GSTR 2003/3DC - Goods and services tax: when is a sale of real property a sale of new residential premises?

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This document has been finalised by GSTR 2003/3.

There is a Compendium for this document: **GSTR 2003/3EC** .

Status: **draft for comment**

Draft Goods and Services Tax Ruling

Goods and services tax: when is a sale of real property a sale of new residential premises?

Relying on this draft Ruling

This is a draft consolidation outlining proposed changes to GSTR 2003/3 to reflect the Administrative Appeals Tribunal's (AAT's) decision in *Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation* [2022] AATA 4436. In particular, the updates reflect that the AAT stated that the 5-year period begins when premises become new residential premises. The Commissioner considers this is consistent with our longstanding view that the continuous 5-year period may commence any time since (or after) the premises become new residential premises. The Addendum which makes these changes, when finalised, will be a public ruling for the purposes of the *Taxation Administration Act 1953*.

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered if this draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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What this draft Ruling is about

1. This draft Ruling[A1] explains what is a 'sale' for the purposes of section 40-65 and when real property is new residential premises pursuant to section 40-75 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

[A1] For readability, all further references to 'this Ruling' refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.

Status: **draft for comment**

2. Whether goods and services tax (GST) is payable on a sale of real property will depend on many circumstances. One of these circumstances is whether or not real property is new residential premises. This Ruling deals with the circumstances in which residential premises are new residential premises. The sale of commercial residential premises is considered in Goods and Services Tax Ruling GSTR 2012/6 *Goods and services tax: commercial residential premises*.[1]

3. This Ruling does not consider supplies of residential premises by way of long-term lease under section 40-70 of the GST Act. However, to the extent that it is necessary to determine whether such premises are new residential premises for the purpose of paragraph 40-70(2)(b), this Ruling will apply.

4. This Ruling does not consider the sale of residential premises that are not real property. It does not consider the sale of a floating or a transportable home.

5. Certain terms used are defined or explained in the Definitions section of this Ruling.

6. All legislative references in this Ruling are to the GST Act, unless otherwise specified.

Date of effect

7. When finalised, this Ruling is proposed to apply to tax periods commencing both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

8. [Omitted.]

Background

9. Subject to two exceptions (being commercial residential premises and new residential premises), the sale by registered entities[2] of residential premises such as houses and units is input taxed, to ensure comparable treatment with owner-occupiers. The supply of residential premises is only input taxed to the extent that the premises are premises to be used predominantly for residential accommodation. For example, where a property consists of retail premises below and a separate residential flat above on a single title, there may be a mixed supply. The supply of the retail premises by a registered entity will be taxable and the supply of the flat may be input taxed. Where there is a mixed supply, the consideration will need to be apportioned as explained in Goods and Services Tax Ruling GSTR 2001/8 *Goods and services tax: Apportioning the consideration for a supply that includes taxable and non-taxable parts*.[4]

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[1] Whether a supply is made in the course or furtherance of an enterprise is dealt with in Miscellaneous Taxation Ruling MT 2006/1 *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number* and Goods and Services Tax Determination GSTD 2006/6 *Goods and services tax: does MT 2006/1 have equal application to the meaning of 'entity' and 'enterprise' for the purposes of the A New Tax System (Goods and Services Tax) Act 1999*?

[2] In this Ruling, 'registered entity' includes entities that are required to be registered. It should be noted that a single activity of developing and selling a property may be sufficient to require a person to be registered – see sections 9-20 and 23-5 and Division 188. See also MT 2006/1 and GSTD 2006/6.

[3] [Omitted.]

[4] Paragraphs 106 to 108 of GSTR 2001/8.

Status: **draft for comment**

10. The sale of new residential premises (whether it is a house or a unit) by a registered entity (for example, a builder or developer) in the course or furtherance of an enterprise it carries on is a taxable supply.

11. The sale of a person's private residential premises will not be subject to GST, even if the premises are new residential premises, unless the sale is in the course or furtherance of that person's enterprise[5] and the person is registered or required to be registered for GST.

12. Residential premises constructed by a builder or developer, who is registered for GST purposes or required to be registered, are subject to GST upon first sale. Where a developer purchases a commercial building, demolishes it and builds an apartment block, a supply of the apartment block or strata titled units in that block is treated as a sale of new residential premises and is subject to GST.

13. Sales of housing which has been used for residential accommodation before 2 December 1998 (either for rental income production or for owner occupation) are not subject to GST as new residential premises. The exceptions are where new residential premises are created through substantial renovations or are built to replace demolished premises on the same land.[6]

14. In addition, the GST Act provides that where residential premises are sold after five or more years of being rented continuously, they are not new residential premises and the sale, therefore, is an input taxed supply. An entity that is intending to rent out the residential premises is not entitled to claim input tax credits in respect of construction and acquisition costs of those premises.[7]

15. This Ruling contains a number of examples. An example may relate to a number of concepts discussed in several different parts of the Ruling. The examples appear at paragraphs 99 to 140 of this Ruling.

Ruling with Explanations

16. Sections 40-65 and 40-75 determine whether a particular supply of real property that is residential premises is an input taxed supply. To the extent that a sale of real property is not input taxed under these specific provisions, it is necessary to consider whether the supply is a taxable supply under the basic rules in section 9-5.

17. Subsection 40-65(2) states that a sale of residential premises is not input taxed to the extent that they are:

- commercial residential premises; or
- new residential premises other than those used for residential accommodation before 2 December 1998.

18. 'Sale of real property', 'sale' and 'sold' are not defined in the GST Act. The ordinary meaning of 'sale' is the transfer of, or agreement to transfer, property to a buyer for a price. For the purposes of section 40-65, we consider that 'sale' and 'sold' refer to the disposal of the land held in its entirety for consideration. The application of section 40-65 to residential premises means that 'sale' and 'sold' refer to the transfer of the full and complete ownership of land – that is, the maximum interest that the Crown has alienated – whether it is freehold or leasehold. The grant of an interest in property by way of lease, hire or

[5] Paragraph 244 of MT 2006/1 and paragraph 13 of GSTD 2006/6.
[6] Paragraphs 40-75(1)(b) and (c).
[7] Paragraph 11-15(2)(a).

licence, with the exception of long-term leases[8], is dealt with specifically by section 40-35 and does not fall for consideration under section 40-65.

19. For example, an entity purchases an apartment building and leases out those premises for a period of 10 years. It sells the premises subject to the existing lease. What has been sold is the freehold interest. As this has been previously sold, the sale is not a supply of new residential premises and is therefore an input taxed supply. The transfer of a leasehold interest in residential premises by a lessee is dealt with under section 40-35, and is not a sale for the purposes of section 40-65.

20. Subject to subsection 40-65(2), the sale of real property is input taxed, but only to the extent that the property is residential premises to be used predominantly for residential accommodation.[9] While the definition of 'real property' in section 195-1 includes a range of interests in, or rights over, or in relation to land[10], section 40-65 is limited to real property that is residential premises.

