



PS LA 2006/16 - GST-free exports - extension of time to export

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Practice Statement Law Administration

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This practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax office staff unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs Tax office staff must follow their business line's escalation process.

SUBJECT: GST-free exports – extension of time to export

PURPOSE: To set out the procedures to be followed where goods have not been, or will not be, exported within the 60-day period allowed in the GST law. The practice statement outlines the issues that will be considered in exercising the discretion to provide an extension of time to export.

STATEMENT

1. The GST law¹ provides for goods to be supplied GST-free provided they are exported within 60 days or such further period as the Commissioner allows. All requests for an extension of time to export goods (including requests for further extensions) are to be referred to the GST International Team.²
2. The following is an outline of advice to be provided to suppliers on the application of the GST-free export provisions where the supplier exports goods from Australia:³
 - Where goods will not be exported within the 60-day period allowed for in the legislation, an application for extension of time to export is required if the supplier wants the export to have a GST-free status.
 - Exceptions to this general rule, where an extension of time is automatically granted, are outlined in Goods and Services Tax Ruling GSTR 2002/6.
 - Applications for extensions of time to export can be made before the 60-day period has expired, after the 60-day period has expired or after the goods have been exported⁴. Applications should be made as soon as the supplier realises that the time period will not be or has not been met.

¹ Section 38-185 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

² via mailbox: GSTInternational@ato.gov.au

³ Subsection 38-185(1) of the GST Act.

⁴ GSTR 2002/6 paragraph 212.

- Extensions of time to export will usually be granted where there are physical, practical or commercial circumstances that reasonably explain the delay.⁵
 - The period of the extension will depend on the circumstances in each case.
 - Further extensions will not normally be granted unless there are exceptional circumstances.
 - Where industry arrangements give assurance that there is an effective compliance trail the Commissioner may consider implementing broader approvals for classes of transactions.
 - Evidence of export, as outlined in GSTR 2002/6, is required.⁶
 - An adjustment⁷ will be required where there is insufficient evidence of export or if export was outside the period allowed (60 days or such further period as the Commissioner allows).
 - Instalment contracts, which conform to industry practice or reasonable commercial terms, can be used by suppliers where the goods are not to be exported within 60 days. For instalment contracts the 60-day period begins when the final payment is made or invoice is given.⁸
3. In providing advice to suppliers who are making supplies to unregistered recipients for export and relying on subsection 38-185(3) of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) it should be advised that:
- It is the supplier's choice to supply goods GST-free to recipients for export and the supplier bears the risk of the goods not being exported. If the goods are not exported then the supplier will be liable for GST.
 - There are specific provisions for aircraft and ships exported by the recipient.⁹
 - The supplier is liable to GST unless it has documentary evidence from the recipient, who is not registered or required to be registered, that the goods have been exported by the recipient, that the goods have not been used or altered prior to export and the goods have been entered for export.
 - Evidence of export,¹⁰ as outlined in GSTR 2002/6, is required.¹¹ An indication of intent to export by the recipient or a photocopy of the recipient's airline ticket or passport is not sufficient evidence.
 - Applications for extensions of time to export can be made before the 60-day period has expired, after the 60-day period has expired or after the goods have been exported. Applications should be made as soon as it is realised that the time period will not be or has not been met.

⁵ GSTR 2002/6 paragraph 212.

⁶ GSTR 2002/6 paragraph 43 and Appendix B.

⁷ Paragraph 19-10(1)(c) of the GST Act.

⁸ Item 2 of subsection 38-185(1) of the GST Act.

⁹ Items 3 and 4 of subsection 38-185(1) of the GST Act.

¹⁰ Paragraph 38-185(3)(e) of the GST Act

¹¹ GSTR 2002/6 paragraph 43 and Appendix B.

- The Commissioner can only give a determination on an extension of time to export to the supplier. The recipient and supplier can jointly apply for an extension of time to export so that the recipient is kept informed. The recipient can request advice on whether it is likely that an extension of time to export would be granted if applied for by the supplier.
 - The goods can be supplied GST inclusive to a recipient, who is not registered or required to be registered, and the GST component reimbursed when the supplier is provided with evidence that the goods have been exported and that the goods have not been used or altered prior to export, except to the extent necessary to prepare them for export. Where export is outside the 60-day period an application for extension of time to export will be required. The supplier cannot be required by the Commissioner to process an adjustment to GST or apply for an extension of time to export.
4. Tax officers identifying instances where goods have not been exported within the 60-day period by the supplier or recipient, in circumstances where an extension of time may be granted, can request advice from the GST International Team that will form the basis for the audit decision. The GST International Team will endeavour to provide a decision within the audit timeframe. To assist in this process the Tax officer should provide all relevant information to the GST International Team and should provide the Team with a report on the available evidence of export and other requirements under the provisions.

