

Intent to carry on a farming business -

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Primary Production Industry Partnership

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Question

1. When farmland is purchased GST-free, is a time limit imposed upon the recipient to commence the carrying on of a farming business?

Answer

2. No. The GST legislation does not specify a time frame in which the farming activity must commence. Therefore, each case must be determined on its specific facts.

Explanation

3. There is no guidance in the GST legislation in relation to the timeframe within which the purchaser or another party must start the farming business; therefore each case must be decided on its specific facts.

4. While the circumstances surrounding the sale of farm land are going to differ widely, it is reasonable to infer that a purchaser would need to be able to give substance to their assertion that they intend a farming business to be carried out on the land. The stated intention must be backed up by some activity. This activity should commence in the immediate or foreseeable future.

5. The intent is not satisfied by having a long term goal, or desire or hope to establish a business.

6. If the farming activity is delayed due to external circumstances (for example seasonal pricing factors) this does not necessarily mean a farming business (as distinct from the farming activity) has not commenced. The term farming activities is to be distinguished from the term farming business. A farming business includes farming activities such as fencing, but it also includes business activities such as keeping business records. Where a temporary cessation in daily activities occurs, for example poor weather, holidays are taken, land is left fallow etc, this does not mean the farming business has ceased altogether.

7. Division 135 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) deals with adjustments in relation to the supply of a going concern (section 38-325) and farm land supplied for farming (section 38-480) and, amongst other things, applies Division 129 in relation to changes in the extent of creditable purpose.

8. Under Division 135 of the GST Act, the purchaser will be required to make an increasing adjustment, where the purchaser acquires farm land GST-free and subsequently changes the use of the land from farming to another use which involves supplies which are not solely taxable or GST-free. Division 135 of the GST Act provides for adjustments both at the time of acquisition and for each adjustment period relating to the acquisition.

9. The adjustment is calculated by working out the proportion of all the supplies made through the enterprise that are neither taxable supplies nor GST-free supplies and applying that proportion to the amount of tax for which the supplier of the farm land would have been liable had the supply been a taxable supply.