21. Where residential premises have been used only for the purpose of making input taxed supplies (that is, residential rental) because of paragraph 40-35(1)(a) for a continuous period of at least 5 years since the premises would otherwise have become new residential premises, they are no longer new residential premises. This is explained further in paragraphs 89 to 93 of this Ruling.

22. A supply of residential premises by way of sale is a taxable supply where all the following conditions are met:

- the residential premises are new residential premises as defined in section 40-75;
- the new residential premises were not used for residential accommodation before 2 December 1998[11];
- the supply is made for consideration[12];
- the supply is made in the course or furtherance of an enterprise that the vendor carries on[13];
- the residential premises are in the indirect tax zone[14]; and
- the vendor is registered, or required to be registered.[15]

23. A flowchart showing the GST treatment of the sale of residential premises by a registered entity in the course or furtherance of its enterprise is attached as Appendix 1 to this Ruling.

24. Subject to subsection 40-75(2), residential premises are new residential premises, as defined in subsection 40-75(1), if they:

(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

[8] 'Long-term lease' is defined in section 195-1; see paragraph 143 of this Ruling.
[9] Subsection 40-65(1).
[10] See the definition at paragraph 144 of this Ruling.
[11] Paragraph 40-65(2)(b).
[12] Paragraph 9-5(a).
[13] Paragraph 9-5(b).
[14] Paragraph 9-5(c) and subsection 9-25(4).
[15] Paragraph 9-5(d).

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

25. It may be possible that in some circumstances more than one of the categories is satisfied. However, provided residential premises satisfy any one of the categories, they are new residential premises. Where none of the categories is satisfied, the residential premises are not new residential premises.

26. Subsection 40-75(1) states when residential premises are new residential premises. The definition of 'residential premises' in section 195-1 refers to land or a building that is occupied as a residence or is intended to be, and is capable of being, occupied as a residence. Because of the definition, for land to be residential premises, there must be a building on the land that has the physical characteristics of a residence. Vacant land, of itself, can never have sufficient physical attributes to characterise it as being able to be, or intended to be, occupied as a residence.[16]

27. Paragraph 40-75(1)(a) raises the question whether the residential premises have previously been sold as residential premises or have previously been the subject of a long-term lease. Where land (or part of that land) and a building that is residential premises is sold, it is the previous sale, or long-term lease, of that land (or that part of the land) and building as residential premises which will determine whether the premises are new.

28. Paragraphs 40-75(1)(b) and (c) raise the question of what has been done to the building or the activity of building by the current owner and this will determine whether the residential premises are new residential premises. Although the focus is on the building, residential premises that are new residential premises under paragraphs 40-75(1)(b) or (c) include both the land and the building.[17] The land and the building components are not to be considered separately when residential premises are sold. Where the criteria in paragraphs 40-75(1)(b) or (c) are satisfied the residential premises are new residential premises, even though, at some point in the past, they may previously have been sold as residential premises, or have previously been the subject of a long-term lease.

Residential premises not previously sold as residential premises and not previously subject to a long-term lease – paragraph 40-75(1)(a)

29. Residential premises that have not previously been sold as residential premises and have not previously been the subject of a long-term lease are new residential premises.[18]

30. For the purposes of paragraph 40-75(1)(a), we consider the residential premises referred to are the land and the residential building on that land (that is, you look at the land and a building as a 'package'). This is because the definition of 'residential premises' specifically refers to land or a building in the context of residential occupation, and vacant land by itself can never have sufficient physical characteristics to mark it out as being intended to be, or capable of being, occupied as a residence.[19] We consider that the land and building 'package' concept also applies to paragraphs 40-75(1)(b) and 40-75(1)(c).

31. Where land that contains a residential building is subdivided into two or more lots, to determine whether there are new residential premises, it is necessary to consider

[16] Paragraph 47 of Goods and Services Tax Ruling GSTR 2012/5 *Goods and services tax: residential premises*.
[17] See subsection 40-75(3).
[18] Paragraph 40-75(1)(a).
[19] Paragraph 47 of GSTR 2012/5.

whether the land and residential building together have previously been sold as residential premises, or been the subject of a long-term lease.

Changes in the size of the land

32. Subdivision of land, of itself, does not create new residential premises.

33. In deciding whether land and a building have previously been sold as residential premises or been the subject of a long-term lease, it is necessary to consider the land and building together. Have that land and that building together previously been sold as residential premises, or been the subject of a long-term lease?

34. Where land with a residential building has previously been sold as residential premises, or the subject of a long-term lease, and the area of land is reduced in size, we consider that a subsequent sale of the excised area of land is not a sale of new residential premises. The reduced land area and building, as a 'package', have previously been sold as residential premises, or been the subject of a long-term lease. It is necessary to consider whether a supply of the excised land is a taxable supply in its own right.

35. For example, a house is located in the corner of 1,000 square metres of land. The house and land have previously been sold together as residential premises. A 200-square metre piece of land is subdivided from the existing land and sold. The 'package' of the house and the remaining 800 square metres of land has previously been sold as residential premises and, therefore, is not new residential premises. This is because the remaining 'package' has previously been sold as part of a larger 'package'. The 200-square metre lot is not residential premises.

36. Where land with a residential building has previously been sold as residential premises, or been the subject of a long-term lease, and the area of land is subsequently increased, we consider that there is a different 'package'. Only the residential building and part of the land, as a 'package', have previously been sold or been the subject of a long-term lease. Where a subsequent supply of the building and all the land is made in the course or furtherance of an enterprise, we consider an apportionment of the consideration between the building and previous land area, and the new land, is required.

37. At the time of sale, there is a different residential premises 'package'. We consider that this residential premises 'package' is made up of two parts. One part is the land and residential building that has previously been sold as residential premises or been the subject of a long-term lease. This part would be input taxed under section 40-65. The other part is the additional land area that had not previously been sold or been the subject of a long-term lease as part of the earlier residential premises 'package'. This part is excluded from the input taxed treatment of the rest of the property, and its sale may be a taxable supply under section 9-5. Where the residential premises and the new land area are sold together for a single price, so that there are taxable and input taxed parts, an apportionment is required. Various acceptable methods of apportionment are discussed in GSTR 2001/8 at paragraphs 97 to 111.

New residential premises where building relocated

38. A residential building may be relocated on the same land. For example, a house may be located in the centre of 1600 square metres of land. The house and land have previously been sold together. The house is moved so that it is wholly located within one half of the allotment to enable the land to be subdivided into two 800-square metre blocks. The house and the 800 square metres of land on which it now sits have previously been sold as residential premises.

39. Similar principles apply where, for example, a house located in one corner of 2.5 hectares of land is relocated to the opposite corner of the site following the subdivision of the land into 20 smaller lots. Where the original land and residential building had previously been sold as residential premises, or been the subject of a long-term lease, we consider that the house and smaller area of land on which it now sits would not be new residential premises. This is because the 'package' has been sold previously, or been the subject of a long-term lease, as part of the larger 'package'.

