



Inland Revenue
Te Tari Taake

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

Do supplies of standing timber and other unsevered crops wholly or partly consist of land for the compulsory zero-rating rules?

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QB 24/05

This question we've been asked (QWBA) provides further guidance on the meaning of "land". It supplements an earlier QWBA, QB 20/04, and interpretation statement IS 17/08.

Key provisions | Whakaratonga tāpua

Goods and Services Tax Act 1985 – sections 2 (definition of "land"), 11(1)(mb)

Question | Pātai

Do supplies of standing timber and other unsevered crops wholly or partly consist of land for the purposes of the compulsory zero-rating (CZR) rules?

Answer | Whakautu

Supplies that wholly or partly consist of land must be zero-rated for GST purposes (pursuant to section 11(1)(mb)¹). Therefore it is important to understand what a supply consists of so that the correct GST treatment is applied.

Supplies of standing timber and other unsevered crops *do not* wholly or partly consist of land (and will not be zero-rated) in the following circumstances:

- The agreement is for the sale and purchase of an annual crop produced by the labour of the cultivator (*fructus industriales*,² eg grain, seed, and vegetable crops).
- The agreement is for the sale and purchase of a crop that is produced by the land each year after an initial productive act (*fructus naturales*,³ eg timber,⁴ pip fruit, stone fruit and grapes) *and* the purchaser does not derive a benefit from the further growth of the crop sold. A purchaser does not derive a benefit from the further growth of a crop if, when the contract is made:
 - the process of growth is complete;
 - broadly speaking, the crop is removed within a short time frame (eg 12 months); or
 - the crop might have to remain in the ground for some time, but the purchaser has nothing to do with it until the vendor severs and delivers it.

Supplies of standing timber and other unsevered crops wholly or partly consist of land when the agreement is for the sale and purchase of *fructus naturales* if, when the agreement is entered into, it is contemplated that the purchaser will derive a benefit

¹ Assuming the other requirements of section 11(1)(mb) are also met.

² *Fructus industriales* is the technical legal term for this kind of crop. It refers to the crops of the soil that are produced by the labour of the cultivator each year; *Saunders v Pilcher* [1949] 2 All ER 1097 (CA) at 1104.

³ *Fructus naturales* is the technical legal term for this kind of crop. It refers to the natural produce of the soil, such as grass and timber; these are crops that result from an initial productive act (eg planting a tree); *Saunders* at 1104.

⁴ For timber, the annual "crop" would be the increase in timber in the tree over the course of the year.

from the further growth of the crop sold. For example, a contract for young, rapidly growing timber that is not to be cut down until it has substantially changed and derived benefit from the land is likely to be a contract involving an interest in land. If the supply satisfies all the requirements under section 11(1)(mb) then the supply must be zero-rated.

Key terms | Kīanga tau tāpua

Fructus industriales means the crops of the soil that are produced by the labour of the cultivator each year.

Fructus naturales means the natural produce of the soil, such as grass and timber; these are crops that result from an initial productive act.

Profit à prendre is the right to take something off another person's land. It is the right to enter another's land and take some profit from the land, or a portion of the land, for the use of the owner of the right.

Explanation | Whakamāramatanga

1. In this QWBA, all legislative references are to the Goods and Services Tax Act 1985.
2. This QWBA follows on from the earlier QWBA, [QB 20/04: Do certain supplies wholly or partly consist of land for the compulsory zero-rating \(CZR\) rules?](#). QB 20/04 itself followed on from the earlier interpretation statement [IS 17/08: GST – Compulsory zero-rating of land rules \(general application\)](#).

What “land” is for CZR purposes

3. A supply that wholly or partly consists of land must be zero-rated for GST purposes under section 11(1)(mb), as long as three other requirements are met:⁵
 - The supply is made by a registered person to a recipient who is also a registered person;
 - The recipient of the supply acquires the land with the intention of using it for making taxable supplies; and

⁵ For the purposes of this QWBA it is assumed these other requirements are met.

- The land is not intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under section 2A(1)(c).
4. Section 11(1)(mb) is intended to prevent “phoenix” fraud schemes. Under these schemes, Inland Revenue refunds GST to a purchaser of land while the vendor makes no corresponding payments because the supplying company deliberately winds up before making payment ([Taxation \(GST and Remedial Matters\) Commentary on the Bill](#) (Policy Advice Division, Inland Revenue, August 2010)).
 5. Section 2(1) provides:
land, in the zero-rating of land rules,—
 - (a) includes—
 - (i) an estate or interest in land:
 - (ii) a right that gives rise to an interest in land:
 - ...
 6. A wide definition of land was included in the CZR rules to ensure the CZR rules apply broadly and to prevent opportunities for avoidance.
 7. For more on the meaning of “land”, see [7] to [14] of QB 20/04.

Do supplies of standing timber and other unsevered crops wholly or partly consist of land?

