GSTR 2009/2EC - Compendium

 This cover sheet is provided for information only. It does not form part of *GSTR 2009/2EC - Compendium*

Ruling Compendium – GSTR 2009/2

This is a compendium of responses to the issues raised by external parties to draft GSTR 2008/D3 – Goods and Services Tax: partitioning of land

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1	Recommended the inclusion of additional examples of circumstances in which an entity does not: • carry on an enterprise; or • make a supply in the course or furtherance of an enterprise it carries on; in relation to supply under a partition.	Agreed. New Example 6 has been added at paragraphs 79 to 85 of the Ruling to further illustrate the concepts of carrying on an enterprise and in the course or furtherance of an enterprise in relation to a partition. Example 5, Rohan and Roma, has also been amended to specify that Roma does not carry on an enterprise prior to the purchase of the land, as tenant in common with Rohan. A footnote reference to the relevant paragraphs of Miscellaneous Taxation Ruling MT 2006/1 has also been added. These paragraphs in MT 2006/1 provide further examples of when an entity is carrying on an enterprise in relation to real property transactions. The footnote reference is incorporated at paragraph 60 of the Ruling.
2	Sought clarification of understanding of 'carry on an enterprise', 'in the course or furtherance of an enterprise carried on' and 'consideration for a supply' in relation to the following example of a partition. Several related entities purchase land as co-owners with the intention to develop the land and construct residential premises. The entities have agreed to partition the residential premises such that each acquires sole ownership of a residential premise. Some of the entities intended to reside in the residential premises acquired whereas other entities intended to sell.	New Example 6 has been added at paragraphs 79 to 85 of the Ruling to further illustrate the concepts of carrying on an enterprise and in the course or furtherance of an enterprise in relation to a partition. In the specific circumstances described at paragraph 71 of the Ruling, the partition of the land would not be connected with, and would not be in the course or furtherance of an enterprise carried on by those entities that intend to live in the residential premise that they acquire by way of partition. In contrast, those entities that intend to sell the residential premises for a profit are carrying on an enterprise (refer to paragraph 270 of MT 2006/1). The partition and relevant supplies will be in connection with, and in the course or furtherance of an enterprise carried on by those entities.

Issue No.	Issue raised	Tax Office Response/Action taken
		The consideration for the supply of an interest in real property by a co-owner by way of partition is the GST inclusive market value of all the other co-owners interests in the part of the property acquired by a co-owner plus any owelty money received in respect of the partition (refer to paragraph 93 of the Ruling).
3	Sought clarification of the tax invoice requirements in relation to a partition between participants of a joint venture (where the joint venture does not constitute a partnership).	New paragraphs 143 to 144 have been added to the Ruling to explain the tax invoice requirements in relation to a partition between participants of a joint venture. If the taxable supplies of real property under a partition by the participants in the joint venture are solely supplies in which the margin scheme has been applied then, in accordance with section 75-30 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act),[1] the participants are not required to issue tax invoices to each other. If, however, the supplies by the participants are not solely supplies under the margin scheme or the participants do not apply the margin scheme, then, pursuant to section 29-70 of the GST Act, the participants will be required to issue tax invoices for the supplies to each other within 28 days of a request by the participant acquiring the real property by way of partition.
4	Sought confirmation of understanding that the entire interest in the land or stratum unit was supplied by the partnership to a partner.	Further clarification of the making of an in specie distribution of land or stratum units by way of partition by a partnership to a partner has been included at paragraphs 149 to 154 of the Ruling. Division 184 of the GST Act applies such that the partition of land by a partnership will result in the partnership making a supply of the entire interest in the land or stratum unit to the partner.
5	Recommended the inclusion of an example to illustrate the consideration for the in specie distribution of the land or stratum unit by the partnership to a partner.	Paragraphs 85A to 86 and paragraphs 135A to 135G of GSTR 2003/13 provide an explanation of the consideration for an in specie distribution by a partnership to a partner.

[1] All legislative references are to the GST Act unless otherwise indicated.

