GSTR 2002/D4 - Goods and services tax: when is a sale of real property a sale of new residential premises?

This cover sheet is provided for information only. It does not form part of *GSTR 2002/D4 - Goods and services tax: when is a sale of real property a sale of new residential premises?*

There is an Erratum notice for this document.
This document has been finalised.

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

Contents	Para
What this Ruling is about	**1**
Date of effect	**7**
Background	**8**
Context	**15**
Ruling with explanations	**23**
Examples	**103**
Definitions	**148**
Detailed contents list	**155**
Your comments	**156**
Appendix 1	

Preamble

This document is a draft for industry and professional 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 officially released as a final Ruling 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 entity to whom it applies.

What this Ruling is about

1. This Ruling explains what is a 'sale' for the purposes of section 40-65 and when **real property** is **new residential premises** pursuant to 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 circumstances. This Ruling deals with the circumstances in which **residential premises** are new residential premises. Some of the other circumstances are dealt with in other Rulings.[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) of the GST Act, 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. These terms, when first mentioned, appear in **bold type**.

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

[1] The sale of **commercial residential premises** is considered in Goods and Services Tax Ruling GSTR 2000/20. Whether a sale of residential premises is made in the course or furtherance of an enterprise is dealt with in Miscellaneous Taxation Ruling MT 2000/1 and Goods and Services Tax Determination GSTD 2000/8.

Date of effect

7. This draft Ruling represents the preliminary, though considered, view of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applied from 1 July 2000. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to whom it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

Background

8. 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.[3] For example, where 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.[4] The consideration will need to be apportioned as explained in Goods and Services Tax Ruling GSTR 2001/8, which deals with apportioning the consideration for a supply that includes taxable and non taxable parts.[5]

9. The sale of new residential premises (which includes houses and units) by a registered entity (which includes builders and

[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, 23-5 and Division 188. See also MT 2000/1 and GSTD 2000/8.

[3] As noted in GSTR 2000/20 at paragraph 19 (as amended in the Addendum) – "It is their physical characteristics that mark them out as a residence. In turn, these characteristics determine when the use or proposed use is for residential accommodation."

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

[5] Paragraphs 106 to 108.

developers) in the course or furtherance of an enterprise it carries on, is a taxable supply.[6]

10. 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[7] and the person is registered or required to be registered.

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 upon sale. The definition also ensures that if a developer purchases a commercial building, demolishes it and builds an apartment block, the 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.[8]

12. However, it is not intended that sales of housing which has been used for residential accommodation before 2 December 1998 (either for rental income production or for owner occupation) would be subject to GST as new residential premises. The exceptions would be where new residential premises are created through **substantial renovations** or are built to replace demolished premises on the same land.[9]

13. 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 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 the construction and acquisition costs.[10]

14. This Ruling contains a number of examples. An example however may relate to a number of concepts discussed in several different parts of the ruling, and for this reason it was considered appropriate to include these examples together at the end of the ruling.

Context

15. Sections 40-65 and 40-75 are specific provisions which determine whether a particular supply is an input taxed supply. However, to the extent that a sale of real property is not input taxed under these specific provisions it is necessary to consider whether the

[6] Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, paragraph 5.167.
[7] MT 2000/1 paragraph 25, and also GSTD 2000/8 paragraph 8.
[8] Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999, paragraph 1.163.
[9] Paragraphs 40-75(1)(b) and (c)
[10] Paragraph 11-15(2)(a)

supply is a taxable supply under the basic rules in section 9-5. For the purposes of the GST legislation a supply is any form of supply whatsoever[11]. The sale of real property is a supply.

16. '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. 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 licence, with the exception of long-term leases[12], is dealt with specifically by section 40-35 and does not fall for consideration under section 40-65**.**

17. For example, an entity purchases an apartment building and enters a lease agreement to lease out those premises for a period of 10 years. It subsequently sells the premises with the existing lease attached. What has been sold is the freehold interest and as this has been previously sold, it will not be the sale of new residential premises and will be an input taxed supply. The transfer of a leasehold interest by a lessee is dealt with under section 40-35, and this is not a sale for the purposes of section 40-65. The transfer of the leasehold interest is an input taxed supply.

