

# ***Supply by way of lease - input taxed supply or taxable supply -***

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⚠ This publication is extracted from section 15 - sale or real property of the Property and Construction Industry Partnership - issues register. See issue 15.4.22 of that register. 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

### Supply by way of lease – input taxed supply or taxable supply

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If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

**An investor, who is registered for GST, purchases new residential premises from a builder who is also registered for GST. The house has all the usual physical characteristics to enable it to be used for residential accommodation. The investor then supplies the house by way of lease to the builder who intends to use it as a display home.**

**(2) Is the supply of the house by the investor to the builder by way of lease an input taxed supply, or a taxable supply?**

***ATO position***

(2)

1. Under subsection 40-35(1) of the GST Act, a supply of premises by way of lease is input taxed if it is a supply of residential premises. A house is residential premises as it is intended to be occupied, and is capable of being occupied, as a residence (See section 195-1 of the GST Act). However, paragraph 40-35(2)(a) of the GST Act states that the supply is input taxed only to the extent that the premises are to be used predominantly for residential accommodation.

2. In order to determine whether the supply is input taxed, the issue that needs to be decided is whether the house is to be used 'predominantly for residential accommodation'. It is the ATO view that it is the physical characteristics of the premises that determine whether or not premises are to be used predominantly for residential accommodation.

3. The premises leased as a display home comprise a house that has all the usual physical characteristics that enable it to be used for residential accommodation. Therefore, it is considered that the house being leased as a display home is to be used predominantly for residential accommodation. The importance of physical characteristics is discussed at paragraph 19 of Goods and Services Tax Ruling GSTR 2000/20. Paragraph 19, as amended by the addendum to GSTR 2000/20, states as follows:

Further, the requirement in paragraph 40-35(2)(a) and subsection 40-65(1) that input taxing only applies to the extent that the premises are 'to be used predominantly for residential accommodation' indicates that premises that are residential premises are capable of use for purposes other than residential accommodation. It is their physical characteristics that mark them out as a residence. In turn, these characteristics determine when the use or proposed use is for residential accommodation.

4. As a result, the supply of the house by way of lease to be used by the builder as a display home is an input taxed supply under section 40-35 of the GST Act.