8. This item is concerned with the sale of standing timber or other unsevered crops. It does not concern the harvesting of timber or picking of other crops where ownership of the timber or crop remains with the landowner or orchardist or farmer.
9. A supply of standing timber or other unsevered crops could involve a supply of a *profit à prendre* (an interest in land) or it could involve a supply of a licence to remove timber or other crops (a supply of goods). The supply of timber or other crops could also be simply the vendor’s supply of goods already severed from the land to the purchaser (ie the purchaser has no right to enter the land to remove the timber or other crops).

***Fructus industriales*: crops cultivated on an annual basis**

10. Case law categorises the produce of land as either *fructus industriales* or *fructus naturales*. *Fructus industriales* refers to the annual crops of the soil, produced by the labour of the cultivator in that year, such as grain, seed, and vegetable crops.
11. An agreement for the sale and purchase of an unsevered crop classified as *fructus industriales* is an agreement for the supply of goods and **not** land) (*Marshall v Green*

[1874-80] All ER Rep Ext 2198; *Kauri Timber Co v Commissioner of Taxes* [1913] AC 771 (PC).⁶ That is, an agreement in relation to such a crop does not involve a *profit à prendre*.

12. Such an agreement will be standard-rated for GST purposes if the supplier is GST registered⁷.

Example | Taurira 1 – Supply of vegetable crop not a supply wholly or partly consisting of land

Ms Potatohead is a potato grower who produces a significant crop of potatoes every year. She has entered an agreement with Mr Wholesaler to sell her entire crop to Mr Wholesaler for the next 10 years.

For GST purposes the supply is not a zero-rated supply of land. The agreement does not give rise to an interest in land to Mr Wholesaler. The potatoes are *fructus industriales* and as such the agreement cannot give rise to a *profit à prendre* and an interest in land, and the supply is a supply of goods and standard-rated for GST.

***Fructus naturales*: the produce of land arising from an initial productive act**

13. *Fructus naturales* is the natural produce of the soil, such as grass and timber, which results from an initial productive act that does not need to be repeated each year, such as planting a tree or vine, or sowing a paddock in grass.⁸ Other examples in this category include grape vines, kiwifruit vines, pip fruit trees and stone fruit trees.
14. An agreement for the sale and purchase of standing timber or other unsevered crops classified as *fructus naturales* may be either a sale of an interest in land (a *profit à prendre*) or a sale of goods depending on the terms of the agreement.

⁶ This item does not concern the situation where a crop is sold as part of the sale of the underlying land (see *Paisley v CIR* [1958] NZLR 332).

⁷ In some circumstances the supplier may not be registered or liable to be registered. For example, an unregistered owner of a lifestyle block selling grass that will immediately be harvested for hay or silage.

⁸ Planting grasses each year for grass seed production would be *fructus industriales*. In the context of *fructus naturales*, we are referring to “permanent” paddocks, which may be used, for example, for hay production.

Supplies that wholly or partly consist of land

15. Supplies of standing timber and other unsevered crops wholly or partly consist of land when the agreement is for the sale and purchase of *fructus naturales* if, when the agreement is entered into, it is contemplated that the purchaser will derive a benefit from the further growth of the crop sold. Such arrangements will involve a *profit à prendre*. For example, a contract for young, rapidly growing timber that is not to be cut down until it has substantially changed and derived benefit from the land is likely to be a contract involving an interest in land (*Marshall* at 2202 and 2204; *Kauri Timber* at 779).
16. Such an agreement will be zero-rated for GST purposes under section 11(1)(mb).

Example | Taura 2 – Supply of right to standing timber a supply wholly or partly consisting of land

Mr Landowner enters into a 30-year agreement with Ms Sawmiller that grants Ms Sawmiller the exclusive right to remove the timber from certain specified blocks of land. The trees are of varied maturity, but many of them will not be ready for harvest until well into the term of the agreement. Ms Sawmiller has the right to choose when to harvest and which trees to remove at any given time.

For GST purposes, the supply is a zero-rated supply of land under section 11(1)(mb). The right granted to Ms Sawmiller is a *profit à prendre* and so it is an interest in land. The supply relates to *fructus naturales* and the recipient of the supply (Ms Sawmiller) is receiving a benefit from the future growth of the timber on the basis that it will remain in the soil for a number of years to come.

Example | Taura 3 – Supply of right to harvest fruit a supply wholly or partly consisting of land

Mr Vinegrower has a block of land on which he has planted kiwifruit vines. After a few years of tending the vines and harvesting the fruit he realises he has no interest in the agricultural life and prefers to spend his time pursuing gains through sports betting. However, he loves living on the land and does not intend to sell or lease the land. Instead, Mr Vinegrower enters into a 10-year agreement with Ms Fruitlover by which Ms Fruitlover is obliged to maintain the kiwifruit vines and has the right to enter the land to maintain the vines, harvest the fruit and sell it. (Ms Fruitlover is not providing a service of picking the kiwifruit for Mr Vinegrower and then subsequently buying the

kiwifruit from Mr Vinegrower. She is buying the kiwifruit on the vine and having to arrange to pick them herself.)

