipient's passport.

- a copy of the NZ Customs Service temporary import entry permit.

- details of the goods and services supplied (this could be by way of invoices and photographs), and

- evidence to show that those goods became part of the temporary import or were consumed in the process. This could simply be an explanation of the work done.

Example

The New Zealand Customs Service gives temporary import status to a yacht that enters New Zealand waters. The yachtsperson, a non-resident, hires a berth at a marina. She undertakes repairs to the vessel, and installs a new engine which she has purchased. She also buys spare mooring ropes, new life jackets and a lifebuoy.

The following GST treatment applies:

- Charges to the visiting yachtsperson for any services made directly in connection with the yacht, such as repairs and the berth hire at the marina, can be zero-rated under section 11(2)(ca).

- Charges to the visitor for consumable items used in the course of repairs, such as motor oil, can be zero-rated under section 11(1)(ba)(ii), provided that the items become unusable or worthless as a result of the repair process.

- The supply of the engine to the visitor can be zero-rated, provided the supplier of the engine has kept a copy of: the temporary import entry permit, and/or the visitor's passport, and/or documents that show that the goods have become part of the temporary import (e.g. a photograph or other evidence).

- The supply of the life jackets and the lifebuoy is standard-rated. These items do not meet the criteria for zero-rating, as they are not goods fixed or attached in some way to the yacht with a sufficient degree of permanence. Both life jackets and lifebuoys remain loose items that are easily removed from the vessel and are not incorporated into it. They may be stored on the craft or even (in the case of lifebuoys) placed on a suitable carrying bracket, but even where they are supplied in the course of repairing, renovating or modifying the vessel, they are not considered to have been wrought into, affixed to, or attached to the vessel with the degree of annexation that section 11(1)(ba)(i) requires.

- Ropes should be standard-rated unless the supplier has evidence or witnessed that they became part of the craft (e.g. by becoming part of the rigging). In this example the ropes are spare mooring ropes. Because they have not been "wrought into, affixed to, attached to, or otherwise form part of" the vessel (being merely stored away) they should be standard-rated.

- If the visitor had engaged a person to install the new engine, two separate supplies would have occurred. The sale of the engine, which could be zero-rated if the supplier maintained records as indicated above, and the supply of the installation services, which could be zero-rated under section 11(2)(ca) (being services supplied directly in connection with the temporary import). Adequate records to show that the services were supplied to a non-resident in respect of a temporary import would need to be kept.