40. Where a residential building is relocated from one block of land to a different vacant block, we consider that the building and new block of land become new residential premises. The land and building, as a 'package', have not previously been sold together, or the subject of a long-term lease. It may also be necessary to consider whether the supply of the now vacant land after the removal of the building is a taxable supply in its own right. The vacant land is not residential premises.

Residential premises previously sold as commercial property

41. Residential premises have not been sold as residential premises where the real property was previously sold only as commercial property. For example, where land had only previously been sold with a warehouse constructed on it, and the building is converted to residential premises, the residential premises would be new residential premises. Where a warehouse is converted to residential premises it is unnecessary to look beyond paragraph 40-75(1)(a). The resulting residential premises have not been previously sold as residential premises, or been the subject of a long-term lease.

Subdivision of apartments into strata title units

42. A building may comprise flats or units for which no separate title exists. Title refers to the registered ownership of the relevant land and improvements as a whole. The owner of the apartments may decide to obtain permission for a strata title subdivision so that each flat or unit can be sold separately. Approval for the subdivision may be subject to building works being undertaken. For example, approval may be conditional on the construction of a firewall or modifications to the entrance and exit of the building.

43. The process of strata titling an apartment block does not, by itself, create new residential premises under paragraph 40-75(1)(a). When the newly strata titled units are subsequently sold, the supplies of those units are not sales of new residential premises, if the land and the building together have previously been sold as residential premises, or been the subject of a long-term lease. Physically, the combination of land and the building as residential premises remains basically the same. It is only the nature of the legal interest which has changed. If the process of strata titling is accompanied by works on the building, it is then a question of whether the works constitute substantial renovations (see discussion at paragraphs 53 to 83 of this Ruling).

Company title converted to strata title

44. Company title means:[20]

> A type of title for multi-occupancy buildings (usually home units), common before the introduction of strata title. Under company title, a company owns the building, and the company's shares are divided into a number of blocks or classes, each block or class entitling the owner of the shares to exclusive occupation of a particular part of the building.

[20] Butterworths Australian Legal Dictionary 1997.

This right of exclusive occupation is not a proprietary interest in the freehold, but is rather a contractual right against the company or sometimes a right to be granted a lease.

45. Under company title, the company holds the title to the building. The company may be the first owner having built the building (that is, it has never been sold) or it may have purchased the building (in which case it has previously been sold).

46. The company issues shares that contain certain rights. The rights attached to the shares include an entitlement to occupy a unit in the building owned by the company. Following conversion of the title, in some cases, the newly created strata titled units will be transferred to the existing shareholders for nominal consideration or in exchange for shares in the company.

47. Where the company is the first owner of the building, the supply of the residential units by the company to the individual shareholders is a supply of new residential premises under paragraph 40-75(1)(a) as they have not previously been sold. It is only shares in the company that have previously been sold. The supply of the units may be a taxable supply by the company.

48. However, where the residential units have been used for residential accommodation before 2 December 1998 (paragraph 40-65(2)(b)), the transfer of the newly strata titled units by the company to the shareholders is not a taxable supply, provided paragraphs 40-75(1)(b) or (c) do not apply.

49. Where the shareholder returns the shares to the company in exchange for the unit, the supply of the shares is a financial supply and may be an input taxed supply under Subdivision 40-A. Any subsequent sale of a unit by the new owner will not be a sale of new residential premises under paragraph 40-75(1)(a).

Tenants in common

50. Residential premises, for example a block of units, may be developed by two or more owners as tenants in common and converted to strata title. The strata titling does not, by itself, involve a transfer of any interest. All that results is that the residential premises are held under a different title by the same owners.

51. The newly created strata titled units may then be transferred between the individual participants so that each becomes the sole owner of specified residential units. For example, A and B are tenants in common in equal shares of land and enter into a joint venture to construct 6 units. A transfers his interest in 3 units to B and B transfers his interest in 3 units to A.

52. In the scenario referred to in paragraph 51 of this Ruling, the transfer of each participant's interest in the 3 units as tenant in common to the other is a sale of 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 units sold by A and B is in respect of premises that is intended to be occupied, and are capable of being occupied, as a residence or for residential accommodation.

52A. Subsection 40-65(2) provides contextual support for the view that the transfer of each participant’s interest in the relevant units is properly characterised as a sale of residential premises to the extent of the interest supplied by each participant. Among other things, this subsection provides that a sale of residential premises is not input taxed to the extent that the residential premises are new residential premises. We consider that the words ‘to the extent’ mean that a residential premises may in part be new residential premises as defined in section 40-75. That is, a sale of the residential premises in their entirety may consist of both taxable and input taxed parts.

52B. For instance, with reference to the scenario at paragraph 51 of this Ruling, a subsequent sale of an individual unit by B 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 by A to B and partly a taxable supply of new residential premises with respect to the interest that has not previously been sold as new residential premises.[20A]

52C. If instead of A and B becoming sole owners of specified units, A and B sold the newly strata titled units together, each individual unit sold would be a sale of residential premises in its entirety.[20B]

New residential premises created through substantial renovations – paragraph 40-75(1)(b)

53. New residential premises may be created through substantial renovations of a building. A sale of new residential premises may be a taxable supply if the requirements for the making of a taxable supply are satisfied (see paragraph 22 of this Ruling). Where, however, the substantial renovations occurred before 2 December 1998 and the premises have been used for residential accommodation before that date, a sale of the premises is not a taxable supply. It is an input taxed supply (paragraph 40-65(2)(b)). Because new residential premises are created for the purposes of paragraph 40-75(1)(b), any previous sale, long-term lease, or use of the residential premises, is not relevant in determining whether the residential premises are new residential premises.

54. The term 'substantial renovations' is defined in section 195-1:

> ***substantial renovations*** of a building are renovations in which all, or substantially all, of a building is removed or is replaced. However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.

55. This definition requires consideration of what work has been done to the building since it was acquired by the current owner.

56. The word 'building' is not defined in the GST Act. 'Building' means 'a substantial structure with a roof and walls, as a shed, house, department store etc'.[21] In the context of the provision, we consider that an individual strata title unit or apartment is a 'building' and its structure is enclosed within the external walls of the unit, rather than the entire complex.

57. The general usage of the term 'renovate' is 'to make new or as if new again; restore to good condition; repair; to reinvigorate; refresh; revive'.[22] However, the term needs to be considered in the light of the surrounding words in the definition of substantial renovations.

58. The section 195-1 definition of 'substantial renovations' stipulates that the renovations are substantial by requiring all or substantially all of the building to be removed or replaced. We consider the statement '…the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases' means that the renovations may, but need not, involve the removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.

[20A] Subject to the application of subsection 40-75(2). Refer to paragraphs 89 to 93 of this Ruling.

