

QUESTION WE'VE BEEN ASKED

QB 18/15

GST - When will goods and services supplied in connection with the repatriation of human remains from New Zealand be zero-rated?

*As part of our review of Public Information Bulletins, this QWBA updates and replaces **PIB 168 "GST on Human Remains for Repatriation"** (January 1988: 5).*

Key provisions

Goods and Services Tax Act 1985:
ss 11(1)(a)-(e), (4) and (5),
11A(1)(k), 11A(2), and 11A(3).

Question

When will goods and services supplied in connection with the repatriation of human remains from New Zealand be zero-rated?

Answer

Services supplied in connection with the repatriation of human remains (such as cremation and embalming services) will be zero-rated where:

- The services are supplied to a non-resident who is outside New Zealand when the services are performed; and
- The remains will not be received by a third party in New Zealand (and it was not reasonably foreseeable when the contract was entered into that a third party would receive the remains in New Zealand).

Goods (such as caskets and urns) exported by the supplier are zero-rated.

Explanation

1. All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.
2. *Public Information Bulletin (PIB) 168 "GST on Human Remains for Repatriation"* (January 1988: 5) stated that work performed on human remains to be repatriated overseas could not be zero-rated. The reason given was that human remains are "moveable personal property" situated in New Zealand when the services are performed. The Commissioner is now of the view that this is not correct and, in certain circumstances, the goods and services can be zero-rated.

When services can be zero-rated

3. The relevant provision in this context is s 11A(1)(k) (which is subject to s 11A(2)). For the types of services being considered, s 11A(1)(k) will apply where:
- the services are supplied to a non-resident;
 - the recipient is outside New Zealand when the services are performed;
 - the services are not supplied directly in connection with land in New Zealand;
 - the services are not supplied directly in connection with moveable personal property; and
 - the performance of the services will not be received in New Zealand by a third party (and it is not reasonably foreseeable at the time the agreement is entered into that the performance of the services will be so received).
4. These requirements are considered below.

Services supplied to a non-resident outside New Zealand

5. The services will be supplied to a non-resident if the contract for services is entered into with a non-resident.
6. As well as being a non-resident, **that person must be "outside New Zealand" at the time the services are performed.** For a non-resident company or unincorporated body, **"outside New Zealand" includes a minor presence in New Zealand, or a presence that is not effectively connected with the supply (s 11A(3)).**
7. For a natural person, **"outside New Zealand" includes a minor presence in New Zealand that is not directly in connection with the supply.**

Services not supplied directly in connection with land in New Zealand

8. Services supplied "directly in connection with land" are not able to be zero-rated. Certain **services provided "in connection with land" are also unable to be zero-rated;** however, these are unlikely to be relevant in this context.
9. In the context of the repatriation of human remains, it is unlikely that any of the services provided would be directly in connection with land. However, if instead of repatriating the remains, the funeral home arranges for burial in New Zealand, that service would be directly in connection with land. Consequently, it would not be zero-rated.

Services not supplied directly in connection with moveable personal property in New Zealand

10. Services are not able to be zero-rated if they are supplied directly in connection with moveable personal property situated in New Zealand. PIB 168 stated that work performed in New Zealand by funeral directors on human remains that are to be repatriated could not be zero-rated because the services are performed on moveable personal property (being the human remains) which are in New Zealand when the services are performed. The correctness of this has been questioned.
11. **"Property" is relevantly defined in the *Concise Oxford English Dictionary* (12th ed) as "a thing or things belonging to someone" and "ownership". There is case law considering whether there is "property" in a dead body.**
12. In *Takamore v Clarke* [2011] NZCA 587; [2012] 1 NZLR 573, the Court of Appeal considered who had the right to determine where a body would be buried. In the course

of the judgment the Court discussed the issue of whether there is property in a body (footnotes omitted):

[199] At common law an executor has the duty to dispose of the body of the deceased. The application of this common law duty has not been modified by statute in New Zealand. Section 24 of the Administration Act 1969 states that all of the estate of a deceased person vests in the administrator of the estate. This provision does not alter the clear common law position that the estate does not include the body of the deceased, and that the obligation to dispose of the body is an obligation imposed under the common law.

[200] It is generally accepted that there is no property in the body of a deceased. However, as the executor has the duty to dispose of the body of the deceased, he or she **therefore has the right to possession of the deceased's body for the purpose** of final disposal. The right to possession of the dead body is directed towards the ancillary duty of **ensuring a proper burial, providing an exception to the "no property in a dead body" rule.**

[Emphasis added]

13. Similar observations were made in *Re JSB (A Child)* [2010] 2 NZLR 236 (HC). And in *Public Trustee v Kapiti Coast Funeral Home Ltd* [2004] 3 NZLR 560 (HC), the Court stated:

[11] Some discussion of the law as to rights and duties in relation to a dead body is desirable as background to the analysis of liability for funeral expenses. At common law, there is no property in a deceased body, and a person cannot by will dispose of his or her dead body – *Williams v Williams* (1882) 20 Ch D 659 at p 665. There is no statutory provision which would modify this position in New Zealand.

[Emphasis added]

14. Therefore, under the common law, there is no property in a dead body. There are no **statutes that change this as a general proposition. In the Commissioner's view, as** there is no property in a human body, the body cannot be property. No one can own a body and a body cannot belong to anyone. If a body cannot be property, it follows that it **cannot be "moveable personal property". As such, services provided in connection with a** human body will not be excluded from zero-rating under s 11A(1)(k)(ii).

