



**Australian
BORDER FORCE**

Australian Customs Notice No. 2021/20

New by-law for superyachts undertaking repairs

To support the longer-term growth of Australia's maritime services industry, the Australian Border Force (ABF) has reviewed the arrangements available for superyachts to enter Australia for repair or alteration without the requirement to immediately export the vessel on completion of these activities.

Amendment to Item 21 of Schedule 4 of the *Customs Tariff Act 1995*

A new by-law has been made under Item 21 of Schedule 4 of the *Customs Tariff Act 1995* (Item 21) which will apply to *superyachts* which enter Australia for repair and alteration.

Item 21 provides a duty rate of 'Free' and an exemption from Goods and Services Tax (GST) for goods that are imported for repairs or alteration and subsequently exported. A security or undertaking is required for any revenue liability.

The new by-law (Customs by-law no. 2100072) allows superyachts to:

- enter Australia for the purposes of repair and/or alteration;
- remain in Australia for up to 12 months from the date of entry for home consumption; and
- undertake activities other than the repair and alteration of the vessel within the specified 12-month period.

By-law no. 1304168 has been revoked and reissued as by-law no. 2100073, to ensure the entry of superyachts into Australia for repair and/or alteration is facilitated exclusively through by-law no. 2100072.

Implementation

By-law no. 2100072 will require the importer to satisfy the ABF that repair and/or alteration of the superyacht will be the primary purpose of importation. This may include documentary evidence of the repair and/or alteration activities to be performed on the superyacht, such as booking confirmations, quotes and invoices. Other activities, such as private cruising or chartering, may also be undertaken within the 12 month period.

The ordinary meaning of 'repair' and 'alteration' will be used for the interpretation of this by-law. This approach is consistent with the Australian Taxation Office's GSTR2005/2 for supplies of goods and services in the repair, renovation, modification or treatment of goods whose destination is outside Australia.

Any superyacht seeking to use the by-law must be entered for home consumption on an import declaration. The relevant treatment code and by-law number should be recorded on this document. When the vessel is entered into home consumption, relevant legislative requirements, including for prohibited goods, will apply.

- Ships' stores (including bunkers, tobacco and alcohol) must be entered into home consumption on separate lines of the import declaration.
- Permit requirements for prohibited goods (e.g. firearms and medical kits) must be met. Prohibited

goods must be declared on separate lines of the import declaration.

- The ABF may allow importers to surrender prohibited goods at the port of arrival, with such goods returned to the importer on the vessel's departure from Australia. Some items may still require export permits under this arrangement.
- The importer should also be aware of any state and territory requirements for their goods (e.g. firearms).
- Some goods on board the superyacht, which are not being repaired or altered, may be eligible for other types of concessional treatment (including temporary importation).

Once the superyacht and goods on board are cleared into home consumption, the vessel has no further reporting obligations to the ABF until its export and departure from Australia.

Prior to departing Australia before or at the end of the 12 month period from the date of entry, an export declaration must be lodged to export the superyacht. This export declaration will indicate the fulfilment of the requirements of the by-law and acquit any security or undertaking the ABF holds on the vessel. The superyacht must also obtain a Certificate of Clearance from the ABF before it departs its final port in Australia.

Securities

Item 21 requires the importer to provide a security to guarantee the payment of duties and taxes on the superyacht, in the event of a failure to comply with the conditions of the by-law. Australian-based entities may also be permitted to provide an undertaking in lieu of a security under the new by-law.

Prior to lodging the import declaration, please contact National Temporary Imports and Securities within the ABF via email, ntis@abf.gov.au, to discuss arrangements for the security or undertaking.

Use of the Tradex Scheme

The ABF is aware the superyacht industry sometimes uses the Tradex Scheme to import goods for use in repair and alteration activities. The holder of a Tradex order is liable to pay Tradex duty and GST if goods that are used in the repair and/or alteration of a superyacht are subsequently consumed or used in Australia. By conducting private cruising or chartering after undertaking repair or alterations, using goods imported under the Tradex Scheme, holders of orders may no longer meet the legislative requirements of the *Tradex Scheme Act 1999*.

Please contact the Tradex section in the Department of Industry, Science, Energy and Resources by email, Tradex@industry.gov.au, for further advice in relation to your Tradex order.

Australian Taxation Obligations

If you are the operator of a superyacht and intend to undertake chartering activities or remain in Australia for up to 12 months, you may have taxation obligations to register and charge GST on cruising services in Australia, income tax (including freight tax and pay as you go withholding) and the ability to claim fuel tax credits. Further information can be found on the ATO's website *Australian tax obligations for special recreational vessels*. You can also email ForeignShipping@ato.gov.au for questions regarding freight tax and lodging freight tax returns.

