GSTR 2001/D3 - Goods and services tax: when is a sale of real property a sale of new residential premises?

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

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Preamble

This document is a draft for industry, professional and community comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners. When the final Ruling is officially released it will be a public ruling for the purposes of section 37 of the ***Taxation Administration Act 1953*** *and may be relied upon by any person to whom it applies.*

What this Ruling is about

1. This Ruling explains when a sale of **real property** is a taxable supply of **new residential premises**. The Ruling considers paragraph 40-65(2)(b) and section 40-75 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

2. Whether a sale of real property is subject to GST will depend on many issues. This Ruling deals with one of those issues, namely, whether the premises are new residential premises. Some of the other issues are dealt with in other Rulings. The sale of **commercial residential premises** is considered in Goods and Services Tax Ruling GSTR 2000/20. Guidance on whether a sale of **residential premises** is made in the course or furtherance of an enterprise is contained in Miscellaneous Taxation Ruling MT 2000/1 and Goods and Services Tax Determination GSTD 2000/8. How the margin scheme applies to supplies of real property held prior to 1 July 2000 is considered in Goods and Services Tax Ruling GSTR 2000/21.

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 under paragraph 40-70(2)(b) of the GST Act, this Ruling will apply.

4. This Ruling does not consider the sale of residential premises that are not real property, for example, a floating or transportable home not affixed to the land.

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

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

Date of effect

7. When finalised, this Ruling applies on and from 1 July 2000.

Background

8. Subject to two exceptions, the sale by registered entities[1] 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 to be used predominantly for residential accommodation. For example, if a property consists of retail premises below and a separate residential flat above on a single title, there is a mixed supply. The supply of the retail premises by a registered entity will be taxable and the supply of the flat will be input taxed.[2] The consideration will need to be apportioned in accordance with section 9-80.

9. The exceptions are the sale of:

- commercial residential premises such as hotels, motels, etc; and
- new residential premises.[3]

10. Therefore, the sale of new residential premises (which includes houses and units) by registered entities (such as builders and developers) is a taxable supply.[4]

11. The definition of new residential premises in the GST Act ensures that residential premises constructed by a builder or developer are subject to GST. The definition also ensures that if a developer

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[1] 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 could be sufficient to require a person to be registered – see sections 9-20, 23-5 and Division 188.

[2] Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, paragraph 5.164.

[3] Other than those new residential premises used for residential accommodation before 2 December 1998 (paragraph 40-65(2)(b)).

[4] Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, paragraph 5.167.

purchases a commercial building, knocks it down and builds an apartment block, the supply of the apartment block is treated as a sale of new residential premises and is subject to GST.[5]

12. However, it is not intended that sales of existing housing which may have been used for many years by the original owners for residential accommodation (either for rental income production or for owner occupation) would be subject to GST as new residential premises.[6] Accordingly the legislation allows residential premises which were used for residential accommodation before 2 December 1998 to be input taxed.

13. In addition where an entity constructs residential premises and subsequently rents out the residential premises, the entity will be denied input tax credits for construction because it is making an input taxed supply of those premises. The eventual sale of the premises may occur too far into the future to claim the input tax credits for the creditable acquisition of the construction. However, in these circumstances the residential premises are not treated as 'new residential premises' and GST is not payable when the premises are ultimately sold after five or more years of rental.[7]

Context

14. For the purposes of the GST legislation a supply is any form of supply whatsoever[8], and includes a grant, assignment or surrender of real property.[9] The sale of real property is a supply.

