GSTR 2000/20 - Goods and Services Tax: commercial residential premises

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Goods and Services Tax Ruling
Goods and Services Tax: commercial residential premises

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Preamble
This document is a public ruling for the purposes of section 37 of the ***Taxation Administration Act 1953*** *and may be relied upon by any person to whom it applies.*

*[**Note**: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

What this Ruling is about

1. Under *A New Tax System (Goods and Service Tax) Act 1999* ('GST Act'), taxable supplies of accommodation in **commercial residential premises** are subject to Goods and Services Tax ('the GST'). This Ruling states the Commissioner's view on the meaning of paragraphs (a), (e) and (f) of the definition of commercial residential premises and provides guidance on **residential premises**.[1]

2. This Ruling also explains the application of the GST Act to taxable supplies of **long-term accommodation** and how you may apply special rules to reduce the value upon which your GST is calculated.[2]

3. The Ruling explains how supplies of long-term accommodation are taxed under the GST.

4. This Ruling does not consider the following issues:

- the definition of **'new residential premises'**;
- the definition of **'real property'**;
- the application of GST to marinas or marina berths occupied by **ships** used as residences;[2a] or
- the meaning of 'in connection with' regarding **education institutions**.

[1] Section 195-1 and Subdivision 40-B.
[2] Division 87.
[2a] Since this Ruling issued the law in relation to marinas has been amended (by Act No 156 of 2000). See subsection 40-35(1A) and section 195-1 definition of 'commercial residential premises' paragraph (da).

5. Certain terms used in this Ruling are defined or explained in the **Definitions** section of the Ruling. These terms, when first mentioned in the body of the Ruling, appear in **bold** type.

6. The Ruling refers to 'you' as a supplier of premises or accommodation. A supply of premises may be by way of sale, lease, hire or licence to occupy. Some supplies of rights to use premises are also discussed.

7. Unless otherwise stated, all legislative references in this Ruling are to the GST Act.

Date of effect

8. This Ruling applies on and from 8 July 1999 (the date of Royal Assent to the GST legislation) and may be relied upon immediately.

Background

9. Most supplies of residential premises by sale, lease or hire are input taxed under Subdivisions 40-B and 40-C. This gives those who rent residential premises similar GST treatment to those who own them.

10. By contrast, supplies of commercial residential premises are subject to GST because they have a particular character that removes them from the class of residential premises. However, the GST Act recognises those cases where accommodation of a commercial residential character, has a similar, practical function to residential premises. To this end, special rules under Division 87 reduce the GST payable on supplies of commercial accommodation for 28 or more days.

11. The definition of commercial residential premises in section 195-1 serves two purposes. Firstly, it provides a point of demarcation between supplies of residential premises that are input taxed and supplies of accommodation in commercial residential premises, that are subject to GST. Secondly, it identifies the classes of premises to which the special rules in Division 87 may be applied to reduce the GST payable on supplies of long term accommodation.

Overview of the relevant provisions

12. As a general rule, where you make a **taxable supply** of commercial residential premises you will be liable for GST. The GST Act treats a supply of residential premises differently. Supplies of residential premises to be used predominantly for residential accommodation, other than new residential premises, are input taxed,

regardless of your registration status.[3] A supply may be by way of sale, or of lease, hire or licence.

13. Generally, where you make a taxable supply of **commercial accommodation** in commercial residential premises, the supply is subject to GST. The GST payable is 10% of the value of the taxable supply.

14. Special rules may apply to reduce the value upon which the GST is payable.[4] You may apply the special rules when you make a taxable supply of long term accommodation to an individual in commercial residential premises. The GST payable by you depends on whether or not your premises are **predominantly for long term accommodation.** [5]

15. If you choose not to apply the special rules for long term stays, all of your supplies of long term accommodation are input taxed, while any supplies of short term stays remain taxable under the basic rules.[6]

Ruling with explanations

Part one: Residential premises

16. To understand how the definition of commercial residential premises applies, it is first necessary to examine the concepts and application of GST to residential premises. Under the GST law, supplies of residential premises are input taxed, but only to the extent that they are to be used predominantly for residential accommodation. There are two major exceptions, these are:

- sales of new residential premises; and
- supplies of commercial residential premises including supplies of accommodation in these.[7]

17. Residential premises is defined as 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.[8]

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[3] Subdivision 40-B.
[4] Division 87.
[5] Sections 87-5 and 87-10.
[6] Section 87-25 and Subdivision 40-B.
[7] Subdivisions 40-B and 40-C.
[8] Definition of 'residential premises', section 195-1.

Meaning of 'residential premises', 'residence' and 'to be used predominantly for residential accommodation'

18. To understand the use of these terms it is necessary to view their context in the definitions and structure of the GST Act. The definition of 'commercial residential premises' in paragraph (f) referring to 'anything similar to *residential premises described in paragraphs (a) to (e)' clearly indicates that the preceding paragraphs refer to things that are residential premises.[9] This suggests that the definition of residential premises and the use of residence in that definition have a broader meaning than those words may ordinarily have.

19. 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.

20. To be used for 'residential accommodation' or to be 'occupied as a residence', premises do *not* have to be a home or a permanent place of abode. To be residential premises as defined, a place need only provide sleeping accommodation and the basic facilities for daily living, even if for a short term. This follows from the definition of commercial residential premises referred to in paragraph 18.

21. Some examples will indicate the differences that need to be understood in this context. If a building consists of a shop below and a flat above, the physical characteristics indicate that only part of the building is residential premises, that is, the flat. The shop is not residential premises and is taxable in the normal way when leased or sold.

[9] Paragraphs (c) and (d) of the definition do not fall into this category, see paragraphs 68 to 70.

22. The function of paragraph 40-35(2)(a) and subsection 40-65(1) is to differentiate the GST treatment of any portions of residential premises that are commercial. This would apply, for example, to a house that has been partly converted for use as a doctor's surgery. Several parts of the house may still be used predominantly for residential accommodation, such as bedrooms, bathroom, kitchen, living rooms and gardens, while other areas are not, being turned over to office and consulting room space, and storage for the surgery. In this case paragraph 40-35(2)(a) and subsection 40-65(1) operate to exclude these commercial parts from the input-taxed treatment of the rest of the property.

23. Whether or not a particular room or part of a house or apartment is to be used predominantly for residential accommodation, as opposed to commercial purposes, is a question of fact and degree. A home office in a house will not generally be sufficiently separate from the rest of the residential premises to distinguish its use and its predominant use will still be residential accommodation.

Characteristics of residential premises

24. The definition of 'residential premises' in section 195-1 refers to land or a building that is occupied as a residence or is intended and capable of being occupied as a residence.

25. The definition requires that land must have a building affixed to it and that the building must have the physical characteristics that enable it to be occupied or be capable of occupation as a residence. Vacant land of itself can never have sufficient physical characteristics to mark it out as being able to be or intended to be occupied as a residence.

26. The physical characteristics common to residential premises that provide accommodation are:

(i) The premises provide the occupants with sleeping accommodation and at least some basic facilities for day to day living.

(ii) The premises may be in any form, including detached buildings, semidetached buildings, strata-title apartments, single rooms or suites of rooms within larger premises.

