

Separately titled garage - supplied with a residential unit -

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This publication should be read in conjunction with the related content of that register where further context is required.

! This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2010*



Property and Construction Industry Partnership

Separately titled garage – supplied with a residential unit

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Is the supply of a separately titled residential unit garage (when supplied with the residential unit itself) input taxed as the supply of residential premises within section 40-65 of *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act')?

ATO position

1. 'Residential premises' are defined in section 195-1 of the GST Act to mean land or a building that:

- (a) is occupied as a residence, or
- (b) is intended to be occupied, and is capable of being occupied, as a residence,

and includes a floating home.

2. The ATO accepts that where the garage is part of premises being supplied, then it takes its character from the premises being supplied. If the premises are residential premises then the garage will also have the character of residential premises. There is no apportionment issue as the garage does not have a character separate from the residential premises. This will be the case whether the garage is supplied as part of the residential premises by way of the same or different titles.

3. The ATO further accepts that a garage can be physically separate from the residential unit and still possess the characteristics of residential premises. The ATO does not make a distinction based solely on title structure.

4. It is the ATO view that for a part of premises, such as a garage, to be considered part of the 'sale of residential premises' under the GST Act, the sale contract should include some specific reference to that part of the premises. If the garage is to be supplied at a later point in time, this should be stated in the terms and conditions of the contract. The timing of any transfer is not conclusive, rather it may be an indicator that a separate supply is being made.

5. For those residents with contracts entered into prior to 1 July 2000, the ATO assumes the garage that is to be supplied at a later point in time is included in their existing contract.

6. The ATO view is based on the character of the supply. The fact that garages can be bought and sold separately is indicative of a garage potentially having a character separate from residential premises. It is the ATO view that residential premises are determined by their characteristics and actual use. A garage supplied independently of a residential unit cannot be occupied as a residence and therefore does not have the characteristics of residential premises.

7. However if a garage, separately titled or not, forms part of residential premises being supplied it will take its character from the premises being supplied. This same approach applies to other related premises such as store rooms and mooring facilities. For further particulars relating to the characteristics of residential premises reference should be made to GSTR 2000/20 commencing at paragraph 24.

8. In summary it is the ATO view that any sale of a residential unit, with a separately titled strata unit garage (or other related premises), can be considered the sale of residential premises provided:

- The sale contract includes reference not only to the residential unit itself, but also to the garage
- If there is more than one document, the documents must comprise a single transaction, and they must relate to both the supply of the residential unit and the supply of the garage
- A garage, to be supplied in connection with a residential unit at a later point in time, should be expressly referred to in the terms and conditions of the contract
- A garage will need to be included as a term or condition of a contract entered into by residents prior to 1 July 2000 where they intend to receive the garage at a later point in time in connection with their residential unit
- The contract for the sale of residential premises must provide for:
 - the same entity to supply both the residential unit and the garage
 - the same entity to receive both the residential unit and the garage.

9. As a result, the sale of the residential premises (comprising the residential unit and the garage) will be input taxed under section 40-65 of the GST Act. However the premises will not be input taxed to the extent that they are 'new residential premises' as defined under section 40-75 of the GST Act, other than those used for residential accommodation before 2 December 1998.