EXPLANATION

5. Section 38-185 of the GST Act provides for the GST-free export of goods. This provision provides, in relation to goods, that they be exported from Australia within 60 days (or such further time as the Commissioner allows).
6. GSTR 2002/6 sets out the Commissioner's views on:
- the meaning of 'the supplier exports'
 - when the export of goods occurs
 - when an exporter satisfies the condition that the export of goods must occur within specified time limits, and
 - the types of documents that a supplier needs to keep as evidence of satisfying the requirements for an export of goods to be GST-free.
7. The Ruling also addresses the operation of subsection 38-185(3) of the GST Act, that applies where the recipient exports the goods, and how that subsection expands the scope of items 1 and 2 of the table in subsection 38-185(1) in certain circumstances.
8. This practice statement provides additional guidance on the practical application of the 60-day rule. The 60-day rule is intended to provide suppliers with adequate time to arrange and export goods. The Commissioner's discretion overcomes any unintended consequences (such as goods in transit) of the strict application of the 60-day rule.

9. Beyond the situations outlined in GSTR 2002/6 where the Commissioner's discretion would normally operate, it is also noted that the discretion would be granted where there are physical, practical or commercial circumstances that reasonably explain the delay. This assessment will generally be made on a case by case basis. Relevant case law indicates that each case should be decided on its own merits and that a discretion should not be tied to a prescriptive formula. Some industries may have arrangements that will provide reasonable assurance that goods are exported. In this situation broader approvals for classes of transactions may be approved by the Commissioner.
10. The GST International Team is responsible for considering and approving requests for extension of time to export to ensure that a consistent approach is taken. In some circumstances these requests may be referred to specialist industry teams, such as the mining and energy team, who are responsible for considering and approving requests in their specialist area.
11. Applications for extension of time to export can be made before the 60-day period has expired, after the 60-day period has expired or after the goods have been exported.¹² There is no restriction in the legislation that requires an application to be made prior to the end of the 60 days. However, applications should be made as soon as it is realised that the time period will not be or has not been met. A factor that may be taken into account in the consideration of a retrospective application is where the supplier has indicated that it was not aware of the 60-day requirement. Where a supplier finds that it has exceeded the 60-day limit the GST International Team can provide a decision on an extension of time to export.
12. The information required to be submitted to request an extension of time to export is:
 - description of goods, quantity, recipient and destination
 - date of supply/invoice/consideration
 - length of time needed for extension
 - date exported or proposed date of export
 - carrier/mode of export
 - where the goods have already been exported - evidence of export, and
 - reason why an extension of time to export should be granted.
13. Tax officers identifying instances where goods have not been exported within the 60-day period by the supplier or recipient will need to consider whether there are physical, practical or commercial circumstances that reasonably explain the delay. If the supplier wishes to apply for an extension of time to export and it is considered that the Commissioner may exercise his discretion then the issue should be referred to the GST International Team for decision. A report setting out the details of the transaction, whether the goods have been exported or are likely to be exported and a recommendation based on the factors outlined below will assist the decision.

¹² GSTR 2002/6 paragraph 212.