27. In addition to the physical characteristics, there are other factors which may be of use in determining whether premises are to be used for residential accommodation or accommodation of another kind. These characteristics would usually be present in residential premises that have the physical characteristics given in paragraph 26. These often, but not always, include:

(i) The purpose or context of the premises' use is for personal accommodation, rather than another purpose, such as for a business.

(ii) The tasks of day to day living, such as, preparing food, cleaning and laundering, are performed by the occupant, or by others under private arrangements.

(iii) The status of the occupant is most commonly that of owner, tenant or lessee.[10] Any boarders, lodgers or guests occupy the premises by private arrangement with the owner, tenant or lessee.

(iv) The premises will be in an area zoned by Council or Shire regulations as suitable for human habitation.

Sleeping accommodation and facilities for human habitation

28. The definition states that residential premises must be capable of occupation as a residence. To be a residence in this sense, a place normally should have the facilities required for day to day living. These characteristics are inherent in the fabrication of the structure itself.[11] The premises should have such things as areas for sleeping, eating and bathing, but it is not necessary that these things be arranged in a similar manner to a conventional house or apartment.

29. Premises that lack these basic features, may not be either residential premises or commercial residential premises. Supplies of buildings or other structures without these characteristics are subject to GST under the basic rules, regardless of whether or not they are or have been at one time, occupied as some form of residence.

[10] In this context, use of the terms 'tenant' and 'lessee' does not necessarily mean that only the strict, legal sense is intended.
[11] Compare this with the definition of a floating home, which refers to 'a building designed to be occupied as a residence'.

Form of the premises

30. The definition of commercial residential premises sets out types of premises to be covered. The definition of residential premises does not do this and from this it is clear that there is no intention to restrict the form or type of building or structure that can be 'residential premises', provided it is fit for accommodation and day to day living.[12]

Purpose of premises

31. In some cases, the purpose for which the premises are to be used will be evident from their form or fit-out. This is most clearly the case where premises have been fabricated, or altered, to accommodate commercial or professional activities.

Services

32. It is usual for those who occupy residential premises to be largely responsible for their own care. That is, either they must cook, clean and launder for themselves, or provide for these things to be done by another, in some form of private arrangement (whether or not this is a paid arrangement). The salient factor is that these things are not arranged externally by the owner or manager of the premises, but privately by the occupant.

33. Exceptions exist in some premises that are residential in nature such as, dormitory or barrack style accommodation.

Status of the occupant

34. There are a variety of arrangements by which residential premises may be supplied. Typically, residential premises are owner occupied, or supplied under a residential tenancy agreement.[13] Under these agreements, tenants are entitled to quiet enjoyment of the premises.

35. Other arrangements, less formal than tenancy agreements, also exist. People frequently occupy residential premises as guests or lodgers. There is a distinction between these arrangements and those in commercial residential premises. Guests, even paying guests, in residential premises usually have an informal, private arrangement for occupation which does not amount to tenancy.

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[12] References to buildings on land includes flats, tenements or similar divisions. Section 22 *Acts Interpretation Act 1901*.

[13] Each of the States has a Residential Tenancies Act governing residential tenancy agreements. See, for example, the *Residential Tenancies Act 1987* (NSW).

Example 1

Helen is a university student, who rents a large house and provides 3 rooms to other students to help cover the costs. All are responsible for their own cooking and cleaning. Although the other students are lodgers, their arrangements with Helen are private. The property is not a boarding house or similar to one. The house is residential premises.

Zoning

36. For premises to be residential, it must be legal for them to be used for accommodation. As the concepts of 'residential' are given a broad treatment under GST, it is only necessary that the land on which premises stand is zoned by the Council or Shire in a way that contemplates human habitation or accommodation, even if only for short term occupancy. A certain zoning, or a change of zoning cannot, by itself, alter the character of premises.

Some special cases

Employee accommodation

37. If accommodation is provided by an employer, in premises controlled by them or their associate, the premises are usually residential premises. This includes premises such as houses, apartments or residential barracks or quarters provided by an employer.

38. Employee accommodation that is provided by employers in hotels, hostels or the like, that are not controlled by them or their associate, may be commercial residential premises. This will depend on the character of the premises in question. The supplier of the accommodation is responsible for any GST implications of the supply.

39. Accommodation provided by an employer on a short-term basis, to employees whose occupation carries conditions related to their terms of employment, including: the requirement to vacate the premises at the end of a period of duty or set quota of work; the sharing of accommodation as directed; and limitations on personal possessions, is not normally accommodation in residential premises, nor, by extension, is the accommodation provided in commercial residential premises.[14] Accommodation provided in remote mining or prospecting sites on a 'fly-in-fly out' basis, similar arrangements for accommodating workers on oil rigs, or for itinerant workers on rural

[14] In the current context, a 'short term basis' would normally be for a period of less than 28 continuous days.

properties, for example, fruit pickers or shearers may be of this kind. Supplies of such accommodation are subject to the basic rules.

Floating homes and ships

40. Floating homes, that are not capable of self-propulsion or of being adapted for self propulsion, are residential premises. This is because they are expressly included in the definition of residential premises. Conversely, 'ships', including buildings on platforms, such as houseboats, that are capable of self propulsion are not residential premises.[15]

41. A vessel may be adapted for self propulsion by the fitting of an outboard motor. Most houseboats are not residential premises because they are readily adaptable for self-propulsion in this way.

42. The supply of a floating home by way of lease, hire or licence to occupy, is an input taxed supply under section 40-35. However, as floating homes are not real property they are subject to the basic GST rules upon sale.[16]

43. Commercial residential premises can include **ships** that are let out for hire in the ordinary course of a business of letting ships out for hire, or providing ships for entertainment or transport. Ships are not residential premises if they are capable of self propulsion, or readily adaptable for self-propulsion.

Demountable housing

44. Demountable dwellings to be used for residential accommodation are buildings designed to be placed on a site for a number of years. They are plumbed and wired in a similar way to a conventional house.

45. Demountable dwellings of this kind are input taxed when rented if they are to be used predominantly for residential accommodation. To be input taxed on sale, they must be real property which requires that the demountable must be affixed to land. Demountable housing itself comes within the definition of residential premises, but section 40-65 only allows that residential premises that are real property, are input taxed at sale.[17]

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[15] Definitions of 'floating home' and 'ship', section 195-1.
[16] Section 40-65.
[17] The reference in the definition of residential premises in section 195-1, to 'building' does not draw upon the concepts of fixture. That is, it is possible for a building, such as a demountable, to fall within the definition of residential premises, even though the effect of this is limited by the reference to real property in section 40-65.

46. Demountable buildings that do not have the character of residential premises, that is, those without facilities for residential accommodation (sleeping accommodation, kitchen, bathroom and toilet facilities) are not residential premises. Supplies of demountable buildings that are not residential premises are subject to GST under the basic rules.

47. Supplies of new demountable housing not sold together with land are subject to GST under the basic rules.

Vehicles

48. Road vehicles including motor homes, caravans and camper-vans are not residential premises.

49. This includes caravans and motor homes, even if they are left on a site for permanent occupation. A supply of accommodation in a caravan is a supply of commercial accommodation, if it takes place on a site in a caravan park.[18]

50. Vehicles do not fit within the definition of residential premises as they are neither land nor buildings. Even when stationary for a long period of time, they do not become structures affixed to the land, for the purposes of being 'land' under ordinary concepts.