18. 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.[13] While the definition of 'real property' in section 195-1 includes a range of interests in or rights over or in relation to land[14], section 40-65 is limited to real property that is residential premises.

19. Subsection 40-65(2) states that 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]

20. Where residential premises have been used only for the purpose of making input taxed supplies (ie residential rental) under paragraph 40-35(1)(a) for a continuous period of at least 5 years since the premises would otherwise have become new residential premises,

[11] Subsection 9-10(1).
[12] 'Long-term lease' is defined in section 195-1; see paragraph 150 of this Ruling.
[13] Subsection 40-65(1).
[14] See definition at paragraph 151 of this Ruling.
[15] Subsection 40-65(2).

they are no longer new residential premises.[16] This is explained further in paragraphs 93 to 97 of this Ruling.

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

- the residential premises are new residential premises as defined in section 40-75; and
- the new residential premises have not been used for residential accommodation before 2 December 1998[17]; and
- the sale is made for consideration[18]; and
- the sale is made in the course or furtherance of an enterprise that the vendor carries on[19]; and
- the residential premises are in Australia[20]; and
- the vendor is registered, or required to be registered.[21]

22. 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

23. 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

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

24. The above categories are not mutually exclusive. Provided residential premises satisfy any one of the categories, they are new residential premises.

---

[16] Subsection 40-75(2).
[17] Paragraph 40-65(2)(b).
[18] Paragraph 9-5(a).
[19] Paragraph 9-5(b).
[20] Paragraph 9-5(c) and subsection 9-25(4).
[21] Paragraph 9-5(d).

25. Where none of the criteria in these categories are satisfied the residential premises are not new residential premises.

26. 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 or have previously been the subject of a long-term lease.

27. 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 to be 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.[22] This definition requires that, for land to be residential premises, a building will be part of the land and the building has the physical characteristics that make it a residence.

28. 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 (or part of that land) 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 is to be considered for the purposes of paragraph 40-75(1)(a).

29. Paragraphs 40-75(1)(b) and (c) examine what has been done to the building or the activity of building to determine whether the residential premises are new residential premises. Although the focus is on the building, residential premises that are new residential premises under paragraph 40-75(1)(b) or (c) include both the land and the building.[23] The land and the building components are not to be considered separately when residential premises are sold.

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

30. 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.[24]

31. 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'

[22] GSTR 2000/20 paragraph 25.
[23] See subsection 40-75(3).
[24] Paragraph 40-75(1)(a).

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 able to be or intended to be occupied as a residence.[25] We consider that the land and building 'package' concept also applies to paragraphs 40-75(1)(b) and 40-75(1)(c).

32. Where land that contains a residential building is subdivided into two or more lots it is necessary to consider whether the land and residential building together have previously been sold as residential premises, or been the subject of a long-term lease, in determining whether there are new residential premises. Similarly, where land and an apartment building is strata titled, it is necessary to consider whether the land and the residential building together, or the strata titled unit, have previously been sold as residential premises, or been the subject of a long-term lease, in determining whether there are new residential premises. The effect of this approach is discussed below in paragraphs 39 to 42.

Changes in the size of the land

33. In deciding whether land and a building have previously been sold as residential premises or been the subject of a long-term lease, or are new residential premises, it is necessary to consider the land and building together. Has that land and that building together previously been sold as residential premises, or been subject to a long-term lease? To do this, we consider that you look at the land and building as a 'package'. You consider whether the building and the land, or part of the land, that you are selling has previously been sold as residential premises, or been subject to a long-term lease.

34. Where land with a residential building has previously been sold as residential premises, or subject to a long-term lease, and the area of land is reduced in size, we consider that the sale 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 subject to a long-term lease. It may be necessary to consider whether the supply of the vacant land is a taxable supply in its own right.

