

# ***PS LA 2006/16 - GST free exports - the Commissioner's discretion to extend the time to export***

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# Practice Statement Law Administration

**PS LA 2006/16**

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<b>SUBJECT:</b>	<b>GST-free exports – the Commissioner's discretion to extend the time to export</b>
<b>PURPOSE:</b>	<b>To set out the procedures to be followed where goods have not been, or will not be, exported within the 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</b>

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## **STATEMENT**

1. The GST law<sup>1</sup> provides for goods to be supplied GST-free provided they are exported within 60 days or such further period as the Commissioner allows.

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<sup>1</sup> Section 38-185 of *A New Tax System (Goods and Services Tax) Act 1999*. All legislative references in this practice statement are to the *A New Tax System (Goods and Services Tax) Act 1999* unless otherwise stated.

2. Supplies of new recreational boats made under contracts entered into on, or after 1 July 2011 may be GST-free where they are exported within 12 months after the receipt day 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 ITX Interpretative Assistance (ITX IA). Any decision to exercise the discretion must be approved by an ITX IA Executive Level 2 or SES.
3. 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 (other than new recreational boats) from Australia outside the 60-day period allowed:<sup>2</sup>
  - 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 *Goods and Services Tax: Exports of goods, items 1 to 4A of the table in subsection 38-185(1) of the A New Tax System (Goods and Services Tax) Act 1999*.<sup>3</sup>
  - 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.<sup>4</sup> Applications should be made as soon as the supplier realises that the time period will not be or has not been met.
  - Extensions of time to export will usually be granted where there are physical, practical or commercial circumstances that reasonably explain the delay.<sup>5</sup>
  - 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.<sup>6</sup>
  - An adjustment<sup>7</sup> 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.<sup>8</sup>

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<sup>2</sup> Subsection 38-185(1).

<sup>3</sup> GSTR 2002/6 paragraphs 36 to 38, 69 to 70 and 208 to 209.

<sup>4</sup> GSTR 2002/6 paragraph 212.

<sup>5</sup> GSTR 2002/6 paragraph 212.

<sup>6</sup> GSTR 2002/6 paragraph 43 and Appendix B.

<sup>7</sup> Paragraph 19-10(1)(c).

<sup>8</sup> Item 2 of the table in subsection 38-185(1).

4. In providing advice to suppliers who are making supplies to unregistered recipients for export and relying on subsection 38-185(3) 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 (excluding new recreational boats) exported by the recipient.<sup>9</sup>
  - The supplier is liable for 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,<sup>10</sup> as outlined in GSTR 2002/6, is required.<sup>11</sup> 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.
  - 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 by the supplier 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 should be made and will need to be granted before such reimbursement can be given. The Commissioner is not required to grant extensions. Suppliers remain liable for GST if an extension is not granted regardless of whether they reimbursed an amount for GST. The supplier cannot be required by the Commissioner to process an adjustment to GST or apply for an extension of time to export.

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<sup>9</sup> Items 3 and 4 of the table in subsection 38-185(1).

<sup>10</sup> Paragraph 38-185(3)(e).

<sup>11</sup> GSTR 2002/6 paragraph 43 and Appendix B.

5. The following is an outline of advice to be provided to suppliers or recipients on the application of the GST-free export provisions where a new recreational boat<sup>12</sup> is exported from Australia outside the 12-month period allowed:
- Item 4A of the table in subsection 38-185(1) applies to supplies of new recreational boats made under contracts entered into on, or after 1 July 2011, that are exported by the supplier or the recipient within 12 months after the receipt day<sup>13</sup> or such further period that the Commissioner allows.
  - Where the boat is exported by the recipient, the supplier is required to obtain documentary evidence of the export from the recipient. The proof of export requirements for new recreational boats are the same as for goods under the 60-day export rules as outlined in GSTR 2002/6.<sup>14</sup> If the boat is not exported then this gives rise to an adjustment event.<sup>15</sup>
  - For the supply of the boat to be GST-free the boat must not be used for certain disqualifying activities prior to being exported.<sup>16</sup> The supplier should be satisfied that this condition is met in order to continue to treat the supply as GST-free.
  - Applications for extensions of time to export can be made before the 12-month period has expired, after the 12-month period has expired or after the boat has been exported. Applications should be made as soon as it is realised that the time period will not be, or has not been, met.
  - If a new recreational boat cannot be exported within the 12-month export period, the supplier or recipient (or the supplier and recipient jointly) may apply to the Commissioner seeking an extension of time for the export to occur.<sup>17</sup>
  - The boat can be supplied GST inclusive to a recipient and the GST component reimbursed by the supplier when the supplier is provided with evidence that the boat has been exported and that the boat has not been used for a disqualifying activity prior to export. Where export is outside the 12-month period an application for extension of time to export should be made and will need to be granted before such reimbursement can be given. The Commissioner is not required to grant extensions. Suppliers remain liable for GST if an extension is not granted regardless of whether they reimbursed an amount for GST. The supplier cannot be required by the Commissioner to process an adjustment to GST or apply for an extension of time to export.
6. Tax officers identifying instances where goods or new recreational boats have not been exported within the allowed period by the supplier or recipient, in circumstances where an extension of time may be granted, can request advice from ITX IA that will form the basis for the audit decision. ITX IA will endeavour to provide a decision within the audit timeframe. To assist in this process the tax officer should provide all relevant information to ITX IA and should provide a report on the available evidence of export and other requirements under the provisions.