Strata and other separately titled premises

51. Residential premises are input taxed under the GST unless they have the character of commercial residential premises. One of the fundamental characteristics is multiple occupancy, as discussed in paragraphs 88 to 91. This characteristic emphasises the difference between a single room or suite or house for hire, and a hotel or boarding house. A strata titled unit or suite cannot, by itself, exhibit the characteristics of commercial residential premises.

52. This is why an individual unit only takes on the character of commercial residential premises when it is aggregated with others and run by an entity who has acquired the interests necessary to let the rooms in its own right, rather than on behalf of the owners, in the same manner as a hotel, motel, inn, or hostel.[19]

An alternative view is acknowledged, that a building must be real property before it can be residential premises, but this is not the view accepted by this Ruling, as the definition of residential premises, in section 195-1 states that residential premises means 'land *or* a building…' [emphasis added].

[18] Definition of 'commercial residential premises', section 195-1.

[19] For example, an entity that has acquired the rights under a lease or a licence and is operating the hotel in its own right. When this person lets out the rooms they are subject to GST.

53. The following diagram gives a view of how a simple arrangement of this kind works:



54. Strata and other separately titled residential premises retain their character as residential premises when sold and are input taxed, regardless of whether they are located within the precincts of commercial residential premises.[20]

55. Where new residential premises are purchased by a registered entity, for the purpose of supplying them to another to use as a part of commercial residential premises, the acquisition is not for a creditable purpose, under section 11-15. This is because the underlying character of the supply made by the owner, is of residential premises to be used for residential accommodation, which is an input taxed supply.[21] There are no input tax credits available in relation to the acquisition of residential premises to be used predominantly for residential accommodation.[22]

Agent arrangements

56. Strata, or other separately titled premises used as holiday accommodation are not usually commercial residential premises. This is also discussed in paragraphs 116 to 117. The majority of the casual letting in such premises is carried on by agents, on behalf of unit owners. The agents may either be real estate agents, operating from separate premises, or on-site agents, who may also act as the managers of the complex.

[20] The exception is the first sale of new residential premises, which are excluded from input taxing (and so subject to GST under normal rules) by subsection 40-65(2).
[21] For a discussion of the interpretation of 'residential accommodation' see paragraphs 18 to 23.
[22] Section 11-20.

57. The most common arrangement for on-site agents, is for an entity to purchase management rights from the complex's body corporate, or owners' association, then sign individual letting agreements with the apartment owners who wish to let their properties. These letting agreements are similar to the agreements between real estate agents and property owners for ordinary house or flat rental. The rights conferred by these agreements are not sufficient to enable managers to operate commercial residential premises because they do not allow the agent to let the rooms as principal in their own right, rather than on the owner's behalf. In agency arrangements, it is the owner of the unit who bears the risk to their own income, of the unit remaining vacant.[22a]

58. Some features of these agreements, based on agreements operating under Queensland State law, include:[23]

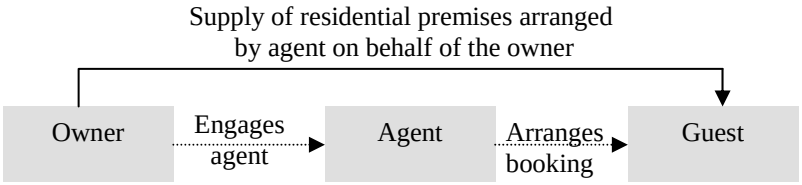
- the agreements expressly appoint the manager as an 'agent' for the owner;
- the agent agrees to attend to certain duties, including such things as maintenance to a standard 'star' rating of a tourist authority and maximising rental income;
- the agent pays rental income into a trust account and disburses net amounts (less costs and commission) to the owners regularly;
- owners have the option of occupying their units, but must give notice;
- there are indemnities for the agent against overdue or defaulted rent;
- the agent may carry out maintenance, up to a specified amount; and
- the agreement may be terminated by either party, with notice.

59. Owners who supply their units for accommodation through agents are supplying *residential premises.* An individual unit of accommodation, such as a room, suite, apartment, cabin or villa does not possess the characteristics that are shown by a hotel, motel, inn, hostel or boarding house.

[22a] Where the manager bears the risk on an ongoing basis (that is, the owner's income is assured, even where their unit has not been let out by the manager), then the relationship is unlikely to simply be one of agency.

[23] *Auctioneers and Agents Act 1971* (Qld).

60. The following diagram shows a typical agent letting arrangement:



61. Where an owner holds several strata units within one complex and lets them through an agent under letting, or similar agreements, these supplies are usually also of residential premises.[24]

Part two: Commercial residential premises

Definition of commercial residential premises

62. The definition of commercial residential premises in section 195-1 is central to the interpretation of Subdivisions 40-B and 40-C and the special rules for long term accommodation in Division 87. This Ruling focuses on paragraphs (a), (e) and (f) of the definition.

63. Paragraphs 64 to 74 contain a brief overview of the interpretation of each element of the definition. Key concepts in the definition are dealt with in detail in the sections that follow.

'a hotel, motel, inn, hostel or boarding house' (paragraph (a))

64. These premises are discussed under the subheading *'Hotels, motels, inns,* hostels *and boarding houses'*.

'premises used to provide accommodation in connection with a school' (paragraph (b))

65. The boarding facilities provided by schools, or by another organisation on behalf of or in connection with a school or schools, are commercial residential premises.

[24] It is possible that an owner of a number of strata units in the same location can operate them in a manner similar to an hotel, if the characteristics of commercial residential premises are met to a sufficient degree.

66. This does not necessarily mean that supplies of accommodation for students undertaking school courses will be subject to GST. Section 38-105 makes supplies of student accommodation to those undertaking primary, secondary or special education courses GST-free, where:

- the supplier of the accommodation also supplies the course; or
- the accommodation is provided in a hostel whose primary purpose is to supply such accommodation to students from rural or remote locations.

67. Other supplies of accommodation you make in boarding facilities or hostels are subject to the basic and special rules as they apply to commercial residential premises.[25] This includes taxable supplies of accommodation made to teachers and staff.

'a ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire' (paragraph (c))

68. Where you let out a ship, such as a charter vessel, on a long or short term basis, the supply is subject to GST.

69. A lease or hire of a ship for 28 days or more is the supply of long-term accommodation, eligible for the special treatment given in Division 87. This applies despite the fact that ships are not residential premises. Their inclusion in the definition of commercial residential premises ensures that section 87-15 applies to make the hiring-out of such a ship, a supply of commercial accommodation.

'a ship that is mainly used for entertainment or transport in the ordinary course of a business of providing ships for entertainment or transport' (paragraph (d))

70. The special treatment for long-term (28 days or more) stays applies to accommodation offered on ships used for entertainment or transport. Cruise ships, for example, fall into this category.

'a caravan park or a camping ground' (paragraph (e))

71. These premises are more fully discussed under the subheading *'Caravan* parks *and camping grounds'*.

[25] Chapter 2 and Division 87.

'anything similar to residential premises described in paragraphs (a) to (e)' (paragraph (f))

72. Paragraph (f) includes in the definition of commercial residential premises, anything similar to the residential premises described in paragraphs (a) to (e). This means that to be considered under paragraph (f), the premises must be similar to a hotel, motel, inn, hostel, boarding house, premises used to provide accommodation in connection with a school, caravan park or camping ground. The ships in paragraphs (c) and (d) are not considered under this paragraph as they are not 'residential premises', as defined in section 195-1.