35. For example, a house is located in the corner of 1,000 sq m of land. The house and land have previously been sold together as residential premises. A 200 sq m piece of land is subdivided from the existing land and sold. The 'package' of the house and the 800 sq m of land on which it sits has previously been sold. This is because the 'package' has previously been sold as part of a larger 'package'.

[25] GSTR 2000/20 paragraph 25.

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 increased, we consider that there is a different residential premises 'package'. Only the residential building and part of the land, as the residential premises 'package', have previously been sold or been the subject of a long-term lease. Where the sale is made in the course or furtherance of an enterprise we consider that an apportionment of the supply is required when considering the appropriate GST treatment.

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 increased 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 will be a taxable supply under section 9-5. Where the sale of the residential premises has both taxable and input-taxed parts an apportionment will be appropriate. Various acceptable methods of apportionment are discussed in GSTR 2001/8 at paragraphs 97 to 111.

Residential premises previously sold as commercial property

38. Residential premises will not have 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 together with a warehouse, and the building is converted to residential premises, then the residential premises would be new residential premises.

Subdivision of apartments by strata title

39. A building may comprise flats or units for which no separate title exists. The 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.

40. The process of strata titling of apartment blocks, where the land with the apartment block has previously been sold as residential premises or been the subject of a long-term lease, by itself, does not create new residential premises under paragraph 40-75(1)(a). When

the newly strata titled units are subsequently sold they 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 a 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 58 to 87).

Subdivision of land

41. The subdivision of land that includes residential premises may reduce the size of the block of land on which the residential premises are located. For example, this may occur where the owner of a house has land of sufficient size to obtain local government approval to subdivide that land into two lots. Sub-division of land, of itself, does not create new residential premises.

42. However, the owner of the land may then sell the vacant block or build a new residence on that land. Where this occurs, the area of the land that forms part of the residential premises will be changed by the creation of two new blocks of land, where formerly one existed. We consider that the remaining land together with the existing house has previously been sold and are not new residential premises under paragraph 40-75(1)(a). The newly subdivided block of land is not residential premises as vacant land by itself does not constitute residential premises. It may be necessary to consider whether the sale of the new vacant block of land is a taxable supply under section 9-5. The margin scheme, under Division 75, may also need to be considered to see if it is available to the supplier.

Alternative view

43. Where real property that is residential premises, has previously been sold as residential premises, or been the subject of a long-term lease, and the registered estate or interest in the land has altered, it will be new residential premises because that changed interest has not been sold before, or been the subject of a long-term lease. Under the alternative view previously contained in draft ruling GSTR 2001/D3, the strata titling of an apartment block would have created new residential premises as would the subdivision of land of existing residential premises.

44. We consider this approach does not take into account the fact that the land and/or building may not physically change as a consequence of the strata titling and that the capability to occupy those premises is not altered. The apartments were apartments before

and after strata titling. Similarly, the existing residence remains the same before and after the subdivision.

Company title converted to strata title

45. Company title means:[26]

> 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. 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.

46. Under company title, the company holds the title to the units in a 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).

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

48. In the above case, where the company is the first owner of the building, on transfer, the supply of the residential units by the company to the individual shareholders will be a supply of new residential premises under paragraph 40-75(1)(a) as they have not previously been sold. Only shares in the company have previously been sold. This sale may give rise to a taxable supply by the company.

49. However, where the residential units have been used for residential accommodation before 2 December 1998 (paragraph 40-65(2)(b)), the disposal of those residential premises by the company to the shareholder will not give rise to a taxable supply, provided paragraphs 40-75(1)(b) or (c) do not apply.

50. Where the shareholder returns the shares to the company in exchange for the unit, the supply of the shares by the shareholder to the company is a supply of a financial instrument[27] and may be an input taxed supply under Subdivision 40-A. Any subsequent sale of a

[26] Butterworths Australian Legal Dictionary 1997
[27] GSTR 2002/2, paragraph 24.

unit by the new owner will not be of new residential premises under paragraph 40-75(1)(a).

