

QUESTION WE'VE BEEN ASKED QB 15/14

GOODS AND SERVICES TAX – PROGRESS PAYMENTS ON BOATS TO BE EXPORTED BY SUPPLIER

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

This Question We've Been Asked is about ss 9(3)(aa), 11(1), 11(4) and 11(5).

Question

1. We have been asked when a GST registered boat builder can zero-rate progress payments made by an overseas buyer for the construction of a boat that will be entered for export (or deemed to be entered for export) by the supplier.

Answer

2. A supply of goods that will be exported will be zero-rated where the supplier will enter (or be deemed to enter) the goods for export in the course of, or as a condition of, making the supply. The general rule is that export must occur within 28 days beginning on the day of the time of supply.
3. Where an agreement provides for progress payments to be made periodically during the term of the agreement, each payment will have its own time of supply. Therefore, the first progress payment will trigger the 28-day export requirement. The requirement to export within 28 days is unlikely to be satisfied. Therefore, a supplier wishing to zero-rate the supply will need to apply to the Commissioner for an extension of the 28-day requirement. The application should be made before the end of the first 28-day period.
4. The application must be in writing and should include relevant documents (including the supply contract), the date construction is intended to be completed and the intended date of export. Applications should be sent to:

Inland Revenue
PO Box 5542
Auckland 1141
5. Each application will be considered on a case-by-case basis. However, the Commissioner will usually grant an extension in this situation. Where an extension is granted, the supply can be zero-rated as long as export occurs within the term of the extension.
6. This QWBA is focused on agreements for the construction of boats. However, the same principles apply to other engineering works that involve progress payments and where the goods will ultimately be exported.

Explanation

7. "GST and Progress Payments on Boats" *Public Information Bulletin* No 179, May 1989 set out the GST treatment for a GST registered boat builder who constructed a boat for an overseas buyer and charged progress payments during the construction. The item considered the zero-rating provisions and, in particular, when the Commissioner would extend the 28-day period for export. The purpose of this QWBA is to update and replace the PIB item.

8. This QWBA discusses the situation where a registered person builds and exports a boat to an overseas buyer. This QWBA does not look at the situation where a registered person sells a boat to an overseas buyer and the overseas buyer or their agent exports the boat (under its own power). That situation is covered by s 11(1)(i), (7) and (8) (see QB 07/01 "Zero-rating of supplies of sail-away boats - use as security or offered for sale" *Tax Information Bulletin* Vol 19, No 3 (April 2007): 22).

Time of supply for progress payments

9. Section 9(3)(aa)(ii) alters the time of supply for certain goods and services by deeming a single supply to be a number of successive supplies. It applies where goods and services are supplied:
- directly in the construction, major reconstruction, manufacture, or extension of a building or an engineering work; and
 - pursuant to an agreement that provides for the consideration for that supply to become due and payable in instalments or periodic progress payments.
10. Each successive supply is deemed to take place at the earlier of:
- any payment in respect of the supply becoming due;
 - any payment in respect of the supply being received; or
 - any invoice relating only to that payment being issued.

Example 1 – Time of supply

Isaac (GST registered) enters into an agreement with Liam (resident in Dubai) to construct Liam a boat. The agreement provides for 12 bi-monthly progress payments during the construction phase. Under s 9(3)(aa)(ii), each of the bi-monthly payments will be deemed to be for a separate supply. Each supply will be deemed to be made at the earlier of any payment being received or becoming due, or an invoice being issued (solely) for that payment.

Zero-rating exported goods

11. A supply of goods will be zero-rated where:
- the supplier will enter the goods for export under the Customs and Excise Act 1996 in the course of, or as a condition of, making the supply, and will export the goods (s 11(1)(d)); or
 - the goods will be deemed to be entered for export under the Customs and Excise Act 1996 and will be exported by the supplier in the course of, or as a condition of, making the supply (s 11(1)(e)).
12. However, these zero-rating provisions are subject to s 11(4) and do not apply unless the supplier exports the goods within 28 days from the time of supply (or a longer period allowed by the Commissioner). As noted above, where an agreement provides for progress payments, each progress payment has its own time of supply. This means that the time of supply of the first progress payment would trigger the 28-day rule in s 11(4). It is unlikely that the boat would be able to be exported within 28 days of the first time of supply. If the 28-day requirement is not met, then the whole supply would have to be standard-rated.
13. However, s 11(5) gives the Commissioner a discretion to extend the 28-day period within which the goods must be exported. Section 11(5) requires the supplier to apply in writing to the Commissioner. Section 11(5) also requires the Commissioner to determine that either:

- the export of the goods within 28 days could not occur due to circumstances beyond the control of the supplier and the recipient; or
 - due to the nature of the supply, it is not practicable for the supplier to export the goods within 28 days.
14. The second of the possible grounds seems to be more relevant in this situation. That is, due to the nature of the supply, it is not practicable for the supplier to export the goods within 28 days. This is because the start of the 28-day period is triggered by the first progress payment.
 15. An application must be made in writing and should include relevant documents (including the supply contract) and the intended date of export. Each application will be considered on a case-by-case basis. However, the Commissioner will usually grant an extension in this situation. Where an extension is granted, the supply can be zero-rated as long as export occurs within the term of the extension.
 16. Even though the supply of a boat is treated as multiple successive supplies, a single application can be made to cover all of the deemed supplies in relation to a boat to be exported.
 17. A separate application will usually need to be made for each boat exported as the Commissioner needs to consider the relevant details to determine whether the discretion should be exercised. However, s 11(5) allows the Commissioner to grant an extension for a "class of goods". This may be appropriate where the goods being supplied and the contractual terms of the supplies are sufficiently similar.

Example – application for extension of 28-day export period

18. The following example is included to assist in explaining the application of the law.
19. Ryan (GST registered) enters into an agreement with Sophie to build her a boat and to export it to Australia where Sophie is resident. The agreement provides for monthly progress payments throughout its term. The boat is expected to be ready for export in 12 months. The first progress payment is invoiced at the end of the first month. The boat will not be ready for export within 28 days of the invoice.
20. Ryan realises when he enters into the contract that it will not be possible to meet the 28-day export requirement. As he wishes to zero-rate the payments, he immediately makes a written application to the Commissioner under s 11(5) seeking an extension. **The Commissioner accepts Ryan's application and extends the period for export by 12 months.** Ryan is now able to zero-rate the payments as long as he exports the boat within the extended period.

References

Related rulings/statements

- "GST and Progress Payments on Boats" *Public Information Bulletin* No 179, May 1989
- QB 07/01 "Zero-rating of supplies of sail-away boats - use as security or offered for sale" *Tax Information Bulletin* Vol 19, No 3 (April 2007): 22

Subject references

- Boats
Export
Goods and Services Tax
Zero rating

Legislative references

- Goods and Services Tax Act 1985: ss 9(3)(aa), 11(1)(d) and (e), 11(4) and 11(5)