

Application for purchase of land held under lease

Accompanying notes

Introduction

These notes are designed to assist you to complete that part of the application relating to the category of the supply of land being purchased for GST purposes. The notes provide preliminary guidance only and should not be relied on as advice. Some of the issues surrounding the GST treatment of your intended purchase of land are quite complex and technical, so you should seek your own professional advice before you complete your application.

The Department of Lands will not be liable for any loss you may suffer as a result of relying on the information contained in these notes. You will also be liable for any loss the department suffers if you do not provide accurate information.

Farmland

Special GST rules apply in some cases where farmland is sold. The rules apply if:

- a government agency (such as the Department of Lands) is selling the land to you
- it is land on which a “farming business is the predominant activity that has been performed on the land
- the “farming business” has been carried on for at least the period of 5 years before the sale
- you intend to carry on, or to continue to carry on, a “farming business” on the land.

These rules are set out in section 38-480 of *A New Tax System (Goods and Services Tax) Act 1999*.

There is no definition of “farmland” in the GST rules. However, if a “farming business “ is the predominant activity performed on the land in the last 5 years before the sale, the land will generally be “farmland” for these purposes.

A “farming business” exists when an entity (i.e. person, company, etc.):

- (a) carries on a business, which means that the activities performed are not in the form of a hobby or a private recreational pastime. The activities should be conducted, amongst other things, with a profit motive, in a consistent and regular way and involve trade
- (b) the business involves:
 - cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things) in any physical environment
 - maintaining animals for the purpose of selling them or their bodily products (including natural increase)
 - manufacturing dairy produce from the raw material that the entity produced
 - planting or tending trees in plantation or forest that are intended to be felled.

Unimproved land

Special GST rules may apply if unimproved Crown land is sold. Therefore, it is very important that you determine whether your intended purchase involves land with improvements or is unimproved land for GST purposes.

Land with improvements

The following are considered to be examples of “improvements on land”.

- Houses, town-houses, stratum units, separate garages, sheds and other outbuildings.
- Commercial and industrial premises.
- Farm houses, farm outbuildings, internal fencing, stockyards, wells and bores, excavated tanks, dams, surface drains, culverts, bridges, sown pasture, formed internal roads and irrigation layouts.
- Formed driveways, swimming pools, tennis courts and walls.
- Any other similar buildings or structures.

Where improvements such as these exist on the land to be purchased, the supply will not qualify as a supply of unimproved land.

Unusable structures

However, in certain limited circumstances where these structures exist on land, the land may still qualify as “unimproved land”. These circumstances are where the structures on the land are in all respects unusable and/or subject to a demolition or similar order made by an appropriate authority and are fully removed before the supply of the land is made.

Public improvements

Public improvements which exist beyond the boundaries of the land in question will not be taken into account in determining whether land is land on which there are no improvements. Public improvements include such things as paved roads, kerbing, channelling and water supply infrastructure.

Fencing

Internal fencing (that is fencing constructed within the boundaries of a parcel of land) will be considered as improvements on land. However, “external” fencing which comprises a dividing fence (that is a fence which has been constructed to delineate the perimeter or boundary of a parcel of land) will not be an improvement for these purposes.

Land with no improvements

Examples where work performed on land is not regarded as “improvements” for GST purposes include:

- external fencing
- clearing of timber, scrub or other vegetation
- excavation, grading or levelling of land, including manholes
- drainage of land including interallotment drainage pits
- building up of soil fertility
- removal of animal pests, rabbit burrows etc.
- removal of rocks, stones or soil
- filling of land
- infrastructure for the reticulation of utilities.

These works performed on land (sometimes referred to as site improvements or site works) are not “improvements” for the purposes of the GST legislation. Therefore, land with these sorts of site works will qualify as unimproved land.

Please note that the various examples referred to above are not meant to be exhaustive. They are designed to assist in the identification of improvements “on” land for GST purposes. In all cases it will be the particular facts of the case which will determine whether there is an improvement “on” the land.

Residential premises

Special GST rules apply to sales of residential premises. For a supply to qualify as a supply of residential premises for the purposes of the GST law, two conditions must be satisfied.

These are:

- (a) that the premises are currently occupied as a residence, or are intended to be and are capable of being occupied as a residence
- (b) you, as the purchaser, intend that the premises will be used predominantly as residential accommodation after the sale (whether personally living there or someone else taking up residence).

For the first of these conditions to be fulfilled, the ATO states that:

- a building must be affixed to the land
- the building must have the physical characteristics that enable it to be occupied or be capable of occupation as a residence. These characteristics will generally include sleeping accommodation and basic facilities for daily living even if for a short term, which includes areas for eating and bathing.

The premises can be in any form - detached or semi detached, apartments, strata title or single rooms - provided that they have the appropriate physical characteristics of a residence.

Whether these physical characteristics exist will always be a matter of fact. However, these characteristics must also be considered in the context of the intended usage of the premises and the extent to which the premises are capable of being used for residential accommodation if the premises are to qualify as residential premises.

For example:

- dilapidated residential buildings will not be “residential premises” because they are not capable of being used for residential accommodation
- houses that have been fitted out for business or commercial use will generally not be residential premises because they are not intended to be used for residential accommodation
- despite land zoning requirements to the contrary, a residence has been built. While residential accommodation in these circumstances is not authorised, these premises can still qualify as residential premises if the physical characteristics are present and the premises are capable of and intended to be occupied as a residence.

New residential premises

Supplies of “new” residential premises are subject to different GST rules to residential premises. The definition of new residential premises for GST purposes is quite technical and is unlikely to apply to the majority of intended purchases from the Department of Lands. Therefore, you should take great care and seek further advice if you intend to nominate this category of supply on your application.

In summary, the GST law provides that new residential premises means premises that:

- (a) have not been previously sold as residential premises and have not previously been the subject of a long term lease
- (b) have been created through substantial renovations of a building
- (c) have been built, or contain a building that has been built, to replace demolished premises on the same land.

However, the premises are not new residential premises if the premises have been used for making input taxed supplies of residential rent for the period of at least 5 years since the premises:

- (a) first became residential premises, where the residential premises have not previously been sold as residential premises and have not previously been the subject of a long term lease
- (b) were last substantially renovated, where premises have been created through substantial renovations of a building
- (c) were last built, where the premises have been built or contain a building that has been built to replace demolished premises on the same land.