14. Where goods are paid for in instalments the GST law¹³ provides that the 60-day period commences on the date that the supplier receives any of the final instalment or the date that the supplier gives the invoice for the final instalment (whichever is earlier). In the case of an aircraft or ship sold by instalments,¹⁴ under a contract that requires the recipient to export it, the earliest date will also include the date of delivery to the recipient or another person. Where suppliers have forward orders of goods they can structure their arrangements to utilise item 2 of the table in subsection 38-185(1) provided that the contracts conform to industry practice or reasonable commercial terms. Extensions of time to export can also be applied for where goods sold under an instalment arrangement cannot be exported within 60 days of the final payment or invoice.
15. The following factors will be considered by the GST International Team in determining whether an extension to the 60-day period will be granted:
- Each application will be considered on its facts and circumstances.
 - The overall situation:
 - why an extension is required
 - whether alternatives were available
 - whether there was a choice to structure the arrangement in this way
 - whether the arrangement was entered into despite the 60-day restriction
 - any extenuating circumstances.
 - Supplier's compliance history:
 - a good compliance record is required
 - whether requests for extension are common and the circumstances of those requests.
 - Commercial circumstances in the industry. These are commercial practices within an industry that may lead to extensions being required, such as subscriptions to publications.
 - Risk of not being exported or going into use in Australia:
 - whether the goods are to be separately stored or go into common stock
 - risk of the goods not being exported within the period allowed by the Commissioner.
 - Circumstances outside the control of the supplier/exporter such as:
 - strikes
 - breakdowns
 - transport company delays or hold-ups
 - illness (animals)
 - vaccinations/quarantine, or

¹³ Item 2 of subsection 38-185(1) of the GST Act.

¹⁴ Item 4 of subsection 38-185(1) of the GST Act.

- delays in preparation for export.
 - For goods to be exported by the recipient, whether:
 - the recipient is not registered or required to be registered
 - the goods have not / will not be used or altered in any way, and
 - if the goods have already been exported – the goods have been entered for export and there is sufficient documentary evidence of export by the recipient.
16. Attachment A provides some examples of requests for extension to the 60-day period.

Subject references	60-day rule export extension of time to export Goods and Services Tax GST-free exports
Legislative references	ANTS(GST)A 1999 38-185 ANTS(GST)A 1999 38-185(1) ANTS(GST)A 1999 38-185(3)
Related public rulings	GSTR 2002/6
Related practice statements	
Other references	Register of Private Binding Rulings
File references	05/5662

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Extension of time to export – examples

Goods and Services Taxation Ruling GSTR 2002/6 provides the ATO view on the operation of section 38-185 of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) that sets out when supplies of goods are GST-free exports. Of particular relevance are paragraphs 32 to 39; 71; and, 209 to 214.

The following examples are illustrative of the general application of the principles outlined to requests for extension of time to export. They are not definitive. Each application will be considered on its own merits by the GST International Team. Additional examples of decisions made in relation to the provision are included in the Register of Private Binding Rulings on the Tax Office internet site (link available in the Other References section of this practice statement).

Accumulation

Example 1

Goods are sold to an unregistered non-resident who accumulates them at a facility under the control of the non-resident until there is a container load that is then exported. Additional time to export would not be granted as the failure to export within 60 days is the recipient's choice. The accumulation of goods for future export carries an increased risk that the goods will not be exported and diverted for home consumption. Had the goods been accumulated at a facility operated by an international transport provider¹⁵ then an extension would normally be granted. The security of the goods and the risk of diversion would be relevant considerations.

Additionally, other alternatives exist to comply with the GST law:

- Goods could be sold under an instalment contract where the invoice for the final instalment defines the start of the 60-day period.
- If the non-resident is conducting an enterprise in their own country they can apply for a GST-only registration (Division 25).
- Non-resident recipient establishes themselves in Australia and registers for GST.

Example 2

Goods are sold to an unregistered non-resident who requires that they be stored and delivered (exported) on request. An extension would not normally be granted as it is the recipient's choice not to export and there is an increased risk that the goods may be diverted for home consumption. Other alternatives exist to comply with the 60-day requirement such as instalment contracts that require an invoice for final payment when delivery is requested.

Storage of the goods in a secure facility ready for export and a viable audit trail may be considered as risk mitigation.

¹⁵ International transport provider is the entity that the supplier has engaged to carry or arrange the carriage of the goods to the overseas destination. This includes a freight forwarder, consolidator, air express courier, postal agency, etc, as well as a shipping line or airline (GSTR 2002/6 paragraph 36).

Goods exported

Goods have been exported outside the 60-day period, or any extension previously granted by the Commissioner, and an extension of time to export is applied for. The fact that the goods have been exported does not automatically mean that an extension of time will be granted. If the reasons for the delay would have failed to satisfy a request for extension, had it been made before the period had expired, an extension of time would not be granted. To do otherwise would encourage non-compliance with the law and would result in inequitable outcomes.

