

Increasing adjustment under Division 129 of the GST Act -

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Primary Production Industry Partnership

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Increasing adjustment under Division 129 of the GST Act

Question

1. Can there be an increasing adjustment under Division 129 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), if the use of the farmland purchased GST free under section 38-480 of the GST Act is different from the intended use when it was purchased?

Answer

2. Yes.

Explanation

3. Section 135-10 of the GST Act deals with the operation of Division 129 of the GST Act in relation to GST-free acquisitions under sections 38-325 of the GST Act (going concerns) and 38-480 of the GST Act (farmland). It has been submitted that a recipient of a supply which is GST-free under sections 38-325 of the GST Act and 38-480 of the GST Act can never have an adjustment under Division 129 of the GST Act because the amount of the full input tax credit referred to in section 129-70 of the GST Act will always be nil where the acquisition was GST-free.

4. In itself, Division 129 of the GST Act is based on the assumption that the acquisition was taxable. However, in the circumstances dealt with in section 135-10 of the GST Act, the acquisition will always be GST-free. It is quite clear that section 135-10 of the GST Act seeks to ensure the operation of Division 129 of the GST Act despite the GST-free status of the acquisition. To accept the submission set out earlier would be to entirely negate the operation of section 135-10 of the GST Act.

5. The Courts would generally be reluctant to adopt an interpretation which would result in a legislative provision having no effect. For this reason, it is considered that the Courts would adopt a more purposive approach to the operation of Division 129 of the GST Act in these circumstances. It is considered that the Courts would calculate the amount of the adjustment based on the assumption that the supply had been taxable.