73. Paragraph (f) is discussed below under the subheading *'Residential premises similar to hotels, motels, inns, hostels and boarding houses'*.

'However, it does not include premises to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school.' (exclusion to the definition)

74. This paragraph excludes from the definition premises such as residential colleges or halls of residence on university campuses.

Hotels, motels, inns, hostels and boarding houses

75. These premises are commercial residential premises for the purposes of paragraph (a) of the definition. The terms are not defined in the GST Act and, therefore, take their ordinary or common meanings, subject to context.[26]

76. The terms 'hotel', 'motel' and 'inn', by their ordinary meanings are largely synonymous. *The Macquarie Dictionary* provides the following definitions:[27]

Hotel	a building in which accommodation and food, and alcoholic drinks are available
Motel	a roadside hotel which provides accommodation for travellers in self-contained, serviced units, with parking for their vehicles.
Inn	a small hotel that provides lodging, food, etc., for travellers and others
Hostel	1. A supervised place of accommodation, usually supplying board and lodging provided at a comparatively low cost, as one for students,

[26] *R v. Peters* (1886) 16 QBD 636, 640-2 and *Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd* (1920) 28 CLR 129, 161-2.
[27] *The Macquarie Dictionary* (Macquarie University, 3rd ed., 1998).

	nurses, or the like. 2. [cross reference] Youth hostel: a simple lodging place for young travellers.
Boarding house	a place, usually a home, at which board and lodging are provided.

Residential premises similar to hotels, motels, inns, hostels and boarding houses

77. Paragraph (f) of the definition provides that residential premises that are 'similar' to hotels, motels, inns, hostels or boarding houses are also commercial residential premises. The interpretative issue surrounding the definition of commercial residential premises, is centred on what things are sufficiently 'similar' to hotels, motels, inns, hostels and boarding houses, to be caught by paragraph (f).

The meaning of 'similar to'

78. Paragraph (f) broadens the definition of commercial residential premises. The purpose of paragraph (f) is to include residential premises that, while not in themselves covered by paragraphs (a),(b) or (e), exhibit characteristics that place them on a similar footing to those premises that are covered.[28]

79. The question of what are 'similar establishments' to hotels, inns and boarding houses, has been examined on several occasions by the courts for the purposes of the Value Added Tax in the United Kingdom.[29] In *The Lord Mayor and Citizens of the City of Westminster*, the Tribunal took the approach that a 'similar establishment' must have sufficient characteristics in common with the class of premises described, to allow them to be classed with them, rather than with premises of another kind.[30] To determine this, the Tribunal examined the premises' characteristics and compared them with the characteristics it identified for the class 'hotel, inn, or boarding-house' as a whole.[31]

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[28] Things similar to the ships mentioned in paragraphs (c) and (d) are not considered under paragraph (f). The paragraph deals only with similar 'residential premises' and ships are not residential premises, under the definition in section 195-1.

[29] *The Lord Mayor and Citizens of the City of Westminster* (1988) 3 BVC 847: *Namecourt Ltd v. The Commissioners* (1984) 2 BVC 208,028; (1984) VATTR 22; *McGrath* (1989) 4 BVC 779; *McGrath v. Customs and Excise Commissioners* (1992) BVC 51.

[30] *The Lord Mayor and Citizens of the City of Westminster* ibid.

[31] *Value Added Tax Act 1994* (UK), Schedule 9, Part II, Group 1, Item 1(d). There are some differences between the UK and Australian legislation. However, those provisions concerning 'similar' establishments in the UK legislation bear a sufficiently close resemblance to 'similar' premises in the GST Act for the findings of the Tribunal to be relevant.

80. This Ruling follows a similar approach to that taken by the Tribunal, in setting down the characteristics for commercial residential premises as defined in the GST Act.

Characteristics of commercial residential premises

81. The characteristics set out in paragraph 83 refer to the common meaning of the terms 'hotel, motel, inn, hostel or boarding house' as they are generally understood. At the same time, they are broad enough to include premises that are considered 'similar' to these. The test is one of fact and degree. However, if the establishment you operate exhibits the characteristics set out below, it is commercial residential premises under paragraph (a) or (f).

82. Note that the characteristics do *not* apply to paragraphs (b), (c), (d) or (e) or to things 'similar' to those mentioned in paragraphs (b) or (e).

83. The main characteristics are:

(i) Commercial intention;

(ii) Multiple occupancy;

(iii) Holding out to the public;

(iv) Accommodation is the main purpose;

(v) Central management;

(vi) Management offers accommodation in its own right;

(vii) Services offered;

(viii) Status of guests.

84. In some cases it may be a question of degree as to whether your premises exhibit all of these characteristics. However, when viewed as a whole the establishment may be commercial residential premises. The indicators of premises possessing each characteristic are discussed in paragraphs 86 to 109.

85. If the premises you operate are comprised of a number of strata titled, or other separately titled units, apartments, suites, cabins or villas, or if you own strata titled property, please also refer to the discussion of these in paragraphs 51 to 61.

(i) Commercial intention

The establishment is operated on a commercial basis. It possesses the characteristics of a business, but may be operated by a non-profit body.

86. Hotels, motels, inns, hostels and boarding houses are normally conducted in business like manner, for reward.[32] It is not the purpose of this Ruling, to determine whether or not operators of premises for hire are enterprises, or carrying on a business. However, some of the indicators of carrying on a business may be of use in considering this characteristic. The Miscellaneous Taxation Ruling MT 2000/1 discusses the indicators of carrying on a business for Australian Business Number purposes. MT 2000/1 draws its concepts from Taxation Ruling TR 97/11.[33] From this latter Ruling the following relevant indicators are drawn:

- whether the activity has a significant commercial purpose or character; this indicator comprises many aspects of the other indicators;
- whether the taxpayer has more than just an intention to engage in business;
- whether the taxpayer has a purpose of profit as well as a prospect of profit from the activity;
- whether there is repetition and regularity of the activity;
- whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business;
- whether the activity is planned, organised and carried on in a businesslike manner such that it is directed at making a profit;
- the size, scale and permanency of the activity; and
- whether the activity is better described as a hobby, a form of recreation or a sporting activity. [34]

[32] See also *International Students House* (1996) BVC 2975. The Tribunal stated that a hotel, inn or boarding house has as its predominant characteristic, '*the offer of use of accommodation for gain*', (quoted in paragraph 98).

[33] Taxation Ruling MT 2000/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN'), paragraph 63.

[34] Taxation Ruling TR 97/11 Taxation Ruling Income tax: am I carrying on a business of primary production? Paragraph 13.

87. Although the intention and prospect of profit is a principal indicator of business, non-profit entities also operate commercial residential premises. An example of this is provided by various non-profit organisations that operate hostels. Notwithstanding that these organisations are non-profit, their enterprises are run in a business-like fashion and much of the accommodation they offer is in commercial residential premises.

(ii) Multiple occupancy

The establishment provides sleeping accommodation on a multiple occupancy basis. The establishment may be a building, a part of a building, a precinct within a building, or a collection of buildings. The establishment may be partly owner occupied.

88. It is a normal characteristic of hotels, motels, inns, hostels and boarding houses, that they are available to the public to be let on a multiple occupancy basis.

