

Sale of farmland - Section 38-480 of the GST Act -

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Primary Production Industry Partnership

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Sale of farmland - Section 38-480 of the GST Act

Question

1. How does section 38-480 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) apply to supplies of farmland?

Answer

2. In order to determine whether the supply of farmland will be GST-free under section 38-480 of the GST Act, it will be necessary to examine all the circumstances of each individual case. The explanation below provides guidelines on a range of issues relating to supplies of farmland.

Explanation

3. Section 38-480 of the GST Act provides exemption for the supply of a freehold interest in land based on the use of that land.

4. Generally, a freehold interest in land includes the land as described on the title deed, as well as buildings, trees, crops and minerals attached to the land. Section 38-480 of the GST Act also applies to leases by an Australian government agency and long term leases.

5. Supplies of farmland will be GST-free under section 38-480 of the GST Act if two requirements are met. The requirements are:

- the land is land on which a farming business has been carried on for at least five (5) years preceding the supply; and
- the recipient of the supply intends that a farming business be carried on, on the land.

Essential characteristics of farmland

6. It is recognised that there will be cases where not all of the land is used for farming purposes. Whether or not this precludes the operation of section 38-480 of the GST Act will depend on the facts in each case. The critical issue to be determined is: 'of all the activities on the land (including private use), is farming the predominant activity?' In other words, does the land have the essential characteristics of farmland or are the other activities so significant that the land cannot be considered to be farmland.

7. Some of the indicators that the ATO considers relevant in determining whether the land has the essential characteristics of farmland are:

- the area of land used for farm business purposes in relation to the total area of land
- the value of the land used for farm business purposes in relation to the total value of the land
- whether there is a business as opposed to a hobby, recreation or sporting activity.
- the size and scale of all of the activities.
- whether there is a profit making purpose and prospect of profit.
- the commercial purpose and viability of the activities.
- is there a business plan?
- what is the current zoning of the land and are there any rezoning applications?
- is the property financed via a home loan or a business loan?
- how is the land treated for accounting purposes?
- in some circumstances, details of the ownership as registered on the title deed may be relevant.
- does the market value indicate the land is more viable for use as a farm or for other purposes?
- has the property been advertised for sale as a farm or for other purposes?
- visual appraisal - what would a reasonable person see when they look at the land?

8. Another relevant factor in determining whether or not section 38-480 of the GST Act may apply is the amount of time that the various areas of the land have been used for farming. It is considered that the land must have had the essential characteristics of farmland for at least the period of 5 years preceding the supply.

9. None of these indicators are more persuasive than the others. What is required is that these and all other relevant factors be considered to give an overall picture of the use of the land.

Private use of farmland

10. It is recognised that, generally, there will be some private use of farmland. Provided that the private use is not so significant that the land loses the essential characteristics of farmland, section 38-480 of the GST Act may continue to apply.

Residential premises and other improvements

11. Land includes all fixtures attached to the land. The standard test for determining whether the object is a fixture is whether the object was affixed to the land with the intention of becoming a permanent feature of that land. This would include residential premises, fences, shearing sheds, workers cottages and dams. Since fixtures form part of the land, they will be included in the GST-free supply where the requirements of section 38-480 of the GST Act are met.

12. Where there are agricultural tenant's fixtures on the land, it will be necessary to determine which entity has property in the fixture when the land is sold. State or Territory legislation will need to be considered in order to determine whether or not the property in a fixture will remain with the tenant or pass to the landlord. Further guidance in relation to the GST treatment of tenant's fixtures can be found at item 6.5.2.
13. Division 135 of the GST Act requires the recipient of a GST-free supply of farmland to make adjustments, where the recipient changes the use of the land from farming to another use which involves supplies which are not solely taxable or GST-free.
14. Provided that the land maintains the essential characteristics of farmland, there will be no requirement to make any adjustment under Division 135 of the GST Act.
15. Even if the land loses the essential characteristics of farmland, there will be no requirement to make an adjustment under Division 135 of the GST Act where the land is used to make taxable or GST-free supplies, for example, a quarry or an ecotourism venture.