15. 'Sale of real property', 'sale' and 'sold' are not defined in the GST Act. The ordinary meaning of 'sale' is the 'transfer, or agreement to transfer property to a buyer for a price'.[10] For the purposes of Subdivision 40-C we consider that 'sale' and 'sold' refer to the conveyance of land in its entirety for consideration. The application of subdivision 40-C to residential premises means that 'sale' and 'sold' refer to the transfer of full and complete ownership of land, that is, the maximum interest which the Crown has alienated – whether it be freehold or leasehold. While 'conveyance' can include the transfer of an interest in property by way of lease, such supplies,

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[5] Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999, paragraph 1.163.
[6] Explanatory Memorandum to Indirect Tax Legislation Amendment Bill 2000, paragraph 11.9.
[7] Explanatory Memorandum to Taxation Laws Amendment Bill (No. 8) 2000, paragraph 1.17.
[8] Subsection 9-10(1).
[9] Paragraph 9-10(2)(d).
[10] *Butterworths Australian Legal Dictionary 1997*, page 1044.

with the exception of long-term leases[11], are dealt with specifically by section 40-35 and do not fall for consideration under Subdivision 40-C.

16. Under Subdivision 40-C 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.[12] While the definition of real property in section 195-1 includes a range of interests in or rights over or in relation to land[13], Subdivision 40-C is limited to real property that is capable of being residential premises. In considering sales of real property under section 40-65, incorporeal rights such as rights of entry and occupation, easements and profits à prendre do not meet the definition of residential premises and need not be considered further in the interpretation of the section.[14]

17. However, the 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.[15]

18. Where residential premises have been used only for the purpose of making input taxed supplies of residential rent under paragraph 40-35(1)(a) for a period of at least 5 years since the premises would otherwise have become 'new residential premises', they are no longer 'new residential premises'.[16] This is explained further in paragraphs 58 to 62 of this Ruling.

19. 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[17] and the person is registered or required to be registered. See Example 6 at paragraph 81.

20. The supply by way of sale of new residential premises is a taxable supply where:

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[11] 'Long-term lease' is defined in section 195-1; see paragraph 65 of this Ruling.
[12] Subsection 40-65(1).
[13] See definition at paragraph 66 of this Ruling.
[14] A 'long-term lease' should be considered under section 40-70.
[15] Subsection 40-65(2).
[16] Subsection 40-75(2).
[17] Paragraph 25 Miscellaneous Taxation Ruling MT 2000/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN'), and also paragraph 8 of Goods and Services Tax Determination GSTD 2000/8.

- the new residential premises have not been used for residential accommodation before 2 December 1998[18]; and
- the sale is made for consideration[19]; and
- the sale is made in the course or furtherance of an enterprise that the vendor carries on[20]; and
- the residential premises are in Australia[21]; and
- the vendor is registered, or required to be registered.[22]

21. 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.

Ruling with explanations

22. 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

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

23. These categories are not mutually exclusive. For example, where all of a building is removed and replaced by a building intended to be used as a residence on the same land, the criteria in both paragraphs 40-75(1)(b) and 40-75(1)(c) would be satisfied. Provided residential premises satisfy any one of the categories, they are new residential premises.

24. Where none of the criteria in the categories are satisfied the residential premises are **not** new residential premises.

25. Where the criteria in paragraphs 40-75(1)(b), or (c) are satisfied the residential premises are new residential premises, even though they may have been sold as residential premises at some point in the past.

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[18] Paragraph 40-65(2)(b).
[19] Paragraph 9-5(a).
[20] Paragraph 9-5(b).
[21] Paragraph 9-5(c) and subsection 9-25(4).
[22] Paragraph 9-5(d).

26. Subsection 40-75(1) only applies where there are 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 and capable of being occupied as 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.[23] This definition requires that, for land to be residential premises, the land will have a building affixed to it and the building has the physical characteristics that enable it to be occupied or be capable of occupation as a residence.

27. Paragraph 40-75(1)(a) considers whether the residential premises have previously been sold or have previously been the subject of a long-term lease. Where land with a building affixed is residential premises, it is any previous sale, or long-term lease, of that land as residential premises which is to be considered for the purposes of paragraph 40-75(1)(a).