Issue No.	Issue raised	Tax Office Response/Action taken
6	With reference to Example 8 (now Example 9) in the draft Ruling, what happens in the following circumstances. If immediately after partition, CrystalCo sold Lot 1 to a third party for the market price of $210,000 (and it was agreed that the margin scheme would be applied): 1. Is the sale of the townhouse an input taxed supply, being the second sale of residential premises? 2. Can the margin scheme be applied to the sale by CrystalCo? 3. What is the margin for the supply? Is it the sale price ($210,000) minus the sum of the purchase price of ClearCo's interest ($104,000) and the value of CrystalCo's interest in the townhouse as at 1 July 2000 of CrystalCo's ($30,000)?	This example has been revised to refer to a simplified set of facts. The Commissioner has revised his view in relation to the sale of a part interest in land that comprises residential premises. The Commissioner's revised view has been incorporated into GSTR 2003/3 by way of an addendum to GSTR 2003/3 that was published concurrently with this Ruling. The Commissioner's revised view is now set out at paragraphs 52 to 52C of GSTR 2003/3. This revised view is also reflected in paragraphs 171 to 182 of the Ruling. In the circumstances described in the comments, based on the Commissioner's view in paragraphs 171 to 182 of the Ruling, the sale of the townhouse by CrystalCo will partly be a taxable supply of new residential premises in relation to the part not acquired under partition (where all of the requirements of section 9-5 of the GST Act are satisfied) and partly an input taxed supply of residential premises with respect to the part acquired under the partition. The margin scheme may be applied by CrystalCo to calculate its GST liability on the sale of the part of the townhouse that is a taxable supply of new residential premises where the requirements of section 75-5 of the GST Act are satisfied.
7	The Commissioner has released two draft rulings dealing with the application of the margin scheme to supplies made by general law partnerships (GSTR 2008/D2) and the GST treatment of partitions (GSTR 2008/D3). The second of these draft rulings contains some nasty surprises.	It is acknowledged that, in accordance with the views in the Ruling, the GST treatment of a partition of land is different to the treatment for Stamp Duty purposes. This differing treatment results from the varying policies and principles underlying the GST and Stamp Duty laws. As discussed in *HP Mercantile Pty Ltd v Federal Commissioner of Taxation* [2005] FCAFC 126; [2005] ATC 4571; 60 ATR 106 GST is a system of value added taxation. It is a multi-stage tax that allows for tax payable on the supply of something by each supplier in the supply chain. The system of input tax credits ensures that the tax payable by each supplier is limited to the value added by that supplier.

Issue No.	Issue raised	Tax Office Response/Action taken
	The author later advised that the 'nasty surprises' comment was directed at accountants and other advisors who may link the GST treatment to the Stamp Duty treatment (where State Acts may provide for stamp duty concessions in relation to partitions). He stated that these advisors need to be aware that the GST treatment is based on recognition of supplies as taxable supplies if the relevant requirements are met.	In contrast, Stamp Duty is a tax imposed on dutiable transactions (as defined in the relevant Acts), including the transfer of dutiable property (as defined in relevant Acts). The Stamp Duty laws provide for a specific statutory concession with respect to the imposition of Stamp Duty in the context of a partition of real property. The GST legislation does not afford such a concession.
8	A significant issue which has been omitted from the draft ruling probably has the most significant implication that residential developers will ask when considering the draft ruling. Take Example 7 (now Example 8). What happens when RockCo and HardPlaceCo each sell their completed townhouses to third party purchasers? If the earlier partition has been a taxable supply for GST purposes (as per the draft ruling) and the margin scheme has been applied to that partition (because the Commissioner accepts that it's a 'sale'), then the subsequent sale by each of RockCo and HardPlaceCo must be an input taxed supply under section 40-65 of the GST Act? Applied literally, the subsequent sale will not be of new residential premises because it has 'previously been sold as residential premises'. There may be problems here, because: 1. If the subsequent sale is input taxed, then the problem (for the ATO) is that only 50% of the 'margin' has been taxed;	Paragraphs 171 and 175 of the Ruling now clarify that the approach set out at point 2 would be the Commissioner's view in these circumstances. In the example referred to in the comments, the transfer of each participant's interest in the townhouses to the other is a sale of new residential premises to the extent of the interest supplied by each participant. This is because, pursuant to the definition of 'residential premises' in section 195-1, the interest in the townhouses sold by RockCo and HardPlaceCo is in respect of premises that are intended to be occupied, and are capable of being occupied, as a residence or for residential accommodation. A subsequent sale of a townhouse by either RockCo or HardPlaceCo would therefore be partly an input taxed supply of residential premises in respect of the interest that has previously been sold as new residential premises under the partition and partly a taxable supply of new residential premises with respect to the interest that has not previously been sold as new residential premises under the partition.