The supply of repair or alterations on a superyacht entered under by-law no. 2100072 may be GST-free. For superyachts entered under this by-law, the ATO may accept the import declaration as evidence that the vessel is from outside Australia, and has a destination outside Australia, for the purposes of GSTR 2005/2. Further information on the GST treatment of supplies and alterations can be found in the Australian Taxation Office's GSTR 2005/2.

The ABF shares information with the ATO on vessels that enter using Item 21 for compliance purposes.

Requirements if undertaking chartering activities

Superyachts that undertake chartering activities while entered for home consumption under Item 21 may still

require a licence under the *Special Recreational Vessels Act 2019*. Please contact the Shipping Business Unit within the Department of Infrastructure, Transport, Regional Development and Communications on (02) 6274 7474 for further advice.

[Signed]

Matthew Duckworth
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Customs and Trade Policy Branch

11 May 2021

Attachment A
Revised Customs Tariff Working Pages

SCHEDULE OF CONCESSIONAL INSTRUMENTS

PART II

INSTRUMENTS ISSUED TO ITEMS IN SCHEDULE 4

CUSTOMS TARIFF ACT 1995

R.4 Part 2/37

Item	By-law No.	Description of Goods	Start date/ End date
<u>Goods that are to be exported from Australia</u>			
<u>Item 21 – Goods for repair or alteration to be exported</u>			
<u>Goods that are made in Australia that are returned for repair or alteration, and are to be re-exported</u>			
21	1304161	<ol style="list-style-type: none"> 1. This by-law may be cited as Customs By-law No. 1304161. 2. This by-law shall take effect on and from 1 March 2013. 3. For the purposes of item 21 of Schedule 4 to the <i>Customs Tariff Act 1995</i>, goods that are made in Australia that are returned to Australia for repair or alteration, and are to be re-exported, are prescribed. 4. For the purposes of this by-law, the “<i>Customs Tariff Act 1995</i>” means the <i>Customs Tariff Act 1995</i>, as amended or proposed to be altered. 	1/3/2013
<u>Goods that are imported for repair or alteration, and are to be re-exported, under security</u>			
★ 21	1304168	<ol style="list-style-type: none"> 1. This by-law may be cited as Customs By-law No. 1304168. 2. This by-law shall take effect on and from 1 March 2013. 3. For the purposes of item 21 of Schedule 4 to the <i>Customs Tariff Act 1995</i>, goods that are imported to Australia for repair or alteration, and are to be re-exported, are prescribed, under security. 4. For the purposes of this by-law, the “<i>Customs Tariff Act 1995</i>” means the <i>Customs Tariff Act 1995</i>, as amended or proposed to be altered. 	1/3/2013- 13/05/2021

SCHEDULE OF CONCESSIONAL INSTRUMENTS

PART II

INSTRUMENTS ISSUED TO ITEMS IN SCHEDULE 4

CUSTOMS TARIFF ACT 1995

Part 2/38

Item	By-law No.	Description of Goods	Start date/ End date
		<u>Superyachts that are imported for repair or alteration, and are to be re-exported, under security</u>	
★ 21	2100072	<ol style="list-style-type: none"> 1. This by-law may be cited as Customs By-law No. 2100072. 2. This by-law commences on 14 May 2021. 3. For the purpose of Item 21 of Schedule 4 to the <i>Customs Tariff Act 1995</i>, superyachts imported into Australia for repair or alteration, and that are to be re-exported, are prescribed, under security. 4. For the purpose paragraph 3, ‘superyacht’ means any high value luxury sailing or motorised ship which is 24 metres or longer in length, not carrying cargo and used for sport or pleasure. 5. The application of item 21 to the goods in paragraph 3 is subject to the condition that a superyacht must be re-exported within 12 months of the date of entry for home consumption of the superyacht. 6. In this by-law, the “Customs Tariff Act 1995” means the <i>Customs Tariff Act 1995</i>, as amended or proposed to be altered. 	14/5/2021
		<u>Goods that are imported for repair or alteration, and are to be re-exported, under security</u>	
★ 21	2100073	<ol style="list-style-type: none"> 1. This by-law may be cited as Customs By-law No. 2100073. 2. For the purposes of item 21 of Schedule 4 to the <i>Customs Tariff Act 1995</i>, goods, other than superyachts of a kind prescribed in Customs By-law No. 2100072, that are imported to Australia for repair or alteration, and are to be re-exported, are prescribed, under security. 3. For the purposes of this by-law, the “Customs Tariff Act 1995” means the <i>Customs Tariff Act 1995</i>, as amended or proposed to be altered 	14/5/2021

★Operative 14/5/21