28. For example, where an existing residence, which has previously been sold as residential premises, is knocked down and replaced by a new residence on the same land, the building (although it is new) is constructed on land that has previously been used and sold as residential premises. The land with the new residence would not be new residential premises under paragraph 40-75(1)(a) because the land has previously been sold as residential premises. However, because the existing building is demolished and replaced by the new residence, there will be new residential premises under paragraph 40-75(1)(c). The new residential premises created will include the land of which the new residential premises are a part.[24]

29. Paragraphs 40-75(1)(b) and (c) examine what has been done to the building to determine if the residential premises are new residential premises. Although the focus is on the building, residential premises which are new residential premises under paragraph 40-75(1)(b) or (c) include both the land and the building.[25] The land and the building components are not to be considered separately when sold where residential premises are new residential premises under any of the categories.

[23] Goods and Services Tax Ruling GSTR 2000/20: commercial residential premises - paragraph 25.
[24] Subsection 40-75(3).
[25] See subsection 40-75(3).

Not previously sold as residential premises and not previously been the subject of a long-term lease

30. In determining whether the residential premises have previously been sold as residential premises, or have previously been the subject of a long-term lease, it is necessary to consider:

- whether that estate or interest in the land (real property) has previously been sold or has previously been the subject of a long-term lease; and
- whether that land (real property) had a building affixed; and
- whether the land and affixed building were residential premises.

31. Where residential premises have previously been sold as residential premises but the registered estate or interest in the land has altered, then the residential premises will be new residential premises because the estate or interest in the land of the previously sold premises has changed. See Example 1 at paragraph 70.

32. For the purposes of Subdivision 40-C we consider that the estate or interest in the land does not change where merely for administrative reasons a new title is issued (e.g., where the old title was lost). The estate or interest in land for the purposes of section 40-75 is also not changed by the granting of an easement, profits à prendre or lease. See Example 3 at paragraph 74.[26]

33. A building may comprise flats or units for which no separate title exists. The title refers to the relevant land and improvements as a whole. If the building comprising the flats or units has been previously sold as residential premises then the sale will have been in respect of the property as a whole and not in respect of any individual flat or unit. Where the title to the property is replaced by a separate title for each flat or unit under a strata title subdivision, each strata titled lot or unit, when sold for the first time after subdivision, will be a sale of new residential premises[27] as the separate lot or unit has not been previously sold as residential premises. See Example 2 at paragraph 72.

34. Residential premises will not have been sold as residential premises if the real property was previously sold only as commercial property. For example, where land had only previously been sold with a warehouse affixed and the building is converted to residential premises then the residential premises sold would be new residential

[26] However, the basic GST rules apply to the granting of rights such as easements or profits à prendre by a registered entity for consideration.

[27] However, each strata titled unit will not be new residential premises if subsection 40-75(2) applies to that unit. See paragraph 58 - 62 of this Ruling.

premises. The conversion from a warehouse to residential premises would also be the creation of new residential premises through substantial renovations of the building. See Example 8 at paragraph 85.

New residential premises created through substantial renovations of a building

35. Under the criterion in paragraph 40-75(1)(b), new residential premises are created through the process of substantial renovations of a building. Because new residential premises are created for the purposes of paragraph 40-75(1)(b) through the process of renovation, the previous use of the premises is not relevant in determining whether the premises are 'new residential premises'. This means that premises will be 'new residential premises' even though they were previously used for residential premises prior to the substantial renovations taking place.

36. 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'.

37. The word 'renovations' is not defined in the GST Act. The term 'renovate' is defined in the *Macquarie Dictionary* as 'to make new or as if new again; restore to good condition; repair; to reinvigorate; refresh; revive'.[28] The meaning of 'renovation' in the context of section 40-75 must necessarily be different from the ordinary meaning of the term as the definition of 'substantial renovations' within the GST Act is not consistent with the dictionary meaning.

38. The income tax law distinguishes between repairs and renovations on the basis that a renovation changes the character or enhances efficiency of function, while a repair merely restores the character or efficiency of function.