89. The scale of the premises, something conceptually similar to multiple occupancy, has been considered relevant in other jurisdictions. In a New Zealand case, Keane DJ considered scale in deciding whether premises were a 'boarding house' (sic) and hence a commercial dwelling under the (NZ) GST law.[35]

90. Premises that only offer accommodation to one person or a small group living or travelling together do not demonstrate the characteristic of multiple occupancy.

91. Premises limited to single occupancy, even where they are regularly let for short-term stays, for example, a cottage let as a weekender, do not have this common characteristic of a hotel, motel, inn, hostel or boarding house. Single occupancy is further discussed in paragraphs 123 to 128.

(iii) Holding out to the public

The establishment holds itself out as premises that will receive travellers who are willing and able to pay for accommodation and / or that it will accept reservations or contracts to let accommodation to guests or lodgers.

92. For your premises to come within the ordinary and legal concepts of 'hotel, motel, inn, hostel or boarding house', you must hold them out as such. There are two separate concepts relevant to 'holding out': the presentation of the establishment to the public, and the purpose of the accommodation.

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[35] *Case L75* (1989) 11 NZTC 1,435; and section 2 of the *Goods and Services Tax Act 1985* (NZ).

93. Under the common law and Australian statute, a hotel or inn is usually defined in the following terms:

> 'any establishment held out by the proprietor as offering food, drink and if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received.'[36]

94. The necessity of holding your premises out for hire is also a commercial reality. Premises that make representations to the public, for example; by way of advertising, naming or signage that indicate they offer accommodation for hire, have this characteristic. Holding out generally overlaps with the 'commercial intention' characteristic. Premises that do not hold themselves out for accommodation hire are unlikely to be run on a commercial basis.

95. An indicator of premises being held out to the public is compliance with the necessary local and State regulatory requirements that exist for hotels, motels, bed and breakfasts and the like. Such regulations include zoning, building code and health regulations.

96. A large house, that accommodates an extended family or a group of acquaintances, even when most pay rent or board, would not meet this characteristic if the household does not offer accommodation to the public and makes no representations that it would do so.

(iv) Accommodation is the main purpose

The provision of accommodation is the establishment's primary purpose, or one of its main purposes, after the service of food and / or drink.

97. The provision of accommodation is the primary purpose of a motel, inn, hostel or boarding house and similar premises.

98. Primary purpose was found to be significant in *International Students House*, a Tribunal case under the British VAT.[37] In considering the phrase 'hotel, inn, boarding house or similar establishment', the Tribunal said '*such places have as their predominant* characteristic *the offer of use of accommodation for gain, that being the purpose of their existence.*'[38] The Tribunal also found that the purpose of International Students House was that of a charity, and that the care and social and cultural development of the foreign

[36] See the *Carriers and Innkeepers Act 1958* section 26 (Vic). Other relevant State Acts contain similar wording.
[37] *International Students House* (1996) BVC 2975.
[38] *International Students House* ibid.

students it accommodated, distinguished it from hotels, inns and boarding houses.

99. Many hotels also offer accommodation as a primary purpose of their operation together with the service of food and drink. Clearly these are 'hotels' for the purposes of paragraph (a) of the definition. However, the ordinary meaning of 'hotel' encompasses another class of establishment, that has the service of alcohol as its primary purpose. Such premises often have some form of multiple occupancy accommodation so as to comply with their licensing regulations. While such establishments are 'hotels' for the purposes of paragraph (a), they are not the standard against which the concept of 'similar to' is measured, for the purposes of paragraph (f). The placement of 'hotel' in paragraph (a) in the context of 'motel, inn, hostel or boarding house', indicates that the concept envisaged, has the offer of accommodation as its main or a substantial purpose.

100. Other premises that offer accommodation subsidiary to another purpose, do not 'hold themselves out' as commercial residential premises. Examples include premises with the purpose of medical treatment, such as hospitals; of employment, such as army barracks; of religious devotion, such as monasteries; or of detainment, such as prisons.

101. Where packages in resort style or similar accommodation offer supplies of such things as recreational activities, sight-seeing, or self-improvement courses, these do not detract from the purpose of providing accommodation. The provision of such things is an indicator of commercial residential premises.

(v) Central management

The establishment has central management to accept reservations, allocate rooms, receive payments and arrange the services provided throughout the premises.

102. Most hotels, motels and inns, have management or employees on the premises, with some facility for guest reception. It is part of the essence of these types of premises, that accommodation is hired together with certain services and facilities. Both reception and services depend on the standard and type of premises offered.

103. Establishments that operate in a similar manner to an hotel, motel or inn usually have an owner or manager present or readily accessible, holding some control over the premises as a whole and managing them. Frequently, larger hotels, motels and inns have additional staff, who perform functions such as making bookings, receiving travellers, taking payments and providing or arranging services for guests or lodgers. In some cases, however, the

management presence may be limited in hours or provided by an office off the site.

(vi) Management offers accommodation in its own right

The management has control of the premises as a whole, whether or not they own the property or any part of it and lets them in its own right, rather than as an agent.

104. This is of particular relevance to strata titled premises. The question of whether or not you have control of the premises may be examined by looking at whose right you are conferring when you let a room to a guest. You control premises if you hold a lease or licence or other right to occupation, and are conferring your right to the guest. An agreement or arrangement that allows you to let premises on the owner's behalf is not the same. Instead you are conferring the owner's right to occupancy, as their agent.

105. Under common law, the keeper of a boarding or lodging house hires accommodation under special contract with each lodger and retains control of the premises as a whole. There is a difference between this, and offering residential tenancies within larger premises, where the owner relinquishes control of the parts of their premises in question, as occurs in some rooming houses.[39]

(vii) Services

Services are provided to guests. These may include periodic cleaning (usually daily or weekly), provision of food, laundering services, telephone (usually through a centralised system, allowing the guest to be billed for calls made), and minor services, like wake-up calls or taxi bookings.

106. The tariff you charge usually includes amounts to cover the cost of cleaning and maintaining guests' rooms during their stay. Often, there is access to meals or the facilities for guests to make and consume their own. Other examples of services include; providing telephones, replacing linen, laundry, and other, minor services, such as wake-up calls, or providing local information.

107. Guests' expectations of service levels vary with the style of accommodation and, to some extent, the tariff charged. An absence of services indicates that the premises may not be commercial residential. Similarly, where guests are required to supply items such as towels or linen or anything else to make the premises fit for accommodation, the premises are less likely to be commercial residential.

[39] See *Residential Tenancies Act 1997* (Vic).

(viii) Status as guests

Those being provided with accommodation are guests, boarders or lodgers. Guests or lodgers can expect a reasonable amount of privacy from management, their staff and other guests, but not to the same level expected by a tenant.

108. Those who hire commercial accommodation have the status of guests, or lodgers. They have the right to occupy and enjoy the premises, but not to the extent of having a legal interest in the premises.[40]

109. It is an accepted part of the normal act of hiring a room in a hotel that management retains rights over it, such as the right to entry. This is a relevant determining feature, when classifying such premises as holiday accommodation and serviced apartments. If, for example, you enter into a residential tenancy agreement, your tenant does not have the status of a guest.

Application of the characteristics to common types of accommodation

110. Some common types of premises that supply accommodation are dealt with in the explanations and examples that follow in paragraphs 111 to 133.