Goods sold GST inclusive

A non-resident purchases goods GST inclusive from a supplier and requests a refund when the goods are exported. The recipient provides the supplier with evidence of export and satisfies other conditions of subsection 38-185(3) of the GST Act. The recipient and supplier can jointly apply for an extension of time to export if the 60-day period has been exceeded. The same factors would be considered in deciding whether to grant an extension of time to export. Whilst there is no risk of diversion as the goods have been exported it is still necessary to demonstrate a practical or commercial reason why the goods could not be exported within the 60 days allowed in the GST law.

Late delivery

The supplier is unable to deliver goods to the freight forwarder until after the container for the non-resident client or destination has been despatched. The next container is not due for despatch until after the 60-day period has expired. In considering a request for extension of time to export the following factors would need to be considered:

- why the consignment was missed
- time to next consignment
- storage of goods in the meantime (have the goods been delivered to the international transport facility), and
- risk of goods being diverted.

Loss or damage

A supplier receives an order for goods from a non-resident recipient. The supplier sources the goods, invoices the recipient and transports the goods to the recipient's freight forwarder. During the transport to the freight forwarder the goods are damaged, lost or stolen. Rather than cancelling the invoice (no supply) replacing the goods and re-invoicing the recipient the supplier refills the order. The delay caused by refilling the order means that the 60-day period from the original invoice is exceeded.

In these circumstances an extension of time to export is likely to be given. Whilst there is an element of choice in not re-issuing the invoice for the replacement goods this may be impractical for the supplier. Evidence of the loss, damage or theft in the form of insurance claims or police report may be required. The compliance record of the supplier and recipient would be a factor considered. A blanket extension could not be given in case such an incident occurred.

New market

A supplier is exporting goods into a new market and encounters difficulties in organising for the delivery into the foreign country. The goods were exported outside of the 60-day period. Where the difficulties encountered were outside the supplier's and recipient's control an extension would be granted.

Pre-sale

Goods are sold before they are manufactured for delivery when completed. For example, the entire vintage is purchased from a winery before the grapes are picked, wine made, bottled, labelled and matured. An extension would not be granted as it is the recipient's choice to pre-purchase so that export cannot be achieved within the 60-day requirement and there is an increased risk that the goods may be diverted for home consumption. Other alternatives exist to comply with the 60-day requirement such as instalment contracts that require an invoice for final payment when delivery is requested.

Procedural failure

A supplier has been granted extensions of time to export in the past where there were extenuating circumstances why goods could not be exported within the 60-day limit. The supplier's practices become relaxed and exports are made outside the 60-day limit because it suits the supplier or recipient. No extensions have been applied for. The supplier reviews its operations and applies for extensions of time in respect of all the out of time exports. In the absence of other extenuating circumstances and taking into account the supplier's knowledge of the 60-day rule and their subsequent compliance behaviour the extensions would not be granted and adjustments would be required.

Use in Australia

A racehorse was purchased at auction and additional time to export was granted to allow the horse to be prepared for export. It has been accepted that breaking and barrier trials can be part of the preparation for export. Before the horse was exported the horse was raced by the recipient. The horse no longer qualifies for GST-free status as it has been used in Australia. The supplier would be required to make an adjustment to reflect this.

Where a boat is purchased in Australia there may be some requirement for sea trials so that any changes or warranty repairs can be made prior to export. These trials may be considered as part of the preparation for export and additional time allowed. Where the use is more than a trial, for example participation in an ocean race, then this would be considered to be use in Australia and would no longer qualify for GST-free status.

Where there is a supply of customised goods to be exported by the recipient and it is necessary that it be demonstrated that they are fit for purpose this could be done by the supplier before they are supplied to the recipient. This would enable both the supplier and recipient to be satisfied that the goods are fit for purpose before the supply for export is undertaken, allowing a full 60 days for the goods to leave Australia.

If a recipient rides a motor cycle purchased for export from the dealership directly to an export facility it may be considered as necessary to prepare it for export and maintain the GST-free status. Riding the motor cycle cross country to another city or port would not generally be a use necessary for export.

Vaccination

Livestock was purchased for export but required vaccination (with a withholding period) or quarantine before export. This requirement takes the livestock past the 60-day period for export. Extension would be granted provided that export occurred as soon as practicable after the withholding period.