39. For the purposes of section 40-75 substantial renovations can include repairs where the repairs replace all or substantially all of the building.

40. The definition of 'substantial renovations' requires that all or substantially all of the building must be removed or replaced. We consider the expression *'However, the renovations need not involve removal or replacement of foundations, external walls, interior*

[28] *The Macquarie Dictionary*, 3rd Edition, p 1803.

supporting walls, floors, roof or staircases' as being '*The renovations may, but need not, involve the removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases*'.

41. For example, where all or substantially all of dilapidated residential premises are removed apart from the foundations, external walls, interior supporting walls, floors, roof and staircases, and all or substantially all of the fixtures and fittings are replaced, new residential premises are created through substantial renovations of a building.

42. The determination of whether substantial renovations have occurred should be based on the building in its entirety, and not only on certain rooms in the building. Where, for example, only the kitchen and bathroom are radically renovated and work of a minor nature is done on the remainder of the building (for example, painting), the building would not have been substantially renovated regardless of the cost of the renovations. See Example 5 at paragraph 78 and Example 7 at paragraph 83.

43. The determination of whether the renovations are substantial must be based on all the facts and circumstances of the renovations in question, that is, it is a question of fact and degree. For example, the increase in market value of the building after the renovations, as well as the total amount spent on the renovations, are to be considered as part of the overall facts and circumstances in determining whether a particular building has been substantially renovated.

44. The following may be present where the renovations are substantial:

- a requirement to obtain building alteration approvals; or
- a requirement to obtain rezoning approvals; or
- a change in council rate classification.[29]

45. Only renovations by the current owner which are reflected in the building at the time of sale will be considered to determine if 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.

46. Work associated with the renovations, but not directly attributable to the building itself, for example, landscaping and beautification of surrounding curtilage, are excluded in determining if the building has been substantially renovated.

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[29] For example where a property developer converts a warehouse to residential premises.

47. Additions, or alterations in the nature of additions, which are unconnected with the renovations to the building are excluded in determining if the building has been substantially renovated. However, where it is determined that a building has been substantially renovated and new residential premises are created, the additions 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 another two bedrooms are added.

New residential premises created through substantial renovations by progressive renovations

48. Where the residential premises were acquired before 2 December 1998 and progressive renovations have resulted in new residential premises created through substantial renovations, it will be necessary to determine whether such new residential premises were used for residential accommodation before 2 December 1998. If the new residential premises have been created by progressive renovations undertaken 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 11 at paragraph 96.

49. It may also be necessary to determine when the premises were last substantially renovated for the purposes of subsection 40-75(2) (see paragraphs 58 to 62 of this Ruling). Where progressive renovations are undertaken, the time at which 'the premises were last substantially renovated' will be point in time when sufficient renovations have been completed to result in new residential premises.

New residential premises that have been built to replace demolished premises on the same land

50. 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.

51. Demolish is not defined in the GST Act, and therefore takes its ordinary meaning. The term 'demolish' means 'to pull down; reduce to ruins; to put an end to; destroy; ruin utterly'.[30] In the context of the GST legislation demolish means the removal of the existing building and includes removal of an entire building to another location.

52. However a building can be demolished without the complete removal of all of the building, for example, were some of the existing foundations are retained.

[30] *The Macquarie Dictionary*, 3rd Edition, p 872.

53. Similarly, the demolition of a building, apart from the facade, and construction of residential premises behind the facade would be new residential premises as the residential premises were built to replace demolished premises on the same land. The premises would also be new residential premises created through substantial renovations of a building.

54. Further, where a building is removed and that building is placed on land and sold, then those residential premises could be new residential premises under:

- paragraph 40-75(1)(a), where the land has not previously been sold as residential premises, or previously been subject to a long-term lease; or
- paragraph 40-75(1)(b), where new residential premises are created through substantial renovations of a building (where all or substantially all of the existing building is removed and replaced by the building that is moved); or
- paragraph 40-75(1)(c), where the residential premises replace a building on the same land.

