


GSTA TPP 092 - Goods and services tax: If a vendor sells a farm as a GST-free supply of a going concern and the farmland includes residential premises that are not part of the business, is an adjustment required under Division 135 of the GST Act?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*



Goods and Services Tax Advice

Goods and services tax: if a vendor sells a farm as a GST-free supply of a going concern and the farmland includes residential premises that are not part of the business, is an adjustment required under Division 135 of the GST Act?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: *This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

Answer

No, if a vendor sells a farm as a GST-free supply of a going concern and the farmland includes residential premises that are not part of the business, no adjustment is required under Division 135 of the *A New Tax System (Goods and Services Tax) Act* (GST Act).

Background

Jack is registered for GST and enters into a contract for the sale of his farm. The farmland includes Jack's residential premises and is held on one title. The sale is not GST-free under the farmland concession in section 38-480 of the GST Act. However, the sale of the farmland qualifies as a GST-free supply of a going concern under section 38-325 of the GST Act.

Explanation

Division 135 of the GST Act provides that a recipient of a GST-free supply of a going concern has an increasing adjustment if they intend that some or all of the supplies made through the enterprise to which the supply relates will be supplies that are neither taxable supplies nor GST-free supplies.

On the facts, if the residence is used by the supplier as his main residence, the residence must be excluded from the arrangement for the supply of the going concern. This is because the private residence is not a thing utilised in carrying on the enterprise of farming. As the residence is excluded from the arrangement, no Division 135 adjustment is required.

However, if the residence is used as part of the farming enterprise of the supplier, then the supply of the residence forms part of the GST-free supply of the going concern. This may occur, for example, if the residence is leased to a manager of the entity operating the farm business. It would therefore be necessary to consider whether an adjustment is required under Division 135.

In these circumstances, an adjustment is not required under Division 135 if the going concern is a farming business and the residence forms part of land that has the essential characteristics of farmland. In addition, the land must maintain those characteristics. That is, the recipient must continue to use the farmland as a whole for operating a farming business.

Application of this GST Advice

This Advice applies [to tax periods commencing] both before and after its date of issue. However, this Advice will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

25 January 2006

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

GST-free
supply of a going concern
residential premises

Legislative references:

ANTS(GST)A 1999 Div 135
ANTS(GST)A 1999 38-325
ANTS(GST)A 1999 38-480
TAA 1953 Sch 1 Div 358

ATO references

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