[20B] It is also noted that if A and B were a partnership for the purposes of the GST Act, in this case there may be a sale of residential premises in their entirety to each partner. See paragraphs 85A to 85P and paragraphs 136 to 138 of Goods and Services Tax Ruling GSTR 2003/13 *Goods and services tax: general law partnerships* for a further explanation of an in-specie distribution by a partnership to a partner.

[21] The Macquarie Dictionary, 3rd Edition.

[22] The Macquarie Dictionary, 3rd Edition.

59. A building comprises a number of components, which can be termed either structural (including the foundations, external walls, interior supporting walls, floors, roof, etc) or non-structural (including fixtures, fittings, plumbing, mechanical, fire systems, electrical, lifts, air conditioning, etc).

Criteria for substantial renovations

60. Whether renovations are substantial is to be determined in the light of all the facts and circumstances.

61. We consider that for substantial renovations to occur for the purposes of the GST Act, the renovations need to satisfy the following criteria before it is necessary to make further inquiry to establish whether the renovations are substantial:

(i) the renovations need to affect the building as a whole; and

(ii) the renovations need to result in the removal or replacement of all or substantially all of the building.

62. Where one of the above criteria is not satisfied, substantial renovations have not occurred and no further inquiry needs to be made.

Substantial renovations need to affect the building as a whole

63. Under this heading, we discuss the concept of a building in its entirety, works on surrounding land (for example, curtilage) and additions to the building.

Building in its entirety

64. Whether substantial renovations have occurred should be based on consideration of the building in its entirety – that is, the building as a whole, and not by reference to specific or individual rooms in the building. For renovations to be substantial, they must directly affect most rooms in a building. The renovation of only one part of a building, without any work on the remaining parts of the building, would not constitute substantial renovations.

65. For example, the owner of a large 4-bedroom house removes the wall between two bedrooms for the purpose of creating a large bedroom with ensuite. The former door to one of the bedrooms is removed and replaced with gyprock so that the newly created larger bedroom can only be entered by one doorway. The room is repainted and recarpeted. Although significant, the work does not constitute substantial renovations as only one area of the house is affected.

Curtilage

66. Work associated with the renovations, but not directly attributable to the building itself, for example, landscaping and beautification of surrounding land, is not renovations of a building.

Additions

67. Additions that are undertaken with renovations are not included in determining whether a building has been substantially renovated. However, once it is determined that a building has been substantially renovated and new residential premises created, all

additions to the building form part of the new residential premises. This will occur, for example, where all or substantially all of a two-bedroom bungalow is removed and replaced and a covered rear deck is added.

Removal or replacement of all or substantially all of the building

68. The extent to which parts of a building are removed or replaced will determine whether the above criterion is satisfied. The definition of substantial renovations states that it is not necessary for foundations, external walls, interior supporting walls, floors, roof or staircases to be removed or replaced for renovations to be substantial.[23]

69. This criterion is satisfied where there is a removal or replacement of a substantial part of the:

- structural components of the building; or
- non-structural components of the building.

70. Structural work may give rise to substantial renovations in its own right. Structural work includes such work as:

- altering, or replacing of, foundations;
- replacing, removing or altering of floors or supporting walls, or parts thereof (interior or exterior);
- lifting or modifying of roofs;
- replacing existing windows and doors such that it is necessary to alter brickwork (for example, replacing a single door with a double sliding door).

71. Structural work is also undertaken in the course of building an extension to a house or adding new bedrooms to a house.

72. Where a substantial part of the structural components of a building is removed or replaced, this will often mean that a substantial part of the non-structural components is also removed or replaced.

73. However, substantial renovations may also occur where a substantial part of the non-structural components is removed or replaced but the structural components are not substantially affected. For example, in a unit, it is not essential that both components are substantially removed or replaced for substantial renovations to have occurred.

74. Non-structural building work includes:

- replacing electrical wiring;
- replacing, removing or altering non-supporting walls, or parts thereof (interior or exterior);
- plastering or rendering an entire wall or walls;
- plumbing (for example, replacing old metal pipes with copper pipes or plastic pipes);
- removing or replacing kitchen cupboards, bathroom fixtures, etc;
- removing or replacing air-conditioning or security systems.

[23] See paragraph 58 of this Ruling.

75. Guidance is provided on what we regard as substantial renovations in Examples 3 to 5 (at paragraphs 104 to 114) and Examples 8 to 9 (at paragraphs 124 to 130) of this Ruling. For instance, in Example 8 of this Ruling, the removal and replacement of the exterior walls, the removal of some internal walls, and the replacement of the flooring and the kitchen in a house are considered collectively to amount to substantial renovations.

76. However, the removal and replacement of a kitchen and bathroom with little else done to the building, apart from repainting and minor repair work, in most circumstances would not be sufficient for substantial renovations to have occurred.

77. As part of renovations, work is often undertaken which does not impact on the structure of the building but is more in the nature of renewing or refreshing what is already there. We consider work of this nature to be cosmetic. Cosmetic work by itself does not amount to substantial renovations. We consider cosmetic work includes:

- painting;
- sanding floors;
- removing and replacing worn or out of date fittings such as light fittings;
- replacing curtains or carpets.

78. Cosmetic work may be undertaken to obtain a better price when selling a property (sometimes referred to as a 'makeover') or to obtain a higher rent. While this is often referred to as a renovation, this is not what the legislation contemplates as 'substantial renovations'. One example of where the work undertaken is largely cosmetic and does not result in substantial renovations, is contained in Example 4 at paragraphs 109 to 110 of this Ruling.

79. Where structural or non-structural work amounts to substantial renovations that create new residential premises, any cosmetic work undertaken will form part of the new residential premises.

Renovation work by previous owners

80. Only renovations by the current owner which are reflected in the building at the time of sale are considered in determining whether new residential premises have been created through substantial renovations. Renovations undertaken by previous owners are disregarded in determining whether new residential premises have been created through substantial renovations by the current owner.

Progressive renovations by the same owner

81. Where new residential premises have been created by progressive renovations completed before 2 December 1998 and the newly created premises have been used for residential accommodation before that date, the sale of the residential premises is input taxed. See Example 9 at paragraphs 128 to 130 of this Ruling.

82. It may also be necessary to determine when the premises were last substantially renovated for the purposes of the 5-year rule (see paragraphs 89 to 93 of this Ruling). For the purposes of paragraph 40-75(2)(b), the time at which 'the premises were last substantially renovated' will be the point in time when sufficient renovations had been undertaken to conclude that substantial renovations had occurred, regardless of whether those renovations were undertaken on a progressive basis.

83. Substantial renovations may occur over a few months or in some cases over several years. The fact that lapses may occur in the renovation work does not prevent substantial renovations from occurring. Where renovation work occurs over several years, the state of the property when it was acquired compared to the time of sale is a relevant consideration.

New residential premises that have been built to replace demolished premises on the same land – paragraph 40-75(1)(c)

84. Under paragraph 40-75(1)(c), new residential premises include residential premises that have been built, or contain a building that has been built, to replace demolished premises on the same land.

