


GSTD 2011/D1 - Goods and services tax: 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, where there has been a cessation of routine farming activities for a period of time as a consequence of a decision to sell the land?

 This cover sheet is provided for information only. It does not form part of *GSTD 2011/D1 - Goods and services tax: 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, where there has been a cessation of routine farming activities for a period of time as a consequence of a decision to sell the land?*

This document has been finalised.



Draft Goods and Services Tax Determination

Goods and services tax: 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*, where there has been a cessation of routine farming activities for a period of time as a consequence of a decision to sell the land?

❗ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner’s preliminary view about the way in which a relevant taxation 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.

You can rely on this publication (excluding appendices) to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don’t have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. Yes, a ‘farming business’ can 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),¹ where there has been an absence of routine farming activities by the supplier for a period of time in anticipation of a sale. Whether a farming business continues to be carried on is a question of fact and degree depending on the circumstances of each particular case.

2. Under section 38-480, the supply of a freehold interest in, or the lease by an Australian government agency of or the long-term lease of, land is GST-free if:

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

¹ All legislative references are to the GST Act unless otherwise indicated.

3. The definite article 'the' in the expression 'the period of five years' indicates that the period in which a farming business must be carried on, on the land, is a continuous period of five years immediately before the supply of the land. This is distinct from the expression 'a period of five years preceding the supply' which may refer to any period of five years before the supply of the land.

4. A farming business is defined in subsection 38-475(2).² Specifically, an entity carries on a farming business if it carries on a business³ of one of the classes of farming listed under paragraphs (a) to (d) in subsection 38-475(2). If an entity carries on a business consisting of one of the classes of farming, the entity will be carrying on an enterprise that is a farming business. This is because paragraph 9-20(1)(a) provides that an enterprise is an activity or series of activities done in the form of a business.

5. Carrying on an enterprise is defined in section 195-1 to include 'anything done in the course of the commencement or termination of the enterprise'. Accordingly, carrying on a farming business includes all the routine farming activities carried out on the land together with any other activities related to commencing, conducting and terminating the farming business. The routine farming activities refer to the physical activities undertaken on the land relevant to the classes of farming in subsection 38-475(2).

6. In the course of selling land on which a farming business has been carried on, the seller may cease the routine farming activities in anticipation of the sale. The cessation of these farming activities does not necessarily result in the cessation of the farming business being carried on, on the land. It may be something done in the course of terminating the farming business; accordingly the farming business may still be carried on.

7. An enterprise terminates when the activities related to the enterprise cease. Ordinarily, this occurs when all the enterprise assets are disposed of, or converted to another purpose or use, and all the obligations of the enterprise are satisfied, for example, the finalisation of accounts, preparation of activity statements, payment of creditors and the cancellation of business registrations.⁴

Example 1- sale in the course of terminating the farming business

8. *Shahrin has been carrying on a farming business of cultivating fruit on her land for more than five years. The routine farming activities involve maintaining fruit trees, clearing the land and harvesting the fruit for sale. Shahrin decides that she no longer wishes to carry on her fruit farming business. She offers her land for sale and ceases the routine farming activities conducted on the land. In the course of doing all the things necessary to terminate her farming business, Shahrin sells the land.*

² Paragraphs (a) to (d) of subsection 38-475(2) provides that an entity *carries on a farming business if it carries on a *business of:

- (a) cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things), in any physical environment; or
- (b) maintaining animals for the purpose of selling them or their bodily produce (including natural increase); or
- (c) manufacturing dairy produce from raw material that the entity produced; or
- (d) planting or tending trees in a plantation or forest that are intended to be felled.

³ A *business* is defined in section 195-1 as including any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

⁴ Paragraphs 140 - 141 of Miscellaneous Tax Ruling MT 2006/1 – The New Tax System: the meaning of carrying on an enterprise for the purposes of entitlement to an Australian Business Number. GSTD 2006/6 provides that the term 'enterprise' as discussed in MT 2006/1 applies equally for GST purposes.

9. For the purposes of paragraph 38-480(a), Shahrin continues to carry on a farming business on her land up until the sale of the land. The sale of the land may be GST-free under section 38-480 if the other requirements of the section are met.

Example 2 – sale in the course of conducting the farming business

10. Sacha has been carrying on a farming business of maintaining animals for sale for more than five years. During that time, the farming business has been conducted on two large blocks of land. Sacha decides to downsize the business and to sell one of the blocks of land. Sacha ceases her routine farming activities on the block of land she is selling. Sacha then sells the land while she continues to carry on her farming business on the other block of land. .

11. For the purposes of paragraph 38-480(a), Sacha continues to carry on a farming business on the land up until the sale of that land. The sale of the land may be GST-free under section 38-480 if the other requirements of the section are met.

12. There are circumstances in which the enterprise of the farming business could be considered to have terminated before the sale of the land. For instance, if there has been a change in the purpose or use of the land before its sale such that it is used for private purposes or is no longer used in the farming business, or outstanding obligations cannot be satisfied and all other activities relevant to the farming business have ceased.⁵

Example 3- farming business terminated before sale

13. Matt has been carrying on a vegetable farming business for almost five years. The business is no longer profitable and Matt decides not to continue operating the business. In the subsequent six months, Matt ceases all the routine farming activities on the land, sells off the farming equipment and finalises all his obligations in relation to the farming business. Matt then rents the land to a neighbour for a purpose that is not related to a farming business. After three months, Matt sells the land to another entity.

14. No farming business has been carried on the land for that three month period before the land is sold. Therefore, the sale of the land is not GST-free under section 38-480 because the land is not land on which a farming business has been carried on for a period of five years preceding the supply.

Date of effect

15. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
17 August 2011

⁵ Paragraphs 142 to 145 of MT 2006/1.

Appendix 1 – Your comments

16. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

17. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- (a) provide responses to persons providing comments; and
- (b) publish on the Australian Taxation Office website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	9 September 2011
Contact officer:	Shaun Milner
Email address:	shaun.milner@ato.gov.au
Telephone:	(03) 9215 3526
Facsimile:	(03) 9215 3134
Address:	14-16 Mason St DANDENONG VIC 3175

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; GSTD 2006/6;
MT 2006/1

Subject references:

- carrying on an enterprise
- farming business
- goods and services tax
- GST enterprise

- GST farm land

Legislative references:

- ANTS(GST)A 1999 9-20(1)(a)
- ANTS(GST)A 1999 38-475(2)
- ANTS(GST)A 1999 38-475(2)(a)
- ANTS(GST)A 1999 38-475(2)(b)
- ANTS(GST)A 1999 38-475(2)(c)
- ANTS(GST)A 1999 38-475(2)(d)
- ANTS(GST)A 1999 38-480
- ANTS(GST)A 1999 38-480(a)
- ANTS(GST)A 1999 195-1

ATO references

NO: 1-2YO7NNU

ISSN: 1443-5179

ATOlaw topic: Goods and Services Tax ~~ Primary production ~~ farm land