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<sup>12</sup> Section 195-1 provides that new recreational boat has the meaning given by subsection 38-185(5).

<sup>13</sup> The receipt day is the earliest day on which one or more of the following occurs; (i) the recipient takes physical possession of the boat; (ii) if consideration for the supply is provided in instalments under a contract that requires the boat to be exported – the supplier receives any of the final instalment; or (iii) if consideration for the supply is provided in instalments under a contract that requires the boat to be exported – the supplier gives an invoice for the final instalment.

<sup>14</sup> GSTR 2002/6 paragraphs 66G, 66H, 66I.

<sup>15</sup> GSTR 2002/6 paragraph 66J.

<sup>16</sup> Subsection 38-185(6). Also see GSTR 2002/6 paragraphs 66E and 235S to 235ZB.

<sup>17</sup> GSTR 2002/6 paragraph 235R.

## EXPLANATION

7. Section 38-185 provides for the GST-free export of goods and new recreational boats. This provision provides, in relation to items 1, 2, 3 and 4 of the table in subsection 38-185(1), that goods be exported from Australia within 60 days (or such further period as the Commissioner allows). Item 4A of the table in subsection 38-185(1) provides that new recreational boats be exported from Australia within 12 months (or such further period as the Commissioner allows).
8. 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.
9. GSTR 2002/6 addresses the operation of subsection 38-185(3), 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.<sup>18</sup>
10. GSTR 2002/6 also discusses subsections 38-185(5) and (6) which are relevant to the export of new recreational boats in item 4A of the table in subsection 38-185(1).<sup>19</sup>
11. This practice statement provides additional guidance on the practical application of the Commissioner's discretion to extend the specified time periods to export goods or new recreational boats.
12. 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.
13. In addition to the 60-day rule, a 12-month export period is allowed for new recreational boats. This practice statement also provides guidance on the practical application of the Commissioner's discretion to extend the 12-month export period.
14. 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 in meeting the specified time period to export. 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 after having proper regard to all relevant facts. The decision to exercise the 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.
15. ITX IA is responsible for considering and approving requests for extension of time to export to ensure that a consistent approach is taken.

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<sup>18</sup> GSTR 2002/6 paragraphs 67 to 81 and paragraphs 237 to 294.

<sup>19</sup> GSTR 2002/6 paragraphs 66A to 66K and paragraphs 235A to 235ZB.

16. Applications for extension of time to export can be made before the relevant period has expired, after the period has expired or after the goods or new recreational boat have been exported.<sup>20</sup> There is no restriction in the legislation that requires an application to be made prior to the end of the 60 days or 12 months. 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. This factor will not apply to the 12 month period for new recreational boats.
17. Where a supplier of goods finds that it has exceeded the 60-day export period ITX IA can provide a decision on an extension of time to export. Requests for the discretion to be exercised should be made in writing to the Commissioner by or on behalf of the supplier, or the supplier and recipient jointly.
18. If a new recreational boat cannot be exported within the 12-month export period ITX IA can provide a decision on an extension of time to export. Requests for the discretion to be exercised should be made in writing to the Commissioner by or on behalf of the supplier, the recipient, or the supplier and recipient jointly. If an extension of time is granted at the recipient's request, the recipient must inform the supplier of the extension.
19. The Commissioner will advise the party that made the request, in writing, whether the discretion has been exercised. If the discretion is not exercised, the Commissioner will include reasons in the response.
20. The information required to be submitted to request an extension of the 60-day period 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
  - the explanation for the delay and reason why an extension of time to export should be granted.
21. 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 ITX IA for a 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.

