



## ***Ownership of crops before harvest -***

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## Primary Production Industry Partnership

### Ownership of crops before harvest

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### Ownership of crops before harvest

#### **Question**

1. Where one entity owns farming land and another entity operates a farming business on that land are any unharvested crops, which are included in the sale of such land, GST-free under section 38-480 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?

#### **Answer**

2. The unharvested crops may only be GST-free under section 38-480 of the GST Act if they can be considered to be part of the land and not a separate supply of goods. The contract for the sale of the farm land may include conditions to protect the interest of the business entity in the unharvested crops. However if an agreement had been made by the landowners with the business entity to include any unharvested crops in the sale of the land, the sale of the unharvested crops would generally be a separate supply for GST purposes subject to the explanation below.

3. Crops which are sown for the purpose of reaping or planted for the purpose of gathering and which are produced in the year of their labour (for example, corn and potatoes) may be classified as emblements, and are things independent of the land and may be sold as growing crops independent of the land. These unharvested crops are considered to be chattels and would be subject to GST as a separate supply of goods.

**Explanation**

4. Apart from crops a summary of the relevant law in relation to other items is as follows:
  1. The natural growth of the land, for example, grass and natural timber and naturally occurring fruit on trees can be regarded as part of the land and in a contract for sale and purchase of land will pass with the land and will generally be GST-free under section 38-480 of the GST Act. The natural growth of the land can only be sold separately from the land if it has been severed from the land.
  2. Trees, including fruit trees or vines, which are planted for the purpose of harvesting or felling, for example, Pinus Radiata planted for felling, are not emblements and if the land upon which they are growing is sold, they pass with the land and will generally be GST-free under section 38-480 of the GST Act. This is subject to the exception that trees sold for the purpose of immediate felling can be classified as chattels.
  3. In contrast to crops, fruit on trees is considered to be part of the land on which it is growing, and a sale of growing fruit is the sale of an interest in land unless the property in the fruit is to pass to the purchaser after it is severed from the land under a separate condition in the land sale contract or a separate contract. This means that generally, sale of fruit on trees will be considered to be part of the land and when the land is sold can be GST-free under section 38-480 of the GST Act. Where the fruit is sold to the purchaser under a separate condition in the land sale contract or a separate contract section 38-480 of the GST Act cannot apply. However, in this situation sale of fruit may be GST-free under Division 38 of the GST Act.