Performance of the services will not be received in New Zealand by a third party

15. Section 11A(2) will apply to prevent zero-rating where the performance of services will be received in New Zealand by a third party (ie, not the contractual recipient of the services). Section 11A(2) will also apply where it is reasonably foreseeable at the time the agreement is entered into that the performance of the services will be received in New Zealand by a third party (regardless of whether this, in fact, occurs).
16. **In the Commissioner's view**, a person will receive the performance of cremation or embalming services where they take possession of the remains. The performance of the services will not be received in New Zealand if the remains are exported overseas by the funeral home.
17. In some cases a service will be held in New Zealand before the repatriation. In the **Commissioner's view**, performance of the associated services (venue hire, celebrant etc) will be received in New Zealand by those attending the service and cannot be zero-rated. **In the Commissioner's view these services will generally be separate supplies from the supply of embalming or cremation services.** However, if there is any uncertainty, the principles to be applied are set out in Interpretation Statement IS 17/03 **"Goods and Services Tax – Single Supply or Multiple Supplies"** (*Tax Information Bulletin* Vol 29, No 4 (May 2017)).

When goods can be zero-rated

18. The main goods that could be supplied in relation to the repatriation of human remains are caskets and urns. The standard rules for zero-rating exported goods in s 11 apply. Section 11(1)(a)-(e), 11(4) and 11(5) are particularly relevant.
19. In summary, the supply of goods will be zero-rated where they have either been exported (by the supplier) or will be exported (by the supplier) in the course of, or as a condition of, making the supply. The applicable time period for exporting goods is 28 days from the time of supply (or a longer period that the Commissioner has allowed).
20. The following examples are included to assist in explaining the application of the law.

Examples

Example 1 – Relative in New Zealand contracts for repatriation services

21. Sally and John moved to New Zealand 10 years ago when they retired. However, when the time comes, both want to be buried in England where they were born. When John dies, Sally contracts with ABC Funeral Home (ABC) to have John embalmed and his remains repatriated to England.
22. The services provided by ABC are standard-rated as Sally is a New Zealand resident and is in New Zealand when the services are performed. **The sale of the casket to transport John's** body will be zero-rated if it is exported by ABC.

Example 2 – No presence in New Zealand

23. Sally (from Example 1) dies a year later. **Sally's sister** Edith from Liverpool arranges for a Liverpool funeral home to contract with ABC to **repatriate Sally's remains**. ABC performs the embalming, obtains the **necessary permits and documentation, and repatriates Sally's** remains to England.
24. The services provided by ABC are zero-rated as the contract is entered into with a non-resident. Also, the services are not received by the **third party in New Zealand**. **The sale of the casket to transport Sally's** body will also be zero-rated as it is exported by ABC.

Example 3 – Performance of services received in New Zealand

25. Sid is on holiday from Perth when he dies while travelling around New Zealand. **Sid's** travel insurance provider contracts with ABC to have **Sid cremated**. **Sid's wife Penny flies to New Zealand to collect Sid's ashes** from ABC and fly home with them.
26. The services provided by ABC are standard-rated as the performance of the services is received in New Zealand by Penny. **The sale of the urn to carry Sid's ashes is also standard-rated** as it is not exported by ABC.

Example 4 – Person in New Zealand not receiving performance of the services

27. Mario and Luca are travelling in New Zealand when Mario dies. **Mario's** travel insurance provider (a UK resident) contracts with ABC to have Mario

embalmed and his remains repatriated to Scotland. ABC performs the embalming, obtains the necessary permits and documentation, and repatriates **Mario's remains to Scotland.**

28. Luca remains in New Zealand throughout the process and arranges to fly home on the same flight as **Mario's body.**
29. The services provided by ABC are zero-rated. The contract is entered into with a non-resident (the insurance company) who has no presence in New Zealand. Also, although Luca is in New Zealand while the services are being performed and accompanies **Mario's body on the flight home, he** does not receive the performance of the services in New Zealand. The sale of the casket to transport **Mario's body will also be zero-rated** as it is exported by ABC.

Example 5 – Funeral services performed in New Zealand

30. Margaret has been living in New Zealand for the past 20 years. When she dies her brother from Canada contracts with ABC to organise a small funeral service for Margaret so that her friends can say goodbye. Following the service, **Margaret's body will be cremated and her ashes** sent back to Canada.
31. The services in relation to the funeral are standard-rated as their **performance is received in New Zealand by Margaret's friends.** The cremation services are zero-rated as no one receives the performance of **those services in New Zealand (the remains are sent back to Margaret's** brother in Canada). The sale of the urn is also zero-rated as it is exported by ABC.

References

Subject references

Funeral services
Goods and Services Tax
GST
Human remains
Repatriation

Case references

Public Trustee v Kapiti Coast Funeral Home Ltd [2004] 3 NZLR 560 (HC)
Re JSB (A Child) [2010] 2 NZLR 236 (HC)
Takamore v Clarke [2011] NZCA 587; [2012] 1 NZLR 573.

Legislative references

Goods and Services Tax Act 1985: ss 11(1)(a)–(e), (4) and (5), 11A(1)(k), 11A(2), and 11A(3).

Other references

PIB 168 "GST on Human Remains for Repatriation" (January 1988: 5)
IS 17/03 "Goods and Services Tax – Single Supply or Multiple Supplies" *Tax Information Bulletin* Vol 29, No 4 (May 2017).