85. The word 'demolish' is not defined in the GST Act, and therefore takes its ordinary meaning. The general meaning of the word is 'to throw or pull down (a building etc); reduce to ruins; to put an end to; destroy; ruin utterly'.[24] In the context of the GST legislation, demolish means the pulling down or removal of a building.

86. However, premises can be demolished without removal of all of the building, for example, where some of the existing foundations are retained.

87. Similarly, the demolition of premises, apart from the façade, and construction of residential premises behind the façade, would create new residential premises.

New residential premises that were used for residential accommodation before 2 December 1998 – paragraph 40-65(2)(b)

88. The sale of new residential premises used for residential accommodation before 2 December 1998 is input taxed. The reference to 'used for residential accommodation' in paragraph 40-65(2)(b) applies to the new residential premises, and not to the use of the premises prior to the criteria in paragraphs 40-75(1)(b) and (c) being satisfied. Where residential premises are new residential premises due to substantial renovations, or demolition and rebuilding, GST may apply to the sale of the premises. For example, where a house that was rented from September 1992 for ten years is acquired by a property developer, then substantially renovated and sold, the sale would be a taxable supply. This is because new residential premises are created by the substantial renovations and those new residential premises were not used for residential accommodation before 2 December 1998.

Sales of rented housing and the 5-year rule

89. Residential premises are not new residential premises if the premises have only been used for making input taxed supplies of residential rental under paragraph 40-35(1)(a) for the period of at least 5 years since:

- *the premises first became residential premises*, where the premises have not previously been sold as residential premises and have not previously been the subject of a long-term lease;
- *the premises were last substantially renovated*, where the premises have been created through substantial renovations of a building; or

[24] The Macquarie Dictionary, 3rd Edition.

- *the premises were last built*, where the premises have been built, or contain a building that has been built, to replace demolished premises on the same land.[25]

This is the position even if one of the categories in subsection 40-75(1) is satisfied.

90. Subsection 40-75(2) requires that for the period of at least 5 years, the premises have been used only for making input taxed supplies under paragraph 40-35(1)(a). This requirement in subsection 40-75(2) is satisfied where the only supplies of the premises were by way of lease, hire or licence (that is, residential rental) for any continuous period of at least 5 years between when the premises would otherwise have become new residential premises[26] and when they are sold. See Example 8 at paragraphs 124 to 127 of this Ruling.

91. ~~We consider t~~The 5 years must be a continuous period.[26A] A continuous period is not broken by short periods between tenancies where the premises are actively marketed for rent following the departure by a previous tenant.

92. However, a continuous period would not include periods when the premises are used for a private purpose, or left vacant with no attempt to lease, hire or licence.[26B] See Example 9 at paragraphs 128 to 130 of this Ruling. Furthermore, a continuous period would not include periods when the premises are held for sale or marketed for sale. See Example 8 at paragraphs 124 to 127 of this Ruling.

93. Where the continuous period of lease, hire or licence spans 1 July 2000, the leasing, hiring or licensing before, on or after 1 July 2000 can be taken into account in calculating the period. This is so whether or not the lessor was registered for GST.

Sale of residential premises with more than one residential building

94. Where there is more than one residential building on the same land, it may be necessary to apportion the consideration for a supply of the land and all of the buildings. This will be required where, for example, one or more of the residential buildings is new residential premises that were not used for residential accommodation before 2 December 1998 or commercial residential premises and one or more is not. The words 'to the extent' in subsection 40-65(2) operate to exclude the new residential premises from the input taxed treatment of the rest of the property.

95. An example is where a new residential building is constructed on land that contains an existing residential building which has previously been sold. The new residential premises part of a supply of the land and buildings is the new residential building together with the land on which the building is located and the land surrounding it. Various acceptable methods of apportionment are discussed in GSTR 2001/8.[27] One method which is acceptable to determine the extent of the surrounding land is that area that actually or substantially contributes to the enjoyment of the building or to the fulfilment of its purposes as a residence. See also Example 12 at paragraphs 136 to 140 of this Ruling.

[25] Subsection 40-75(2) was inserted by No. 156 of 2000. It applies to net amounts for tax periods starting on or after 1 July 2000.
[26] But for the operation of subsection 40-75(2).
[26A] *Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation* [2022] AATA 4436 at [49].
[26B] A continuous period would also not include periods during which the premises are used to make GST-free supplies under section 38-250.
[27] See paragraphs 97 to 111 of GSTR 2001/8.

Status: **draft for comment**

Application of subsection 9-30(4)

96. Subsection 9-30(4) states:

> A supply is taken to be a supply that is input taxed if it is a supply of anything (other than new residential premises) that you have used *solely* in connection with your supplies that are input taxed but are not financial supplies.

97. Where the owner of rented residential premises later subdivides the land into two blocks, one with a residential building and the other a vacant block, subsection 9-30(4) does not apply to the supply of the vacant block. The subdivision of the land is a use of the land that is not in connection with input taxed supplies. Vacant land is not residential premises as defined in section 195-1 of the Act. The supply of the vacant block needs to be considered under section 9-5.

98. The words 'other than new residential premises' mean that subsection 9-30(4) will also not apply to the supply of new residential premises. The sale of new residential premises is to be considered under section 40-65 or section 9-5.

Examples

Example 1 – new residential premises – not previously sold

99. *Jo, a property developer, is registered for GST. She purchases residential premises on a large block of land in February 2001 and subdivides the land into two blocks. The land at the time of purchase was on a single title. One block of land contains the existing residential premises and Jo erects a house on the vacant block of land. Both residential premises are sold in February 2002.*

100. *The first block of land, which has reduced in size (that is, the block containing the original house), is not new residential premises as that house and land together have previously been sold. The second block of land containing the newly built house is new residential premises as the block of land and new house have not previously been sold. The supply of the block with the newly built house is a taxable supply when sold in the course of Jo's enterprise. Jo is entitled to claim input tax credits on acquisitions relating to new residential premises, but not those relating to the previously existing premises.*

Example 2 – new residential premises used for residential accommodation before 2 December 1998

101. *Grant, a property developer who is registered for GST, builds a block of residential flats in July 1998. The flats are let to residents from September 1998 until he sells the block in December 2008.*

102. *The block of flats is residential premises and has not previously been sold. However, the block is not new residential premises as it has been used only for making input taxed supplies by way of rental for a continuous period of at least 5 years since first becoming residential premises.*[28] *In any event, as the premises were used for residential accommodation before 2 December 1998, a sale of the premises would be input taxed.*[29] *An exception would be if the premises became new residential premises again on or after 2 December 1998, for example, if Grant substantially renovated the premises and the premises were not rented continuously for at least 5 years after they become new residential premises.*

[28] Paragraph 40-75(2)(a).
[29] Paragraph 40-65(2)(b).