Tenants in common

51. Residential premises, for example a block of units, may have been developed by two or more owners as tenants in common. In some cases, the property may be converted to strata title. The process of strata titling does not involve a transfer of any interest and all that results is the residential premises are held under a different title by the same owners.

52. The newly created strata titled units may then be transferred between the individual participants so that each becomes the sole owner of specified units. For example, A and B are tenants in common in equal shares of land upon which they construct 6 units. A transfers his interest in 3 units to B and B transfers his interest in 3 units to A. In this case, the transfer of each participant's interest as tenant in common to the other is not a sale of residential premises, as the interest supplied does not fall within the definition of 'residential premises' in section 195-1. The interest supplied is not occupied or capable of being occupied as a residence. Therefore it is necessary to consider the application of section 9-5 to determine if the supply of the interest is a taxable supply.

53. However, where the newly strata titled individual units are subsequently sold by the individual participants there will be a sale of new residential premises.

New residential premises where building relocated

54. Where residential premises are moved to another position on the same land, we consider that the 'package' of that land and the building have previously been sold as residential premises.

55. For example, a house is located in the centre of 1600 sq m 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 so that the land can be subdivided into two 800 sq m blocks. The house and the 800 sq m of land on which it now sits have previously been sold, despite that the 'package' being sold was previously part of a larger 'package'.

56. Similar principles apply where the house located in one corner of 2½ hectares of land is relocated to the opposite corner of the site following the subdivision of the larger area of land into 20 smaller lots. Where the original land and residential building had previously been sold as residential premises, or been subject to 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 under paragraph 40-75(1)(a). This is because the 'package' has been sold previously, or been the subject to a long-term lease, as part of the larger 'package'.

57. Where a residential building is relocated from one block of land to a 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 subject to 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.

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

58. Under paragraph 40-75(1)(b), new residential premises are created through the process of 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 21). Where, however, the substantial renovations occurred before 2 December 1998 and those premises have been used for residential accommodation before that date, the sale of those premises will not be a taxable supply and will instead be input taxed (paragraph 40-65(2)(b)). Because new residential premises are created for the purposes of paragraph 40-75(1)(b) the previous sale, long-term lease or use of the residential premises is not relevant in determining whether the residential premises are new residential premises.

59. 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'.

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

61. The word 'building' is not defined in the GST Act. The word 'building' means 'a substantial structure with a roof and walls, as a shed, house, department store etc'.[28] A building constitutes a number of components, which can be termed either structural (ie 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). In the context of the provision we consider that an individual strata title unit or

[28] The Macquarie Dictionary, 3rd Edition.

apartment is a 'building' and its structure is enclosed within the external walls of the unit, rather than the entire complex.

62. The general usage of the term renovate means 'to make new or as if new again; restore to good condition; repair; to reinvigorate; refresh; revive'.[29] However the term needs to be considered in the light of the surrounding words in the definition of substantial renovations. We consider renovations can fall within three categories, namely, structural, non-structural or cosmetic renovation work.

63. 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 expression 'However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases' means 'The renovations may, but need not, involve the removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases'.

Criteria for a substantial renovations

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

65. We consider that for substantial renovations to occur for the purposes of the 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 needs to affect the building as a whole; and

(ii) the renovations result in the removal or replacement of a substantially all of the building;

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

(i) Substantial renovations need to affect the building

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

[29] The Macquarie Dictionary, 3rd Edition.

Building in its entirety

68. 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 certain rooms in the building. For renovations to be substantial they should 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.

69. 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

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

Additions

71. 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 are created, all additions that relate to the building that was substantially renovated 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.

(ii) Removal or replacement of a substantially all of the building

72. The extent to which parts of a building are removed or replaced will determine whether the above criteria are 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.

73. These criteria will be 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.

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

- alterations to, or replacement of, foundations;
- replacement, removal or alteration 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, (eg a single door is replaced by double sliding doors).