Issue No.	Issue raised	Tax Office Response/Action taken
	2. Alternatively, do you say the subsequent sale is taxable under the margin scheme as to the remaining 50% (which was not supplied under the partition), and the part that has previously been supplied under the partition is input taxed. (This seems to get the correct result in terms of the policy of the law); or 3. Alternatively, do you say the subsequent sale is taxable as to 100%, in which case this would seem to produce anomalous results under the margin scheme where you are taking the consideration paid under the partition (as to 50%), and adding to it 50% of the consideration for the original acquisition. (If you do anything other than this, it produces double taxation under the margin scheme).	
9	The reference in Example 7 (now Example 8) to January 2003 should be January 2004. (The reason being that as a matter of property law and/or common practice, you typically cannot partition until after completion of construction).	Agreed. The example has been amended accordingly.
10	One general theme from the draft is that it highlights circumstances where the Commissioner's position diverges from the income tax position (in some cases), and follows the income tax position (in other cases). Unfortunately though, the relevance (or otherwise) of the income tax position is not properly addressed in this Ruling.	It is agreed that the treatment of a partition may vary under the various taxes. These differences in treatment are a result of the differences in the underlying policies and principles of each of the taxes. The purpose of this Ruling is to articulate the Commissioner's view of the treatment of a partition for the purposes of the GST legislation. It is noted that the income tax legislation, in the context of a partition, may allow for the deferral of tax until the time of ultimate sale. However, there is no legislative provision for such a deferral in the GST legislation. It is considered that the view in the Ruling is consistent with the underlying scheme of the GST Act such that GST applies to the value added by each supplier in the supply chain.

Issue No.	Issue raised	Tax Office Response/Action taken
	The headline story from GSTR 2008/D3 is that the Commissioner considers that a partitioning of land will ordinarily constitute a taxable supply for GST purposes. This is likely to create cashflow issues for property developers, with GST liability typically arising upon practical completion of the project – well before the developer has received any proceeds from the sale of the development. The approach in the draft ruling highlights fundamental differences between the various tax treatments of partitions, namely: • stamp duty, under which most States and Territories exempt partitions from ad valorem duty; • income tax, which allows most taxpayers (holding trading stock) to make an election under section 70-100 of the *Income Tax Assessment Act 1997* (ITAA 1997), the practical effect of which is to defer tax until ultimate sale; • CGT, with recent case law (AAT Case [2007] AATA 1322, *Re Johnson and FCT* (2007) 66 ATR 839, reported at 2007 WTB 21 [899]) affirming the view that CGT is triggered when a partition arises and the absence of any general form of exemption or roll-over relief.	It is acknowledged that the incidence of GST at the point of partition results in a GST liability arising at a time prior to cash sale proceeds becoming available from which the relevant GST liability can be paid. However, this issue is not limited to the context of the partitioning of land. In all circumstances involving barter transactions it is likely that a GST liability will arise before any proceeds from a subsequent sale have been received. It is a feature of the GST legislation that consideration includes non-monetary consideration. See also the response to issue 7 in relation to stamp duty.