103. *Further, where Grant sells the block of flats on one title to a developer who, as part of his enterprise, strata titles and sells the individual units, the sale of each unit is not a sale of new residential premises for the purpose of paragraph 40-75(1)(a), as the residential premises have previously been sold. An exception would be where those residential premises become new residential premises again, for example because the developer substantially renovates the premises, and the 5-year rule does not apply. This is because the premises have not been rented continuously for 5 years since completion of the substantial renovations.*

Example 3 – non-substantial renovations – large part of the building not affected

104. *Indira, a property speculator who is registered for GST, acquires a large 2-storey, 4-bedroom Victorian terrace house with a separate kitchen, lounge room, music room and bathroom on the ground floor. Indira regularly buys, renovates and sells houses (usually two a year on average). She employs a builder to undertake the following work.*

105. *The old kitchen is replaced with beech panelled cupboards, which have expensive granite benchtops, and stainless steel appliances. The kitchen walls and ceiling are repainted and new linoleum is added to replace the existing floor covering. A small bathroom that existed off the kitchen is removed and a new bathroom is constructed in one of the upstairs bedrooms. The two walls between the former bathroom and kitchen are removed so that the kitchen is much larger and can now also be used as a dining room. Indira replaces the door and back window of the kitchen with French doors that open out onto the courtyard. The removal of the bathroom and addition of the French doors have opened up the back part of the ground floor of the house and the courtyard is now more accessible. The dilapidated slate roof of the house is replaced with a new tile roof. The floorboards, joists and bearers in all of the ground floor rooms are also replaced due to water damage. The ceilings in most of the downstairs rooms are replaced due to cracking and mould damage.*

106. *Although the renovation work is significant, we do not consider the renovations to be substantial renovations. The house in its entirety has not been substantially renovated, as a number of rooms have not been affected. The 4 bedrooms upstairs are untouched with the exception of one room which has become a bathroom. If Indira was to sell the house, she would be making an input taxed supply.*

107. *However, where the changes described above are combined with further renovations such as the creation of a larger lounge room by removing a wall between the existing lounge room and music room, and the modernisation of the upstairs bedrooms by replacing the existing plaster on the walls and ceiling with gyprock, installing skylights, repainting, and replacing old carpets with parquetry and cupboards with new walk-in robes, we would consider that substantial renovations have occurred.*

108. *After the renovations, Indira puts the terrace house on the market for $480,000. If Indira sells the residence in the course of her enterprise after undertaking the extra work described in paragraph 107 of this Ruling, she would be making a taxable supply.*

Example 4 – non substantial renovations – renovations largely cosmetic

109. *Bob, a property speculator, is registered for GST. He acquires Tangalooma, a historic federation style residence, in July 2000. Bob does not live in the house and immediately patches some of the walls in a few of the bedrooms with gyprock cement, repaints the whole house, inside and out, and replaces the kitchen.*

110. *Although Bob has made changes to all the rooms, the work done is largely cosmetic in nature. We do not consider that Bob has substantially renovated Tangalooma. The sale of the property will be an input taxed supply. Whether or not a person resides in the premises does not alter the analysis.*

Example 5 – substantial renovations

111. *Mary-Anne, a builder, acquires a dilapidated bungalow that has 3 bedrooms and one bathroom. Mary-Anne intends to renovate and sell the bungalow as part of her enterprise. She lives in the bungalow while she carries out the following renovations.*

112. *Mary-Anne adds an upstairs extension, which creates a new bedroom and a bathroom. As part of the extension, the roof of the bungalow and all ceilings on the lower level are replaced. The renovations to the lower level include rewiring, repairing cracked walls by removing and replacing all of the gyprock and cement rendering the exposed bricks in the combined family room and kitchen. The installation of stairs necessitated the removal of two walls and replacement of the floor in two of the ground floor rooms. Mary-Anne also does some cosmetic work by repainting, polishing floorboards, and replacing all the fittings in the kitchen and bathroom.*

113. *The work undertaken by Mary-Anne constitutes substantial renovations. All of the rooms in the house are affected by the work and several of the rooms have undergone structural renovation work. A substantial part of the bungalow is removed and replaced in undertaking the renovation work. The cosmetic work has not been taken into account when deciding whether substantial renovations have occurred.*

114. *When Mary-Anne sells the renovated house, she will be making a taxable supply of new residential premises, which includes all the work done (whether structural, non-structural or cosmetic) to the house. Whether or not a person resides in the premises does not alter the analysis.*

Example 6 – residential premises built, rented, restored and then sold

115. *David is a property developer whose enterprise includes the construction of residential rental accommodation, renting those premises for a number of years (never less than 10 years) and the eventual sale of those premises.*

116. *Normal maintenance of the premises is undertaken while the premises are rented.*

117. *When the decision is made to sell the premises, work is undertaken to restore the premises to their original condition and to rectify damage done by the tenants. As part of this process a new kitchen, bathroom etc may be installed.*

118. *Where the restoration work affects most of the rooms in the house, but is largely cosmetic in nature (for example, replastering and repainting) and only the kitchen and bathroom are replaced, we consider there have not been substantial renovations.*

119. *The residential premises have been continuously used only for making input taxed supplies (that is, residential rental) for a period of at least 5 years since the premises first became residential premises and there have not been substantial renovations. Therefore, the sale of the premises will be an input taxed supply.*

120. *However, where the damage done is so severe that it is necessary to replace the damaged plumbing, electrical wiring, most of the interior walls, floors, windows, doors, kitchen and bathroom (including fixtures and fittings), and restore the exterior walls and roof, there would be substantial renovations. The painting of the building inside and out is*

cosmetic in nature, and not a factor in deciding whether substantial renovations have occurred. In this case, the sale of the premises will be a taxable supply as the premises are new residential premises created through substantial renovations.

Example 7 – residential premises – not previously sold as residential premises

121. *Alec, a builder who is registered for GST, acquires a 1940's style commercial warehouse in August 2000. Alec substantially renovates the building and converts the building into a residence that he sells in February 2001.*

122. *The land and building are new residential premises as they have not previously been sold as residential premises and have not previously been the subject of a long-term lease. In addition, the residential premises which have been created by substantial renovations of the building are new residential premises.*

123. *The new residential premises have not been used only for making input taxed supplies (that is, residential rental) for at least 5 years since the premises first became residential premises. The supply of the residential premises is a taxable supply when the premises are sold by Alec in the course of his enterprise.*

Example 8 – new residential premises created through substantial renovations of a building – rented for over 5 years

124. Michael, a property speculator who is registered for GST, acquired a 1950's style one-bedroom fibro weekender in September 2000 with the intention of renovating, renting and eventually selling the property.