Hotels, motels, inns and similar premises

111. Premises that explicitly hold themselves out as hotels, motels, inns, resorts or tourist venues and are not owned by strata title holders, are usually commercial residential premises.

112. Hotels and similar establishments may also be operated by managing entities who hold leases or licences over a number of strata title apartments

113. In these cases, managing entities or hoteliers do more than merely collect rent on behalf of apartment owners. They operate the premises as their own and make lease or licence payments to owners or other payments to meet their contractual arrangements with owners.

114. Example 2 is indicative of an arrangement where strata title apartments are operated by a managing entity as premises similar to a hotel. This example may be held in contrast with the strata title apartments discussed at paragraphs 56 to 61 that are not commercial residential premises.

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[40] See, for example, *Carriers and Innkeepers Act 1958* (Vic), section 26(1). This definition is based on the common law as it applied to hoteliers and innkeepers.

Example 2

> *Alpha is a block of strata titled, individually owned apartments. The units were offered for sale off the plan, to investors who leased their units to Alpha Management Pty Ltd, who runs the premises as a holiday resort. Owners were offered a guaranteed return for three years. A few apartments are owner-occupied, but most are leased back to Alpha for use as part of the resort. The manager markets the apartments widely to the holiday market. Alpha's on-site staff take bookings, issue keys, settle accounts and attend to guest enquiries. Linen and towels are provided and changed daily. There is no room service, but there are basic self-catering facilities in the rooms and a small restaurant on the ground floor.*
>
> *As a whole, Alpha exhibits all of the characteristics of premises that are 'similar' to a hotel, motel or inn. Alpha is commercial residential premises.*[41]

115. If you supply accommodation in commercial residential premises comprising strata titled units that you have leased or hired from the owners, or have been granted the rights to use, you make a taxable supply. The supply of commercial accommodation is made by you, the operator, not by the owners of the individual units.

Holiday apartments

116. The characteristics discussed in paragraphs 86 to 109, identify those premises that are most similar to hotels, motels, inns, hostels or boarding houses. Privately owned premises that may be supplied for holiday accommodation will not usually fall into this category. Holiday homes and apartments that you purchase to use personally, lend to friends and/or family, or let out when not in use are residential premises.

Example 3

> *Omega is a block of strata titled, individually owned apartments. Many of the apartments are let out for most of the year, but there are some owner occupiers. Items such as linen, towels and tea and coffee making facilities may be provided, but this varies from unit to unit. Owners let accommodation personally or through local real estate agents. Keys are collected by arrangement. The body corporate maintains*

[41] Definition of 'residential premises' section 195-1.

common areas but does not otherwise involve itself with occupants.

Although, as a whole, Omega provides accommodation on a multiple occupancy basis and offers some services, it does not exhibit the characteristics of commercial residential premises to a sufficient degree. Omega falls within the meaning of residential premises.[42]

117. If you own a holiday apartment and let it through a local real estate agent or through an on-site agent, you are *not* letting commercial residential premises. This is further discussed in paragraphs 56 to 61.

Serviced apartments

118. Serviced apartments may be offered for hire under a variety of terms. As a minimum, regular cleaning of guests' rooms and security are offered. Some offer up to full hotel services (including in some cases, executive and secretarial services), but also provide self-catering facilities.

119. The set-up and management of serviced apartments are strong indicators of whether they are commercial residential premises. It often occurs that 'boutique' hotels will offer some suites for long-term stays on a 'serviced apartment' basis. Such premises are clearly commercial residential premises.

120. By contrast, an ordinary block of flats let out on six month tenancies is not commercial residential premises, even if they are all owned by one person. Something more needs to be shown for those premises to be commercial residential premises. There is a borderline between residential premises and commercial residential premises, which is distinguished by the possession or absence of the characteristics.

121. Some serviced apartments have minimal services and the management may be represented by nothing more on site than a security desk. Again, something more than this is necessary for the apartments to be commercial residential premises. An on-site presence, providing some level of service on demand, indicates that the premises are commercial.

Example 4

Chi Square apartments are a collection of apartments, advertised and let by the management, located off-premises. A guard staffs a security desk and provides keys to incoming

[42] Definition of 'residential premises', section 195-1.

guests. No other services are provided during occupants' stays, though cleaning is conducted by the management, after each departure. The apartments are equipped with kitchens for self-catering and direct dial telephones. There is no restaurant or room service.

Chi Square exhibits some of the characteristics of premises similar to hotels, motels and inns but on these facts, the apartments are not commercial residential premises.

Weekender cottages, farm stays and home stays

122. If you supply accommodation in a single detached or semidetached home on its own land, where the guest is granted the right to use the entire premises, they are *not* commercial residential premises, regardless of the length of the stay. These premises are not in the nature of a hotel, motel, inn, hostel or boarding house.

Example 5

Pi Cottage is advertised for weekend stays in national holiday magazines. The cottage is self contained and accommodates a couple or a small family. The owner lives elsewhere and engages a letting agent. The house is cleaned after each stay. Breakfast provisions are included in the tariff.

Although Pi Cottage is held out as accommodation for hire and includes some services it does not offer multiple occupancy to guests and therefore is not commercial residential premises.

Example 6

Delta Farm Holidays is a farm-stay business conducted in association with an adjacent alpaca farm. Guests are invited to participate in the workings of the farm and stay in renovated farm buildings that sleep up to twelve in four separate suites. Accommodation is offered on a bed and breakfast basis and the suites are cleaned daily. The on site manager advertises the farm stays widely in national lifestyle magazines.

Delta Farm exhibits all of the characteristics of premises that are 'similar' to hotels, motels and inns. The business provides accommodation in commercial residential premises.

123. There is a distinction between letting a single home on a short term basis and letting a cottage or cabin among others within larger premises or precincts. The distinction also applies to resorts and some bed and breakfast accommodation. It is expected that, the more

accommodation premises are able to offer, the more likely they are to fulfil the characteristics to a sufficient degree to be commercial residential premises.

124. Where accommodation of different styles is managed and let centrally and offered by an entity across a range of locations and not through an agent for others, the various premises must be classified using the characteristics that each premises exhibits. However, where separately titled *adjacent* cottages or villas are combined and then offered for letting by an entity, they can form commercial residential premises.[43]

125. This does not alter the basic character of the separate cottages as residential premises, should they cease to be used as part of the larger commercial residential premises. That is, if the cottage is supplied by way of sale or supplied under a tenancy agreement, the supply is input taxed.

126. Domestic bed and breakfast and farm-stay premises may fall into the category of commercial residential premises, if the activities are on a large enough scale and run in a manner that satisfies the defining characteristics to a sufficient degree.

127. If your farm stay or bed and breakfast are commercial residential premises, you should remember that you will only be liable for GST on your supplies of commercial accommodation, if you are registered or required to be registered for GST.[44]

128. Home-stays, where guests have the use of a private home either with or without the owners present, are not ordinarily commercial residential premises as they do not have the characteristic of multiple occupancy. Depending on the arrangements for the home stay, other characteristics may not be met, such as the commercial intent present in operations such as hotels.

Caravan parks and camping grounds

129. These are specifically included in the definition of commercial residential premises at paragraph (e) and therefore do not have to possess the defining characteristics to fall within the definition.