Issue No.	Issue raised	Tax Office Response/Action taken
11	The decision to treat a partition, whether by agreement or court-ordered, as a taxable supply seems consistent with the Commissioner's view of supplies already expressed in GSTR 2006/9. The Commissioner has again taken the opportunity to reinforce his view that a supply merely requires some act on the part of the 'supplier', notwithstanding that the act may simply be in compliance with a court order and not voluntary.	The Commissioner notes the comments. It is agreed that the views in the Ruling are consistent with the views in relation to supplies in GSTR 2006/9.
	The Commissioner's broad view that a partition is eligible for the margin scheme represents a sensible approach that is in accordance with the intended purpose and application of the margin scheme. In our view, the alternative argument that a partition is not eligible for the margin scheme would have been at odds with much of the current provisions, which already allow the margin scheme to apply to supplies which do not meet the strict legal definition of a 'sale' (for example supplies between members of a GST group/joint ventures).	The Commissioner notes the comments.
	One significant issue the Commissioner does not appear to have touched on is whether the partition of a parcel of land, on which the co-owners have developed residential premises, is considered to be the first sale of new residential premises, so that subsequent sales are input taxed for GST purposes.	***Co-owners and joint venture participants*** Based on the Commissioner's view in paragraphs 171 to 182 of the Ruling (see also the response to comment 19), the supply of a part interest in land containing residential premises would be a supply of new residential premises to the extent of the interest supplied. This is because, pursuant to the definition of 'residential premises' in section 195-1, the interest sold is in respect of premises that are intended to be occupied, and are capable of being occupied, as a residence or for residential accommodation.

Issue No.	Issue raised	Tax Office Response/Action taken
	Example 7 (now Example 8) from the draft ruling gives the example of RockCo and HardPlaceCo developing 2 townhouses on 2 co-owned lots. RockCo takes Townhouse 1 and HardPlaceCo takes Townhouse 2. Noting that each co-owner makes a supply of 50% of their respective interests in the land on partition, the question that arises is whether the supply of a 50% interest in a parcel of land containing a townhouse is considered to be the supply of new residential premises. If the answer to this question is yes, the subsequent supply of the 100% interest in the land containing the townhouse will be input taxed, even though GST will have only been paid on 50% of the margin. Alternatively, if the supplies under partition are not the supply of new residential premises, there is the potential for double taxation due to the recognition of an earlier GST liability on partition. Given this issue will be of interest to a number of residential property developers, further practical guidance is required from the Commissioner on this point.	A subsequent sale of the whole of the residential premises would therefore be partly an input taxed supply of residential premises in respect of the interest that has previously been sold as new residential premises under the partition and partly a taxable supply of new residential premises with respect to the interest that has not previously been sold as new residential premises under the partition. Paragraph 175 of the Ruling clarifies that in working out the margin for the purposes of the margin scheme an apportionment of the consideration for the supply between the taxable and input taxed parts is required. The paragraph also explains that the acquisition consideration is the consideration for the part of the land held prior to the partition at the time it was originally acquired. This view does not result in 'double taxation'. ***Partnerships*** In contrast, an in specie distribution of an interest in land by a partnership to a partner would constitute the first sale of new residential premises. This is because the partnership supplies the whole interest in the real property when it makes the in specie distribution to the partner. The subsequent supply of the real property by the partner would therefore be an input taxed supply. (See paragraphs 183 to 184 of the Ruling.)
	One consequence of the Commissioner's general approach in the draft ruling is that partitions of land are likely to have a beneficial impact on taxpayers seeking decreasing adjustments under Division 129. This may arise in circumstances where a developer constructs housing on land for the purposes of letting it upon completion. Any intervening partition should trigger a significant decreasing adjustment (or input tax credit entitlement), based on the value-based apportionment formula generally applied by the Commissioner to property transactions.	Agreed. The analysis in the situation described is correct.

