



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 *25 January 2006*



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 is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. You can rely on the information presented in this document, which provides advice on the operation of the GST system.

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 explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous ruling that you have obtained, this public ruling prevails. However, if you have relied on a previous ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

Date

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 37

ATO references

NO:	05/3095
ISSN:	1833-0053