130. There are some differences between the way these premises operate and the operation of hotels and the like. Guests may pay to

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[43] In this context, adjacent means on adjoining or abutting land. Residential premises making up commercial residential premises by being aggregated and let in this manner is similar to offering resort style accommodation. That is, more or less self contained accommodation is offered within the larger precincts of the resort.

[44] Investment in residential premises that is let out on a regular or continuous basis is an enterprise for the purposes of ABN and GST registration, but does not, of itself require registration (section 9-20).

stay in a caravan or demountable home, or a permanent cabin or villa on the site.[45] Alternatively, they may pay a fee to park their own caravan or demountable home on a site. All of these supplies are taxable under the basic rules, but may also receive concessionary treatment under Division 87.

131. When you provide a site for a caravan or demountable home for 28 days or more, it is a supply of long term accommodation. It does not matter whether your site is occupied for the whole period of the stay. If you supply long term accommodation in a caravan or home park, you may choose to input tax all of your supplies of long term accommodation.[46] See also '*Long term accommodation in caravan parks and camping grounds'* at paragraph 146.

132. 'Home parks' in which sites for demountable homes are rented and the homes themselves either rented or occupied by their owners are commercial residential premises under paragraph (f), as they are similar to caravan parks.[47] The same rules apply to home parks as to caravan parks. The rental of a site is subject to GST, as is the rental of a home *in situ*.

133. [Deleted]

Example 7

> *Anatole operates Iota Caravan Park. The park provides tent sites, caravan sites and long term caravan or demountable home sites in designated zones. The long term sites are hired continuously by persons who make the site their long term residence or wish to leave their caravan or demountable on the site for weekend or holiday use. The park provides communal laundry and ablution blocks for guests. Power, water and sewerage are connected to the long-term sites.*
>
> *Iota's premises are commercial residential premises by virtue of paragraph (e) of the definition. However, where Anatole elects not to use Division 87, he is entitled to treat all of the supplies of long term accommodation (that is, site bookings of 28 days or more) as input taxed. The relevant inputs are those that relate to the zone in which the long term resident sites lie. When he supplies short-term accommodation, he charges GST under the basic rules at 10% of the value of the supply.*

[45] In this Ruling the term 'demountable' is used to cover moveable dwellings, such as pre-fabricated or relocatable homes.
[46] Section 87-25.
[47] Definition of 'commercial residential premises', section 195-1.

Part three: Long-term accommodation in commercial residential premises

134. The GST payable on supplies of long term commercial accommodation in commercial residential premises is calculated on a reduced value.[48] For the concessions to apply, several conditions must be met:

- the supply must be a taxable supply;
- the premises in which the supply of accommodation takes place must be commercial residential premises;
- the supply must be of commercial accommodation;
- the supply must be made to an individual; and
- the commercial accommodation must be provided in the same premises for a continuous period of 28 days or more.

135. Where premises are predominantly for long term accommodation, the value of the supply of accommodation for 28 days or more is reduced for GST purposes to 50% of its price.[49]

136. Where premises are not predominantly for long term accommodation, the value of the part a long term stay that is for the 28th and any additional days, is reduced for GST purposes to 50% of its price.[50]

Meaning of 'commercial accommodation'

137. Under section 87-15, a right to occupy premises includes the right to occupy any part of commercial residential premises. This includes a site in a caravan park or camping ground, or the hire of a ship.

138. In the case of caravan parks and camping grounds, the 'premises' in question are the grounds themselves, rather than any specific accommodation in buildings. Thus, an owner who places their caravan on a site for a fee is occupying the premises. Whether or not they are physically occupying their caravan is, in this particular case, immaterial.

Meaning of 'provided to an individual'

139. To attract the special treatment, under sections 87-5 or 87-10, long term accommodation must be 'provided to an individual'.

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[48] Sections 87-5 and 87-10.
[49] Section 87-5.
[50] Section 87-10.

'Individual' is defined to mean a natural person.[51] A taxable supply of commercial accommodation may be provided to an individual in cases where that individual is not the *recipient* of the supply.

140. This does not prevent corporate entities from receiving concessionary treatment for acquisitions of long term accommodation. This is because the use of the term 'provided to an individual' is intended simply to identify the period of stay of each natural person whom receives accommodation.

141. For example, where a corporation books and pays for long-term accommodation for an employee, the employee is being provided with the accommodation, while the company is the recipient of the supply. The company is then able to receive the concessions in Division 87.

142. The provision of commercial accommodation to an individual may be to that individual alone, or to that individual together with others; as long as the others are not provided with the accommodation at their own expense.[52]

Example 8

> *Theta Pty Ltd books and pays for three months accommodation at the Lambda Hotel for an employee, Sylvia. Her husband Mark joins her for weekends in the hotel. There is no additional charge for Mark.*
>
> *The Lambda is providing long-term accommodation to an individual, Sylvia. Mark's weekends are not charged for and are not counted as stays. Theta Pty Ltd is the recipient of the supply.*

143. Section 87-20 only applies to individual stays of 28 days or more. Where employees stay sequentially under the same booking by the employer, it is each individual's length of stay, not the combined length of all the stays, that is taken into account in determining whether there is a long term stay. This is demonstrated in Example 9.

Example 9

> *Theta Pty Ltd books another room for six weeks. The room is for the use of other employees. Raj stays in this room for two weeks; it is then occupied by Ross for the next two weeks; then Kevin for a further two weeks.*

[51] Definition of 'individual', section 195-1.
[52] Paragraphs 87-20(1)(a) and (b).

The supply to Theta Pty Ltd is for six weeks but the supplies to Raj, Ross and Kevin are of the provision of commercial accommodation to separate individuals. The six-week booking by Theta Pty Ltd is not a supply of long term accommodation as none of the individuals occupy a room for 28 days or more. Division 87 does not apply.

Meaning of 'long-term accommodation'

144. For the purposes of section 87-20, an individual who is provided with long-term accommodation in a hotel, motel, inn, hostel, boarding house, caravan park, camping ground or similar premises does not need to physically occupy the premises for the entire duration of the stay for the stay to be continuous. For example, a guest who occasionally leaves the premises overnight to travel, will maintain continuity of the stay if they are charged for the days they are absent.

145. Commercial accommodation provided to an individual for a continuous period commences on the day on which the individual is first provided with the commercial accommodation, including any day prior to 1 July 2000.[53]

Long term accommodation in caravan parks and camping grounds

146. It is common practice for caravan owners to leave their caravan at a caravan site for an extended period. For this they pay site fees regularly and have the right to use their caravan whenever they choose.

147. In the case of a caravan park, the right to occupy is granted when a site is hired for a caravan, even if the caravan is left unoccupied for most of the time. This effectively means that the special GST treatment for long term stays applies to supplies made to those who leave their caravans on site at a particular park.

148. Where the operator moves a caravan from one site to another, but effectively maintains the booking, this is a continuous site rental. However, if the owner of a caravan and the park operator agree to 'store' the caravan in another area of the park for an agreed fee, the continuity of the site rental ceases when the caravan is moved. The storage of the caravan is a separate supply, subject to the basic rules.

149. The concessions in Division 87 apply to the base tariff you charge for the hire of a site. If your tariff usually includes things like linen and electricity, then the whole of the tariff is subject to the

[53] Section 87-20.

concessions in Division 87.[54] If, however, you charge extra for these things they are subject to GST at the rate of 1/11 of the GST inclusive price. There is no reduction in this liability, for supplies of long term accommodation.