55. In determining whether residential premises have been built, or contain a building that has been built, to replace demolished premises on the same land, the following must be present:

- that estate or interest in the real property is the same as that previously sold;
- that real property had a building affixed;
- a building was demolished;
- residential premises were built to replace the demolished building.

56. The phrase 'or contains a building that has been built' refers to the land component of the residential premises. We consider this phrase covers the concept that a building is attached to the land and forms part of the land.

New residential premises that were used for residential accommodation before 2 December 1998

57. Where one of the criteria in subsection 40-75(1) is satisfied but the new residential premises were used for residential accommodation before 2 December 1998, the sale of the residential premises 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 those residential premises prior to the criteria in subsection 40-75(1) being satisfied. See exception in paragraph 77 in Example 4.

Sales of rented housing

58. Even where one of the criteria in subsection 40-75(1) is satisfied, residential premises are not new residential premises if 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; or
- were last substantially renovated, where the premises have been created through substantial renovations of a building; or
- 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,

the premises have been used only for making input taxed supplies of residential rent under paragraph 40-35(1)(a).[31] In this case the sale of the premises will be input taxed.

59. The requirement in subsection 40-75(2) will be satisfied where the premises are rented for any continuous period of at least 5 years between when the premises became new residential premises[32] and when they were sold. See Example 9 at paragraph 89.

60. Although subsection 40-75(2) requires that for a period of at least 5 years the premises be used only for making input taxed supplies under paragraph 40-35(1)(a), we consider that short periods between tenancies, where the premises are available for rent, would also be periods when the premises were used for making input taxed supplies.

61. However, a continuous period of at least 5 years used for making input taxed supplies would not include periods when the premises are used for a private purpose or left vacant with no attempt to rent. See Example 10 at paragraph 92.

62. For purposes of subsection 40-75(2), where the continuous period of lease, hire or licence spans 1 July 2000, we accept that

[31] 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.
[32] But for the operation of subsection 40-75(2).

leasing, hiring or licensing during the period from 2 December 1998 to 1 July 2000 can be taken into account.

Definitions

63. The following terms used in this Ruling are defined in section 195-1 of the GST Act.

64. ***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.

65. ***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.

66. ***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.

67. ***Residential premises*** means land or a building that:

(a) is occupied as a residence; or

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

and includes a floating home.

68. ***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.

69. The following term used in this Ruling is defined in section 40-75 of the GST Act:[33]

Meaning of *new residential premises*

(1) Residential premises are ***new residential premises*** 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

(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;

[33] Subsection 40-75(1).

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.

Examples

Example 1 – new residential premises – not previously sold

70. *Jo, a property developer who is registered for GST, purchases residential premises on a large block of land which is on a single title in February 2001. She intends to divide the land into two blocks. One block contains the existing residential premises and she erects residential premises on the second block. Both residential premises are sold in February 2002.*

71. *Both properties are new residential premises as the estate or interest in the land of each separate property has not previously been sold as residential premises. Both are taxable supplies when sold in the course of Jo's enterprise.*

Example 2 – new residential premises – not previously sold as strata title

72. *Stewart, a property speculator and developer who is registered for GST, acquires a ski lodge in July 2000 with the intention of strata titling the residential premises and selling the units. The ski lodge is strata titled and all units are sold by June 2003.*

73. *Each of the strata title units, being residential premises, are new residential premises as none have previously been sold as residential premises on their current title, and thus are taxable supplies when sold in the course of Stewart's enterprise.*

Example 3 – granting an easement

74. *Greg, a property speculator and developer who is registered for GST, acquires an existing residence on a large block from an owner-occupier in July 2000 with the intention of demolishing the existing residence, then building and selling units. He rents out the premises while he makes preliminary investigations with the approving authority. He is advised that approval will only be granted after an easement giving vehicle access to a neighbouring property is registered on the title.*