Issue No.	Issue raised	Tax Office Response/Action taken
12	A partition does not arise under a joint venture in circumstances where the participants have agreed to take a share of the output as there is no co-ownership. The participants are 'bare trustees' in respect of their interests in the land which they intend not to hold after the partition. In other words, each participant holds bare legal title in the land on trust for the other participants to the extent of the interests in the land to be subdivided and transferred to the other participants. On this analysis, and in applying paragraph 64 of GSTR 2008/3, the transfer of a participant's interest in the subdivided land to another participant would not be a taxable supply as the transfer is not made in the course of an enterprise carried on by the co-owner, as bare trustee, in relation to the trust property.	It is acknowledged that there may be some circumstances that result in the existence of a bare trust arrangement between joint venture participants. However this will only be the case in very specific factual scenarios. Therefore the Commissioner's views in relation to real property held under a bare trust arrangement in GSTR 2008/3 will not have broad application to circumstances involving the partitioning of land between co-owners.
13	A partition does not arise under a partnership as a partner in a partnership cannot deal with the interest it has in the property of the partnership. It is an in-specie distribution of the property from the partnership to the partner.	It is agreed that for the purposes of the GST Act it is the partnership that makes an in-specie distribution of the property from the partnership to the partner. See response to comment 4.

Issue No.	Issue raised	Tax Office Response/Action taken
	An in-specie distribution of property by a partnership or trust cannot be said to be made in the course or furtherance of an enterprise the partnership carries on. The view is consistent with common law and income tax law. For instance, in an income tax context, an in specie distribution of property held by a partnership as trading stock is generally treated as having been disposed of 'outside the ordinary course' of a business under section 70-90 of the ITAA 1997. Yet despite this, the Commissioner says that the same in specie distribution would be 'in the course or furtherance' of an enterprise for GST purposes. It is submitted that a more consistent approach would see the Commissioner applying the change of creditable purpose provisions in Division 129 to an in specie distribution of property by a partnership to a partner rather than applying section 9-5 and making it a taxable supply.	The Commissioner does not consider that an analogy can be drawn between the expression 'in the course or furtherance of an enterprise' as used in paragraph 9-5(b) with the expression 'the ordinary course of a business' as referred to in section 70-90 of the ITAA 1997. The Commissioner considers that the phrase 'in the course or furtherance of an enterprise' is a broader concept than 'the ordinary course of business'. The Commissioner considers that a supply of an asset by way of an in specie distribution may be 'in the course or furtherance of an enterprise' for GST while being 'outside the ordinary course of a business' for income tax. See response to issue 7.
14	In a practical sense, if a partition of land is a taxable supply, it effectively brings forward the GST liability to the point of partition. It is said that this is inconsistent with the legislative intent and purpose of the GST Act in that it was intended that the GST liability should only apply at the point the real property enters final private consumption. This is likely to create cashflow issues for property developers in that there may not be cash available to pay the tax at the point of partition.	***Co-owners and joint venture participants*** The Commissioner acknowledges that it may be perceived that the approach in the Ruling brings forward the incidence of tax to the point of partition for co-owners or participants in a joint venture. The approach, however, is consistent with the general scheme of the GST legislation with GST being a multistage tax applying to the value added by each supplier in the supply chain.

Issue No.	Issue raised	Tax Office Response/Action taken
		It is also acknowledged that the incidence of GST at the point of partition results in a GST liability arising at a time prior to cash sale proceeds becoming available from which the relevant GST liability can be paid. However, this issue is not limited to the context of the partitioning of land. In all circumstances involving barter transactions it is likely that a GST liability will arise before any proceeds from a subsequent sale have been received. It is a feature of the GST legislation that consideration includes non-monetary consideration. ***Partnerships*** Similar to the case with co-owners and joint venture participants, a partition of land in the context of a partnership will result in GST applying at the point of partition. The difference in the partnership scenario being that this will be a supply of residential premises and the first sale of new residential premises. Therefore, any subsequent sale of the premises by the partner that acquires the premises from the partnership will be an input taxed supply of residential premises. Based on the above analysis, in a partnership context, it has been suggested that the view in the Ruling means that GST is not collected on the full value added when the residential premises enter final consumption. The outcome that the in-specie distribution of newly constructed residential premises by a partnership to a partner is the first sale of new residential premises is not a direct result of the view in the Ruling. This outcome results from the fact that the GST Act treats a partnership as an entity separate from its individual partners. In some cases the distribution by the partnership to an individual partner will be the point at which the new residential premises enter final consumption.