125. *Michael extensively modifies the interior and exterior of the weekender. The fibro exterior of the house is replaced by brick, some interior walls are removed and flooring throughout the house is completely replaced by polished hardwood floors. Air conditioning is installed, the existing kitchen is removed and a new extended kitchen is installed. The existing bathroom is removed and a new bathroom including a spa bath is installed. The building is repainted both inside and outside. The work is completed in March 2001 and the weekender is rented for 6 years immediately following the modifications, but there are short periods between tenancies while the property is being advertised for rental. Michael puts the weekender up for sale in June 2007 and sells ~~the weekender~~it in December 2007.*

126. *At the time of sale, Michael will have to decide whether it is a sale of 'new residential premises'. To do this he will have to decide:*

- *(a) whether substantial renovations have occurred; and*
- *(b) if yes, has the property been used for making input taxed supplies of residential rental for at least 5 years since it was substantially renovated.*

127. *In this example, we consider that the work done amounts to substantial renovations of the building. New residential premises were created through substantial renovations in March 2001. As the residential premises have been used only to make input taxed supplies of residential rental for a continuous period of at least 5 years since the premises were last substantially renovated[29A], the premises are no longer new residential premises. The sale of the residential premises is not a taxable supply. The sale of the property is an input taxed supply.*

[29A] That is, from March 2001 to June 2007. The continuous period ended when the premises were first marketed for sale in June 2007.

Example 9 – new residential premises – progressive renovations

128. *Jamie, a property speculator who is registered for GST, acquires a 1920's style house in September 2001 with the intention of renting it for short-term periods, and to progressively renovate as his work commitments permit. He intends to sell the house within 12 months of completing the renovations.*

129. *The renovations are carried out in the following stages:*

Table 1: Stages of renovation

Period of time	***Renovations***
September to November 2001	• *replacement of kitchen (including laying of new floor covering);* • *existing bathroom removed other than the framework and a new bathroom installed (including new toilet, bath, vanity, shower, tap fittings and tiling)*
February 2002	• *carpet removed, floorboards sanded and polished, the house rewired, all light fittings replaced;* • *existing verandah extended by partly demolishing and rebuilding and enclosing it;* • *modification of the roofline*
March to June 2002	• *exterior brickwork rendered;* • *roof replaced;* • *all windows and doors (interior and exterior) replaced;* • *plaster on the walls and ceilings in the lounge room, hallway and all the bedrooms replaced with gyprock;* • *house repainted*

130. *Even though the work carried out in 2001 and February 2002 does not constitute substantial renovations on their own, the cumulative work carried out from September 2001 to June 2002 amounts to substantial renovations of the house. If Jamie sells the house after the renovations are finished, he will be making a taxable supply of new residential premises, which includes all the work done (whether structural, non-structural or cosmetic) to the house.*

Example 10 – new residential premises that have been built to replace demolished premises on the same land

131. *Tracey, a property developer who is registered for GST, acquires a large run-down two-storey 19th-century mansion in March 2000. The building is demolished apart from the facade. A modern three-story residence is constructed behind the facade. Tracey sells the residential premises in April 2002.*

132. *The demolition and construction of a three-storey residence creates new residential premises through substantial renovations of a building, as it is the replacement of substantially all of the building. The three-storey residence is also new residential premises because the building has been built to replace demolished premises on the same land. The sale of the property by Tracey is a taxable supply.*

Example 11 – 5 year rule and interaction with subsection 9-30(4)

133. *Henk, a builder, acquires a block of land in March 2001 with the intention of building a 3-bedroom house as part of his enterprise and eventual sale. Henk lives in the house during and after construction for a total period of two years, and then rents the house for 4 years. The house is sold in April 2007.*

134. *The sale of the premises is a supply of new residential premises as:*

- *the residential premises have not previously been sold as residential premises and not previously been the subject of a long-term lease;*
- *the residential premises have not been only used for making input taxed supplies of residential rental continuously for at least 5 years since first becoming residential premises,[30] as the period when Henk lives in the house does not satisfy the criteria of having only been used for making input taxed supplies.*

135. *The sale of the house is a taxable supply as it is a supply of new residential premises and is made in the course or furtherance of Henk's enterprise. Subsection 9-30(4) does not apply to make the supply input taxed because the premises are new residential premises. Where the circumstances were such that Henk had rented the premises continuously for 5 years and later subdivided the land into two blocks, one with a residence and the other a vacant block of land, the sale of the house would be an input taxed supply. However, the sale of the vacant block of land would be a taxable supply (section 9-5). Subsection 9-30(4) would not apply to make the supply of the land input taxed as the land has not been used solely in connection with Henk's input taxed supplies.*

Example 12 – where additional residential buildings are built on land that already has existing residential premises

136. *Jonathon lives in the family home located on 40 acres of land adjacent to a National Park. These premises have not been substantially renovated since Jonathon bought the house from his parents in 1990. In January 2000, Jonathon decides to sell the property and, to maximise his return, he builds one residential chalet on the property. He has registered for GST and has claimed input tax credits relating to construction costs. He sells the property as a whole.*

137. *Prior to the construction of the chalet, Jonathon's property is residential premises. It is land and a building occupied as a residence.*

138. *When Jonathon later builds the one chalet, additional residential premises are created. Land previously part of the original residential premises is now used in conjunction with the chalet, and forms part of the additional residential premises. When the additional residential premises are supplied by Jonathon (as part of his overall sale), they will not previously have been sold as residential premises. They will therefore be new residential premises.*

139. *Jonathon makes a supply that comprises a taxable part and an input taxed part. The taxable part is the supply of the residential chalet and its surrounding land. The input taxed part is the supply of his home and the remainder of the land, being residential premises.*

[30] Paragraph 40-75(2)(a).

140. *Any reasonable method of apportionment in relation to the taxable and non-taxable parts of Jonathon's supply will be appropriate. Various acceptable methods of apportionment are discussed in GSTR 2001/8.*

Definitions

141. The following terms used in this Ruling are defined in section 195-1.

142. '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 or 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.

143. 'Long-term lease' means:

a supply by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) for at least 50 years if:

(a) at the time of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, it was reasonable to expect that it would continue for at least 50 years; and

(b) unless the supplier is an Australian government agency – the terms of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, as they apply to the recipient are substantially the same as those under which the supplier held the premises.

144. '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.

145. 'Residential premises' means:

land or a building that:

(a) is occupied as a residence or for residential accommodation; or

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

(regardless of the term of the occupation or intended occupation) and includes a floating home.

Status: **draft for comment**

146. *'Substantial renovations'* of a building are renovations in which all, or substantially all, of a building is removed or replaced. However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors or staircases.

147. *'New residential premises'* is defined in section 40-75 of the GST Act:[31]

> **Meaning of new residential premises**
>
> (1) Residential premises are ***new residential premises*** if they:
>
> (a) have not previously been sold as residential premises (other than commercial 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.
>
> …
>
> (2) However, the premises are not ***new residential premises*** if, for the period of at least 5 years since:
>
> (a) if paragraph (1)(a) applies (and neither paragraph (1)(b) nor paragraph (1)(c) applies) – the premises first became residential premises; or
>
> (b) if paragraph (1)(b) applies – the premises were last substantially renovated; or
>
> (c) if paragraph (1)(c) applies – the premises were last built;
>
> the premises have only been used for making supplies that are input taxed because of paragraph 40-35(1)(a).
>
> …
>
> (3) To avoid doubt, if the residential premises are new residential premises because of paragraph (1)(b) or (c), the new residential premises include land of which the new residential premises are a part.