75. *Greg registers the easement but then has difficulty financing the development. He sells the property, unchanged apart from the new easement, in January 2001. The property when sold is not new residential premises. Greg does not make a taxable supply. The sale of the property is input taxed.*

Example 4 – new residential premises used for residential accommodation before 2 December 1998

76. *Grant, a property developer who is registered for GST, builds a block of residential units in July 1998. Each unit is available for residential accommodation from September 1998 until he sells the block in December 2008.*

77. *The block of units is residential premises and has not previously been sold. However, the block is not new residential premises as it has only been used for making input taxed supplies of residential premises for at least 5 years since first becoming residential premises.*[34] *In any event, as those new residential premises were used for residential accommodation before 2 December 1998, it would be input taxed whenever sold.*[35] *The exception would be where those residential premises become new residential premises again on or after 2 December 1998, for example, where Grant strata titles the premises (see Example 2).*

Example 5 – new residential premises created through substantial renovations of a building

78. *Mary-Anne, an investor who is registered for GST, acquires a dilapidated terrace house in October 2000.*

79. *The terrace house is renovated by replacing the existing 1920's style kitchen with a completely new designer kitchen, removing the existing bathroom and separate toilet, removing the dividing wall and installing a new bathroom which includes a spa. Existing carpeting is removed and hardwood floors polished, a skylight and reverse cycle air-conditioning is installed. The house is completely rewired, replastered and repainted. Mary-Anne sells the renovated terrace house in January 2001.*

80. *The work done amounts to substantial renovations of the building. The residential premises have not been used only for making input taxed supplies of residential premises by way of lease, hire or licence for a period of 5 years since the premises were last substantially renovated. New residential premises have been created through substantial renovations of a building and the sale of the land*

[34] Paragraph 40-75(2)(a).
[35] Paragraph 40-65(2)(b).

and building is a taxable supply when sold by Mary-Anne in the course of her enterprise.

Example 6 – sale is not made in the course or furtherance of an enterprise

81. *Thomas, a public servant, acquires a terrace house adjacent to that acquired by Mary-Anne in example 5 in October 2000, and uses the terrace house as his private residence. Thomas upgrades his residence to the same standard as Mary-Anne's. Thomas is transferred in his job interstate and sells his renovated terrace house in August 2003.*

82. *Thomas has created new residential premises through substantial renovation of the terrace house but it is not a taxable supply because the sale is not made in the course or furtherance of an enterprise carried on by Thomas.*

Example 7 – non substantial renovation

83. *Bob, an investor who is registered for GST, acquires Tangalooma, a historic federation style residence in July 2000. Bob modernises the kitchen and bathroom only and sells the property for use as residential premises in December 2000.*

84. *The work done does not amount to a substantial renovation as all or substantially all of the building has not been removed or replaced. GST is not payable on the supply when Bob sells the residence in the course of his enterprise. The sale of the property is input taxed.*

Example 8 – residential premises - not previously sold as residential premises

85. *Alec, a builder who is registered for GST, acquires a 1940's style commercial premises in August 2000. Alec intends to renovate the building, with the assistance of his two brothers Callum and Max, to create residential premises in the furtherance of his enterprise.*

86. *The renovations are extensive and include removal of substantially all of the interior fixtures, fittings and interior wall cladding of the building, installation of new wiring, a modern kitchen and bathroom, new flooring, an internal staircase to supplement an existing uncovered external staircase, interior wall coverings and ceiling, skylight, ducted heating and repainting. The premises are sold in February 2001.*

87. *The work done amounts to a substantial renovation of the building. In addition the residential premises 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.