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<sup>20</sup> GSTR 2002/6 paragraph 212.

22. Where goods are paid for in instalments the GST law<sup>21</sup> 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,<sup>22</sup> 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.
23. The following factors will be considered 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
    - delays in preparation for export.

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<sup>21</sup> Item 2 of the table in subsection 38-185(1).

<sup>22</sup> Item 4 of the table in subsection 38-185(1).

- 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.
24. Attachment A provides some examples of requests for extension to the 60-day period.
25. The information required to be submitted to request an extension of time to export a new recreational boat is:
- details of the supplier
  - details of the recipient
  - date of supply/invoice/consideration
  - length of time needed for extension
  - date exported or proposed date of export
  - mode of export
  - where the boat has already been exported – evidence of export
  - the explanation for the delay, i.e. the circumstances explaining why an extension of the 12-month export period is required, and
  - reasons why an extension of time to export should be granted.
26. It may be appropriate to exercise the discretion to extend the 12-month export period for a new recreational boat where the delay is due to circumstances beyond the exporter's control. Circumstances could include:
- breakdown or accidental damage to the boat which is sufficiently serious to require repair before departure;
  - serious illness to a crew member; or
  - delayed departure due to unseasonal bad weather making it too dangerous to sail.
27. Unseasonal weather could be:
- cyclones outside the specified season of 1 November to 30 April; or
  - cyclone occurrences outside the regions associated with most tropical cyclone activity. That is, outside the region between Exmouth and Broome in northwest Western Australia and the northeast Queensland region between Port Douglas and Maryborough.

### **Review Rights**

28. A decision on the exercise of the discretion is not a reviewable GST decision under section 110-50 of Schedule 1 to the Taxation Administration Act 1953 (TAA). Therefore, if the supplier or recipient is dissatisfied with the decision they may request a review under the Administrative Decisions (Judicial Review) Act 1977 (ADJR Act).

### Amendment history

<b>Date of amendment</b>	<b>Part</b>	<b>Comment</b>
28 August 2013	Attachment A – Use in Australia	Removed reference to 'breaking and barrier trials'
20 March 2013	New paragraphs 4, 9, 11, 20, 21, 22 and 23 inserted and existing paragraphs amended	Updated for new item 4A of the table in subsection 38-185(1)
	Whole document	References to GST IA amended to ITX IA and reference to the energy and mining team deleted.
	Contact details	Updated
	Other references	Reference to new fact sheet added
	Legislative references	Subsections 38-185(5) & (6) added
	Subject references	New recreational boat added
14 April 2010	Paragraphs 1, 4, 10, 13, 15 and Attachment A	References to the GST International Team amended to GST Interpretative Assistance (GST IA)
15 September 2009	Contact details	Updated

Subject references	60-day rule export extension of time to export Goods and Services Tax GST-free exports new recreational boat
Legislative references	ANTS(GST)A 1999 38-185 ANTS(GST)A 1999 38-185(1) ANTS(GST)A 1999 38-185(3) ANTS(GST)A 1999 38-185(5) ANTS(GST)A 1999 38-185(6) TAA 1953 Sch 1 110-50
Related public rulings	GSTR 2002/6
Related practice statements	
Other references	<a href="#">Register of Private Binding Rulings</a> <a href="#">GST-free sales of new recreational boats – suppliers fact sheet</a>
File references	05/5662
Date issued:	22 November 2006
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Other Business Lines consulted	All

**EXTENSION OF TIME TO EXPORT GOODS – EXAMPLES**

GSTR 2002/6 provides the ATO view on the operation of section 38-185 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 goods. They are not definitive. Each application will be considered on its own merits by ITX IA. Additional examples of decisions made in relation to the provision are included in the Register of Private Binding Rulings on the ATO 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 provider<sup>23</sup> 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)
- the non-resident recipient can establish themselves in Australia and register 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.

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<sup>23</sup> 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 an extension of time to export, 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 from the supplier when the goods are exported. The recipient provides the supplier with evidence of export and satisfies other conditions of subsection 38-185(3). 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 granted. 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 the delivery of the goods 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 likely 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. 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.

A ship (other than a new recreational boat) is purchased in Australia. The recipient will export the ship by means other than under its own power. 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 the supply of the ship 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 motorcycle 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 motorcycle 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. An extension of time to export would be granted provided that export occurred as soon as practicable after the withholding period.