For GST purposes the supply is a zero-rated supply of land under section 11(1)(mb). The right granted to Ms Fruitlover relates to *fructus naturales* and she will benefit from the future growth of the annual crop of kiwifruit.

17. Supplies of forestry rights (as defined in and subject to the Forestry Rights Registration Act 1983) are also supplies of an interest in land as section 3(1) of that Act deems such forestry rights to be profits à prendre. A profit à prendre is an interest in land. Therefore a supply of a forestry right will be zero-rated for GST purposes under section 11(1)(mb). (See further the Commentary to public ruling BR Pub 07/01 *Forestry rights—secondhand goods GST input tax deduction* at page 4.)

Supplies that do not wholly or partly consist of land

18. Supplies of standing timber and other unsevered crops **do not** wholly or partly consist of land when the agreement is for the sale and purchase of *fructus naturales* **and** the purchaser does not derive a benefit from the further growth of the timber or crop sold. Such arrangements will not involve a *profit à prendre*. A purchaser does not derive a benefit from the further growth of the timber or crop if, when the contract is made:
- the process of growth is complete (*Marshall* at 2202 and 2204);
 - the contract creates an obligation (on either the vendor or the purchaser) to immediately sever the timber or crop from the land (*Marshall* at 2202 and 2204), or the contract requires the removal of the timber or crop within a short timeframe (eg 12 months; *McCauley v FCT* (1944) 69 CLR 235 (HCA)), or the contract does not create an obligation to sever the timber or crop within a specified period but the purchaser begins to remove it immediately (*Ashgrove Pty Ltd and others v DFCT* (1994) 124 ALR 315); or
 - the timber or crop might have to remain in the ground or on the tree or vine for some time, but the purchaser has no property right in the timber or crop until the vendor severs and delivers it (*Marshall* at 2203). (This would include the situation where the purchaser has no right of entry to the land to tend the timber or other crop.)
19. Such an agreement will be standard-rated for GST purposes.

Example | Taura 4 – Supply of right to standing timber not a supply wholly or partly consisting of land

Ms Farmer enters into an agreement with Mr Logseller to remove a stand of mature pine trees from a specified area of land on the farm. The agreement requires that the timber be removed as soon as possible but at the latest within 6 months of signing the agreement.

For GST purposes, the supply is not a zero-rated supply of land under section 11(1)(mb). The right does not give rise to an interest in land for Mr Logseller. Although the timber is *fructus naturales*, the right to remove it is not an interest in land because the process of growth is complete, and in addition the contract creates an obligation to promptly sever the crop from the land (*McCauley*).

Example | Taura 5 – Supply of right to standing timber not a supply wholly or partly consisting of land

As a variation on Example | Taura 4, assume that Ms Farmer enters into an agreement with Mr Logseller for the sale of timber that is in a specified area of the farm. The agreement gives Mr Logseller the right to purchase all the timber on that land over a period of 5 years, **but** Ms Farmer is to cut and deliver the timber.

For GST purposes the supply is not a zero-rated supply of land. The agreement does not give rise to an interest in land to Mr Logseller. Although the timber is *fructus naturales*, the right to it is not an interest in land because Mr Logseller has to wait for Ms Farmer to sever the timber and deliver it to him.

Example | Taura 6 – Supply of right to harvest fruit not a supply wholly or partly consisting of land

Ms Landowner has an apple orchard that is comprised of mature apple trees. The apples are ready to be harvested and Ms Landowner enters an agreement with Mr Fruitseller for Mr Fruitseller to harvest and sell the apples. The terms of the agreement are that Mr Fruitseller agrees to buy the apples and he is then obliged to pick them himself before packing and selling them. (As with Example 4, Mr Fruitseller is not providing a service of picking the apples for Ms Landowner and then subsequently buying the apples from Ms Landowner. He is buying the apples on the tree and having to arrange to pick them himself.)

For GST purposes the supply is a standard-rated supply of goods and not a zero-rated supply of land. The agreement does not give a right to an interest in land. Although the apples are *fructus naturales*, the right to remove them does not give rise to an interest in land because the process of growth is complete, and the crop will need to be promptly harvested and removed from the land.

References | Tohutoro

Legislative references | Tohutoro whakatureture

Forestry Rights Registration Act 1983, section 3(1)

Goods and Services Tax Act 1985, sections 2(1) (definition of “land”), 11(1)(mb)

Case references | Tohutoro kēhi

Ashgrove Pty Ltd and others v DFCT (1994) 124 ALR 315

Kauri Timber Co v Commissioner of Taxes [1913] AC 771 (PC)

Marshall v Green [1874-80] All ER Rep Ext 2198

McCauley v FCT (1944) 69 CLR 235 (HCA)

Paisley v CIR [1958] NZLR 332

Saunders v Pilcher [1949] 2 All ER 1097 (CA)

Other references | Tohutoro anō

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About this document | Mō tēnei tuhinga

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