88. *As the new residential premises have not been used only for making input taxed supplies of residential premises by way of lease, hire or licence for at least 5 years since the premises first became residential premises, the supply of the land and building is a taxable supply when sold by Alec in the course of his enterprise.*

Example 9 – new residential premises created through substantial renovations of a building – rented for over 5 years

89. *Michael, a property speculator who is registered for GST, acquires a 1950's style fibro weekender in September 2000 with the intention of renovating, renting and eventually selling the property.*

90. *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, flooring is replaced by polished hardwood floors, air conditioning is installed, the existing kitchen is removed and replaced by a complete new extended kitchen, the existing bathroom removed and a new bathroom including a spa bath is installed, and the building is painted. The weekender is rented continuously for 6 years immediately following the modifications, and is sold by Michael in December 2007.*

91. *The work done amounts to substantial renovation of the building. New residential premises were created through substantial renovation in March 2001. As the new residential premises have been used only for making input taxed supplies of residential premises by way of lease, hire or licence (i.e., rented) for at least 5 years since the premises were last substantially renovated, the sale of the land and building is not a taxable supply when sold in the course of Michael's enterprise. The sale of the property is input taxed.*

Example 10 – not new residential premises because used only for making input taxed supplies for at least 5 years

92. *Belinda, a property speculator who is registered for GST, acquires a block of land in April 2001 with the intention of constructing and selling residential premises.*

93. *The residential premises are constructed by August 2001, but Belinda is unable to sell the premises.*

94. *Belinda decides to take the premises off the market and rents the property out from December 2001. The property is rented until July 2008 when it is sold. The rental agreements are for various periods during this time, but there are short periods between*

tenancies when the property is not rented out whilst it is being advertised for rental. Belinda does not use the premises for private or any other purposes during the vacant periods.

95. *As the residential premises have been used only for making input taxed supplies of residential premises by way of lease, hire or licence for a period of at least 5 years since the premises first became residential premises (in August 2001), they are not new residential premises when sold. The sale of the land and building is not a taxable supply when sold by Belinda. The sale of the property is input taxed.*

Example 11 – new residential premises – progressive renovations

96. *Jamie, a property speculator who is registered for GST, acquires a 1920's style house in September 2001 with the intention of renting for short-term periods, and to progressively renovate as his work commitments permit.*

97. *Over time the mortar is replaced and the exterior brickwork is rendered, the dilapidated roof is removed and replaced with a new roof. All the existing windows are replaced with new cedar windows. Existing deteriorated lime plaster on the walls and ceilings in the lounge room, hallway and all the bedrooms is removed and replaced with gyprock. The existing kitchen is removed and replaced by a complete new kitchen (including new tiles to replace existing lino). The existing bathroom is removed but for the framework and a new bathroom installed (new bathroom fixtures, ie new toilet, bath and taps are fitted and the bathroom is tiled). The carpet is removed, floorboards sanded and polished, the house is rewired, all light fittings are replaced and the existing verandah is extended and enclosed. The house is repainted.*

98. *The building is sold in March 2007. The work done amounts to substantial renovations of the building. As the residential premises have not been used only for making input taxed supplies of residential premises for a period of at least 5 years, it is not necessary to determine when the premises were last substantially renovated.*

99. *The new residential premises were created through substantial renovation some time in the period before March 2007. As these new residential premises were not used for residential accommodation before 2 December 1998 and have not been only used for making input taxed supplies of residential premises by way of lease, hire or licence for at least 5 years since the premises were last substantially renovated, the sale of the land and building is a taxable supply when sold in the course of Jamie's enterprise.*

Example 12 – new residential premises that have been built to replace demolished premises on the same land

100. *Tracey, a property speculator 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 2004.*

101. *The demolition and construction of a three-storey residence is new residential premises created through substantial renovations of a building as it is the replacement of substantially all of the building. However, 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.*

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Your comments

103. If you wish to comment on this draft Ruling, please send your comments promptly by 3 August 2001 to:

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Subject references:
- buildings
- commercial residential premises
- freehold
- GST residential rents
- GST sale of residential premises
- leasehold
- long-term lease
- new residential premises
- real estate
- real property
- residential premises
- strata titles
- substantial renovations

Legislative references:
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Appendix 1

Treatment of the sale of residential premises