Issue No.	Issue raised	Tax Office Response/Action taken
15	The position stated in GSTR 2008/D3 is, in our view, materially incorrect at law and inconsistent with the ATO's position in an income tax context which recognises that partitions do not occur 'in the ordinary course of business' – refer to subsections 70-90 and 70-100 of ITAA 1997. The ATO's position is, in our respectful view, also inconsistent with the intended policy of the law, which sees the partition constituting the first sale of new residential premises rather than the sale to the end consumer.	See responses to issues 12, 13 and 14.
	The position described in GSTR 2008/D3 is unlikely to be followed in practice given that the ATO's stance stands in stark contrast to the position under income tax law, and under stamp duty law in each jurisdiction (which grants an exemption from ad valorem duty, at least to the extent the proportionate interests are unchanged).	The Commissioner acknowledges that there are fundamental differences between the treatment of a partition under the various taxes. This is because the underlying policies and principles of the each of the taxes are not the same. See also the response to issue 7.
	The ATO needs to confirm in its ruling that supplies subsequent to a partition of new residential premises will be input taxed for GST purposes.	See response to issues 8 and 11. In the case of a partition of new residential premises between co-owners or joint venture participants the subsequent sale of the whole of the residential premises by the co-owner or joint venture participant will partly be a taxable supply of new residential premises and partly be an input taxed supply of residential premises.

Issue No.	Issue raised	Tax Office Response/Action taken
16	The outcomes suggested by GSTR 2008/D3 will raise serious cash flow issues for property developers, particularly in the SME sector, and lead to significant levels of non-compliance because the incidence of tax occurs when the developer can typically least afford it from a cash flow perspective. In short, the developer will not usually have the cash available to meet its GST liability at the point of partition. Furthermore, it places even greater reliance on valuations under the margin scheme, which have already proved to be contentious. The ATO's approach will also potentially narrow the tax base because the GST liability will typically be based on the value at practical completion, rather than the arm's length purchase price paid on ultimate sale to the end consumer.	See response to issue 14. The Commissioner also acknowledges that the approach in the Ruling necessitates a requirement for the valuation of the interests in the real property supplied by way of a partition. For the purposes of the GST law, where the consideration for a supply is non-monetary, the GST inclusive market value of that consideration is used to work out the price and value of the supply. The Commissioner has outlined the reasonable methods for determining the GST inclusive market value of non-monetary consideration in GSTR 2001/6. This Ruling also provides guidance as to when this valuation should be done. This information has been added as a footnote to paragraphs 97 and 114 of this Ruling. ***Co-owners and joint venture participants*** The Commissioner does not consider that his approach will narrow the tax base. The supply of the part interest in real property by way of a partition will be a supply of residential premises to the extent of the interest supplied. The subsequent sale of the whole of the residential premises by a co-owner or participant in a joint venture may partly be a taxable supply of new residential premises (where the requirements of section 9-5 of the GST Act are met) and partly an input taxed supply residential premises. ***Partnerships*** The tax base may be narrowed in the context of a partnership to the extent that GST is not collected on the full value added when the residential premises enter final consumption. However, the outcome that the in-specie distribution of newly constructed residential premises by a partnership to a partner is the first sale of new residential premises is not a direct result of the view in the Ruling. This outcome results from the fact that the GST Act treats a partnership as an entity separate from its individual partners. In some cases the distribution by the partnership to an individual partner will be the point at which the new residential premises enter final consumption.