Example 10

Florinda owns a caravan park where caravan owners are permitted to leave their caravans on site and occupy them whenever they choose. She charges a GST inclusive weekly rate for the sites of $110 ($100 plus $10 GST). She also hires linen, blankets and appliances like televisions and toasters for an additional charge.

To work out the GST applicable to Florinda's long-term site-hire rate (assuming that the caravan is on site for 28 days or more), Florinda first takes 50% of what the normal fee would be, that is, 50% of $110 or $55. The GST is 10% of this or $5.50. Florinda's long-term charge is $105.50 ($100 plus $5.50 GST). The GST for linen, blanket and appliance hire is 1/11 of the price she charges for these supplies, regardless of the period the site is occupied.

Meaning of 'predominantly for long-term accommodation'

150. If a large proportion of the individuals you accommodate stay for 28 days or more, you should work out whether your premises are **predominantly for long-term accommodation,** so that you may apply the special treatment in section 87-10. Where at least 70% of the individuals to whom you supply commercial accommodation stay for 28 days or more, your premises are predominantly for long-term accommodation.[55]

151. One of the following methods or a combination of both may assist you in calculating occupancy:

(a) the actual occupancy of your premises for the twelve months preceding the month for which the booking is made; or

(b) your projected occupancy for the twelve months following the month in which the booking is made.

152. If it is inappropriate to use either of these methods you may adopt a reasonable alternative.

[54] Section 87-15: these things are included in the supply of 'commercial accommodation', to which the concessions apply.
[55] Subsection 87-20(3).

153. When looking at actual or projected occupancy, examine the number of supplies of accommodation, or the number of bookings that are for 28 days or more, rather than the number of people in each room. You may include bookings made by corporate entities for individuals, provided each individual stays for 28 or more days.

154. Where there are two or more individuals sharing a room, who are charged separately, you may count each of them in calculating the 70% figure. This may occur where rooms are booked on an independent twin-share basis or, if you operate dormitory style commercial residential premises, such as a youth hostel.

The option to input tax supplies of long term accommodation

155. Section 87-25 allows you the option not to apply the special rules to your supplies of long term accommodation. If you choose not apply the special rules, your supplies of long term accommodation are input taxed, under paragraph 40-35(1)(b). Any supplies of accommodation that you make of 27 days or less, will be taxable under the basic rules.

156. If you elect to input tax your supplies of long term accommodation, you must input tax all supplies of commercial accommodation for 28 or more days. Your election remains in force for 12 months after the day on which you first made the election. However, after 12 months or more, you may revoke your choice. If you do this, you must then tax all your supplies of long term accommodation according to the special rules, for the next 12 months after the day you revoked your choice.

157. You do not need to advise the Australian Taxation Office about these choices.

Definitions

158. The following terms are defined for the purposes of this ruling. Terms with asterisks are defined in section 195-1.

Commercial accommodation

159. **commercial accommodation** means the right to occupy the whole or any part of *commercial residential premises, including, if it is provided as part of the right so to occupy, the supply of:

(a) cleaning and maintenance; or

(b) electricity, gas, air-conditioning or heating; or

(c) telephone, television, radio or any other similar thing.[56]

Commercial residential premises

160. **commercial residential premises** means:

(a) a hotel, motel, inn, hostel or boarding house; or

(b) premises used to provide accommodation in connection with a *school; or

(c) a *ship that is mainly let out on hire in the ordinary course of a *business of letting ships out on hire; or

(d) a ship that is mainly used for *entertainment or transport in the ordinary course of a *business of providing ships for entertainment or transport; or

(da) a marina at which one of more of the berths are occupied, or are to be occupied, by *ships used as residences; or

(e) a caravan park or a camping ground; or

(f) anything similar to *residential premises described in paragraphs (a) to (e).

However it does not include premises to the extent that they are used to provide accommodation to students in connection with an *education institution that is not a *school.[57]

Education institution

161. **education institution** has the meaning given by subsection 3(1) of the *Student Assistance Act 1973.*

Enterprise

162. An **enterprise** is an activity or series of activities, done:

(a) in the form of a business; or

(b) in the form of an adventure or concern in the nature of trade; or

(c) on a regular or continuous basis in the form of a lease, licence or other grant of an interest in property; or…[58]

[56] Section 87-15.
[57] Section 195-1.
[58] Subsection 9-20(1).

Floating home

163. **floating home** means a structure that is composed of a floating platform and a building designed to be occupied as a residence that is permanently affixed to the platform, but does not include any structure that has means of, or is capable of being readily adapted for, self-propulsion.[59]

Input taxed

164. If a supply is input taxed, then no GST is payable on the supply, and there is no entitlement to an input tax credit for anything acquired or imported to make the supply.

Long-term accommodation

165. (1) **long-term accommodation** is provided to an individual if *commercial accommodation is provided, for a continuous period of 28 days or more, in the same premises:

(a) to that individual alone; or

(b) to that individual, together with one or more other individuals who:

(i) are also provided with that commercial accommodation; and

(ii) are not provided with it at their own expense (whether incurred directly or indirectly).

(2) For the purpose of working out the number of days in the period for which an individual is provided with *commercial accommodation:

(a) count the day on which he or she is first provided with the commercial accommodation; and

(b) disregard the day on which he or she ceases to be provided with commercial accommodation.[60]

New residential premises

166. **new residential premises** means *residential premises that:

[59] Section 195-1.
[60] Subsections 87-20(1) and (2).

(a) have not previously been sold as residential premises and have not previously been the subject of a *long-term lease; or

(b) have been created through *substantial renovations of a building; or

(c) have been built, or contain a building that has been built, to replace demolished premises on the same land.

To avoid doubt, if the residential premises are *new residential premises because of paragraph (a) or (c) of this definition, the new residential premises include land of which the new residential premises are a part.[61]

Predominantly for long-term accommodation

167. *Commercial residential premises are **predominantly for long-term accommodation** if at least 70% of the individuals who are provided with *commercial accommodation in the premises are provided with commercial accommodation as *long-term accommodation.[62]

Real property

168. **real property** includes:

(a) any interest in or right over land; or

(b) a personal right to call for or be granted any interest in or right over land; or

(c) a licence to occupy land or any other contractual right exercisable over or in relation to land.[63]

Recipient

169. **recipient**, in relation to a supply, means the entity to which the supply was made.[64]

Residential premises

170. **residential premises** means land or a building that:

(a) is occupied as a residence; or

[61] Section 195-1.
[62] Subsection 87-20(3).
[63] Section 195-1.
[64] Section 195-1.

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

and includes a *floating home.[65]

Ship

171. **ship** means any vessel used in navigation, other than air navigation.[66]

Taxable Supply

172. You make a **taxable supply** if:

(a) you make the supply for *consideration; and

(b) the supply is made in the course or furtherance of an *enterprise that you*carry on; and

(c) the supply is *connected with Australia; and you are *registered, or *required to be registered.

However, the supply is not a *taxable supply to the extent that it is *GST-free or *input taxed.[67]

Detailed contents list

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[65] Section 195-1.
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Commissioner of Taxation
21 June 2000

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Related Rulings/Determinations:
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- camping ground
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