148. [Omitted.]

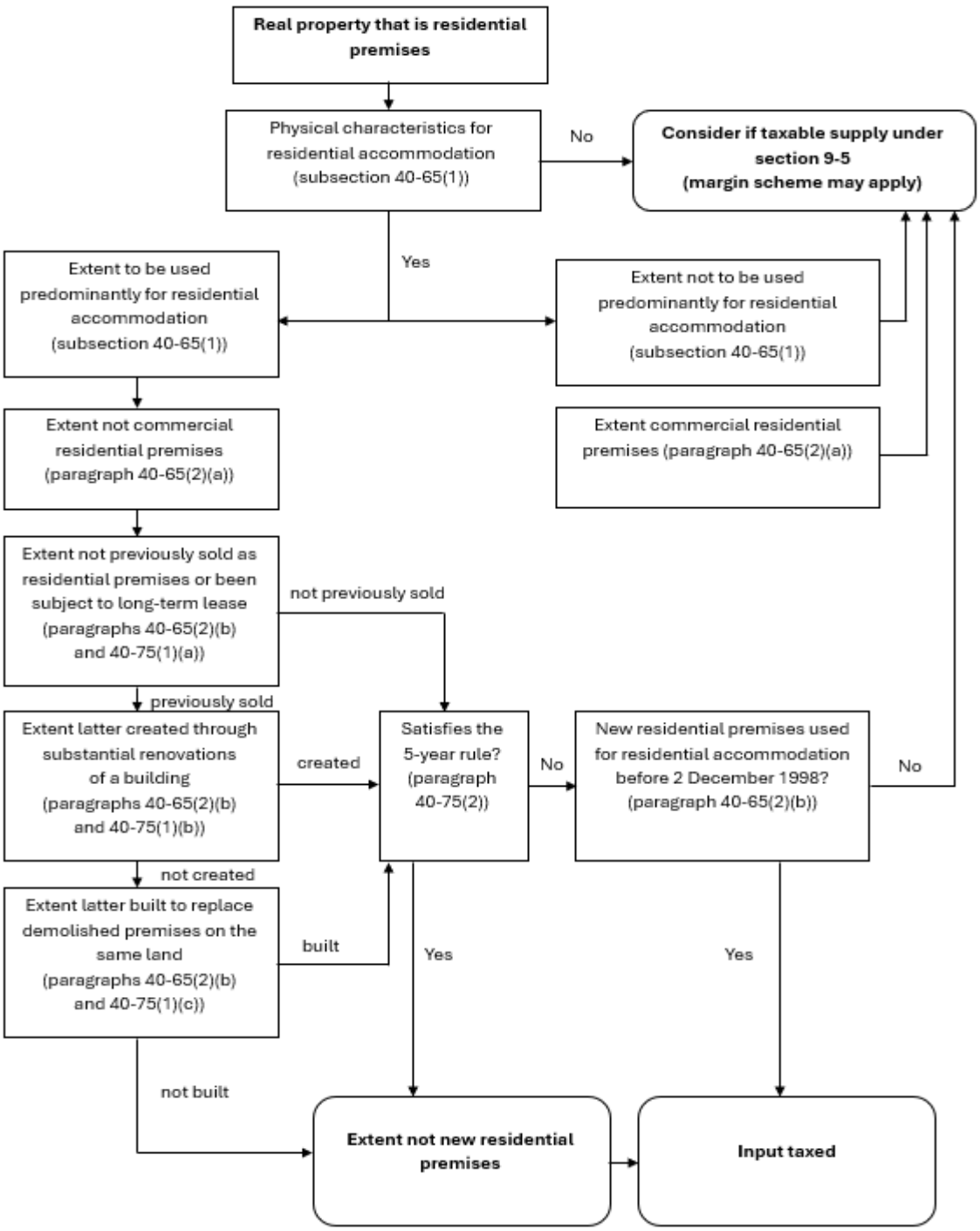
Commissioner of Taxation
9 July 2025

[31] Subsection 40-75(1).

Appendix 1

149. This flowchart is a general guide only and should be used in conjunction with the relevant paragraphs of this Ruling.

Diagram 1: Treatment of the sale of residential premises in the course or furtherance of an enterprise



Appendix 2 – Your comments

150. You are invited to comment on the changes to this draft Ruling, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

151. A compendium of comments is prepared when finalising this Ruling and an edited version (names and identifying information removed) is published to the Legal database on ato.gov.au. Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 8 August 2025

Contact officer details have been removed as the comments period has ended.

Status: **draft for comment**

References

Previous drafts:

GSTR 2001/D3; GSTR 2002/D4

Related rulings and determinations:

GSTR 2001/8; GSTR 2003/13; GSTD 2006/6; MT 2006/1; TR 2006/10

Legislative references:

- ANTS (GST) A 1999 9-5
- ANTS (GST) A 1999 9-5(a)
- ANTS (GST) A 1999 9-5(b)
- ANTS (GST) A 1999 9-5(c)
- ANTS (GST) A 1999 9-5(d)
- ANTS (GST) A 1999 9-20
- ANTS (GST) A 1999 9-25(4)
- ANTS (GST) A 1999 9-30(4)
- ANTS (GST) A 1999 11-15(2)(a)
- ANTS (GST) A 1999 23-5
- ANTS (GST) A 1999 SDiv 40-A
- ANTS (GST) A 1999 40-35
- ANTS (GST) A 1999 40-35(1)(a)
- ANTS (GST) A 1999 40-65
- ANTS (GST) A 1999 40-65(1)
- ANTS (GST) A 1999 40-65(2)
- ANTS (GST) A 1999 40-65(2)(a)
- ANTS (GST) A 1999 40-65(2)(b)
- ANTS (GST) A 1999 40-70
- ANTS (GST) A 1999 40-70(2)(b)
- ANTS (GST) A 1999 40-75
- ANTS (GST) A 1999 40-75(1)
- ANTS (GST) A 1999 40-75(1)(a)
- ANTS (GST) A 1999 40-75(1)(b)
- ANTS (GST) A 1999 40-75(1)(c)
- ANTS (GST) A 1999 40-75(2)
- ANTS (GST) A 1999 40-75(2)(a)
- ANTS (GST) A 1999 40-75(2)((b)
- ANTS (GST) A 1999 40-75(3)
- ANTS (GST) A 1999 Div 188
- ANTS (GST) A 1999 195-1
- TAA 1953 Sch 1 Div 358

Cases relied on:

- Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation [2022] AATA 4436; 2022 ATC 10-661; 115 ATR 275

Other references:

- Butterworths Australian Legal Dictionary 1997
- The Macquarie Dictionary, 3rd Edition

ATO references

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