Issue No.	Issue raised	Tax Office Response/Action taken
17	One alternative option the Commissioner could consider (if he believes he is locked into applying the current approach) is deferring the attribution point for partitions of property to the point of ultimate sale. That would at least overcome the cash flow and valuation problem.	Section 29-25 of the GST Act provides a mechanism for the Commissioner to determine particular attribution rules in specified circumstances. The Commissioner does not consider that the partitioning of land falls within one of the specified circumstances described in subsection 29-25(2) of the GST Act. In addition, the Commissioner either cannot, or does not consider that the partitioning of land is an appropriate circumstance in which to exercise his powers of general administration under section 356-5 of Schedule 1 of the *Taxation Administration Act 1953*.
18	The ATO should not finalise GSTR 2008/D3 given that proposed amendments to the margin scheme provisions announced by the Federal Government in the 2008 Budget are likely to impact on this. Instead, it is requested the ATO to issue a rewritten draft of GSTR 2008/D3 once those amendments are introduced and enacted.	It is agreed that the Ruling is affected by the amendments. However, the Tax Office does not consider that re-issuing the Ruling as a draft Ruling is required. Reference to the amendments that received Royal Assent on 9 December 2008 has been incorporated into the Ruling at paragraphs 8, 110, and 140 to 141. A separate ruling that deals comprehensively with the amendments is scheduled for publication in July 2009.
19	The proposed change in view with regard to the sale of a partial interest in residential premises is considered a more appropriate interpretation and results in outcomes that actually make sense whereas the current interpretation results in what appears to be unintended consequences of selling partial interests in residential premises that are not new.	The Commissioner notes the comments. A change in the Tax Office's view with regard to the sale of a partial interest in residential premises has been incorporated at paragraphs 171 to 182 of the final Ruling, and by way of an addendum to GSTR 2003/3 (see paragraphs 52 to 52C of GSTR 2003/3).

Issue No.	Issue raised	Tax Office Response/Action taken
	An issue worth considering is the practical consequences of part sales back and forth. Take the following example: 'Entity A and Entity B construct new residential premises jointly as tenants in common. Entity B sells its share to Entity A upon completion which would be a taxable supply under both the current and proposed interpretation. Entity A now owns 100% interest in the residential premises, 50% is new residential premises. If Entity A then sells 20% to Entity C after 12 months, is this a taxable supply or an input taxed supply? Can Entity A make a statement to the effect that this 20% sale to Entity C represents part of the 50% previously purchased from Entity B and therefore is no longer new residential premises and input taxed? Would the ATO consider this sale partly taxable and partly input taxed on the basis that 50% of the whole premises is still new residential premises, and apply this percentage as an arbitrary apportionment of the 20% sold to Entity C making 50% of the 20% taxable while the other 50% input taxed?'	It is noted that the situation described in the example would arise in limited circumstances. The Commissioner will consider individual taxpayer's circumstances on a case by case basis.

Issue No.	Issue raised	Tax Office Response/Action taken
20	We support the proposed change in ATO view with regard to the sale of a partial interest in residential premises. For completeness, when the proposed view is released (for example by way of addendum to GSTR 2003/3), we ask that: • the ATO clarify the effective date for the proposed view; and • an example be included to show how the margin scheme would work on the sale of a partial interest in residential premises.	The Commissioner notes the comments. The related addendum to GSTR 2003/3 explains the Commissioner's view of the law as it applies both before and after its date of issue. Agreed. New Example 11 has been added at paragraphs 176 to 182 of the Ruling to illustrate how the margin scheme would apply to a subsequent sale of the whole of the residential premises.
21	There was general agreement with the outcomes resulting from the proposed view that a sale of a part interest in real property comprising residential premises could be characterised as a sale of residential premises to the extent of the interest sold. However there were concerns expressed in relation to aspects of the proposed analysis. These concerns were that the analysis may be construed by a reader as suggesting that the nature of the interest that an entity holds in real property comprising residential premises determines whether or not the premises are residential premises.	The Commissioner agrees that the nature of the interest that an entity holds in real property comprising residential premises should not determine the characterisation of those premises for the purposes of the GST Act. The analysis in the related addendum to GSTR 2003/3 focuses on the physical characteristics of the premises to determine whether or not a part interest in those premises is appropriately characterised as a sale of residential premises. Contextual support for the view in the addendum to GSTR 2003/3 is also drawn from the words 'to the extent' in subsection 40-65(2) in that they provide support for the view that a supply of real property (comprising residential premises) in its entirety may consist of both taxable and input taxed parts.