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Ruling Compendium – GSTD 2011/2

This is a compendium of responses to the issues raised by external parties to draft GSTD 2011/D1 – can a ‘farming business’ be carried on, for the purposes of paragraph 38-480(a) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), where there has been a cessation of routine farming activities by the supplier for a period of time as a consequence of a decision to sell the land?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Entity/ies commenting	Issue raised	Tax Office Response/Action taken
1	Entity 1	1.1 - Fully agree with the draft Determination. 1.2 - Suggest that 'a' on the last line of draft Determination paragraph 14 be changed to 'the' to be consistent with draft Determination paragraph 3.	1.1 - Comment noted. 1.2 - Paragraph 14 of this Determination has been amended accordingly.
2	Entity 2	It is not clear if there is a specific or maximum period of time between the cessation of the routine farming activities and the sale of the land before it is considered that a farming business had terminated on the land and the sale is not GST-free.	Whether a farming business continues to be carried on in these instances is a question of fact and degree that depends on the circumstances of each particular case.
3.	Entity 3	3.1 - The draft Determination suggests that the farming business can be wound down in anticipation of the sale as long as it can be construed that the farming enterprise is still being conducted in that wind down period. In fact, it is not uncommon for the sale of farm land to be one of the steps in winding down an enterprise. Carrying on an enterprise includes	3.1 – Observation noted. This Determination explains the principles when the cessation of routine farming activities does not constitute the cessation of the enterprise of the farming business carried on the land by the supplier. It does not address the circumstance where another entity had conducted the farming business on the land. The Commissioner considers that the application of paragraph 38-480(a) of the GST Act to the circumstance outlined in the Determination should be addressed

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		the activities of commencement and cessation of the enterprise which supports this view. However, this may not be so clear where the farming entity is a different entity to the supplier of the land. 3.2 - The draft Determination suggests that the farming business must be conducted continuously in the five year period preceding the supply. The specific drafting of paragraph 38-480(a) of the GST Act is sufficient to imply that the farming activities must be continuous for five years before or preceding the supply. 3.3 – The draft Determination is unfortunate as all the examples deal with situations where the farming business operator is also the farm land owner. It would be nice to have an example where this was not the case. 3.4 - There is some debate as to whether the same farming business must be conducted for the whole five year period. The section refers to 'a farming business' but can see no reason why there cannot be several farming businesses. It is not unusual for farmers to cease their business and to sell the farm land to a neighbour who then uses the land in their farming business.	on its own to aid the understanding by taxpayers. 3.2 – Observation noted. The ATO view has been explained at paragraph 3 of the Determination and in the 'Farmed for five years but not immediately prior to the sale' item in the <i>Goods and Services Tax Industry Issues</i> under the Primary Production Industry Partnership section. 3.3 – See the response at 3.1 above. 3.4 – See the response at 3.1 above.