75. Structural work would also be undertaken in the course of building an extension to a house or adding new bedrooms to a house.

76. 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.

77. However, substantial renovations may also occur where a substantial part of the non-structural components is removed or replaced but the structural components may or may not be 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.

78. Non-structural building work includes:

- electrical rewiring;
- replacement, removal or alteration of non-supporting walls, or parts thereof (interior or exterior);
- plastering or rendering an entire wall or walls;
- plumbing (eg replacing old metal pipes with copper pipes or plastic pipes);
- the removal or replacement of kitchen cupboards, bathrooms fixtures etc.;
- removal or replacement of air-conditioning or security systems.

79. Guidance is provided on what we regard as substantial renovations in Examples 3-5 at paragraphs 108 to 118 and Examples 8-9 at paragraphs 130-136 at the end of the Ruling. For instance, in Example 8 at paragraphs 130-133, the removal and replacement of the exterior walls, the removal of some internal walls to create a more

open plan house, and the replacement of the flooring and the kitchen in a house are considered to be substantial renovations.

80. 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 to regard substantial renovations to have occurred.

81. 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 would consider work of this nature to be cosmetic. Cosmetic work by itself cannot give rise 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.

82. 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 contemplated. One example of where the work undertaken is largely cosmetic and does not result in substantial renovations, is contained in Example 4 at paragraphs 113 to 114.

83. 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 done by previous owners

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

85. Where the 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 134 to 136.

86. It may also be necessary to determine when the premises were last substantially renovated for the purposes of the 5 year rule (see paragraphs 93 to 97 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.

87. 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 state that it is in at the time of sale, will require consideration in determining if new residential premises have been created through substantial renovations.

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

88. 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.

89. The word 'demolish' is not defined in the GST Act, and 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'.[30] In the context of the GST legislation demolish by reference to premises means the pulling down or removal of the existing building.

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

91. Similarly, the demolition of premises, apart from the facade, and construction of residential premises behind the façade, 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.

[30] The Macquarie Dictionary, 3rd Edition.

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

92. 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 those residential premises prior to the criteria in subsection 40-75(1) being satisfied. Where residential premises are new residential premises due to substantial renovation, or demolition and rebuilding, GST may apply to the sale of the premises. For example, where a house that was rented from September 1998 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

93. Even if one of the criteria in subsection 40-75(1) is satisfied, residential premises are not new residential premises where 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;
- 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 rental under paragraph 40-35(1)(a).[31] In this case, the premises are not new residential premises and the sale of the premises will be input taxed.

94. The requirement in subsection 40-75(2) will be satisfied where the only supplies of the premises were by way of lease, hire or licence (ie. residential rental) for any continuous period of at least 5 years between when the premises would otherwise have become new

[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.

residential premises[32] and when they were sold. See Example 8 at paragraphs 130 to 133.

95. 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). We consider that the 5 years must be a continuous period. A continuous period is not broken by periods between tenancies where the premises are available for rent following the departure by a previous tenant.

96. 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. See Example 9 at paragraphs 134 to 136.

97. 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.

Sale of residential premises with more than one residential building

98. Where residential premises are sold in the course or furtherance of an enterprise and there is more than one residential building to be used for residential accommodation on the same land, it is necessary to apportion the value of the supply between the residential premises which are new residential premises and those which are not. This is because where one of the residential premises 'packages' is new residential premises that was not used for residential accommodation before 2 December 1998 (or commercial residential premises) and one is not, the words 'to the extent' in subsection 40-65(2) operate to exclude the new residential premises 'package' from the input-taxed treatment of the rest of the property.

99. 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 the supply is the new residential building together with the land on which the building is located and an appropriate area of land surrounding it. Various acceptable methods of apportionment are discussed in GSTR 2001/8[33] (see also Example 12 at paragraphs 143 to 147). 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.

---

[32] But for the operation of subsection 40-75(2).
[33] Paragraphs 97 to 111.

Application of subsection 9-30(4)

100. 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.

101. Where the owner of residential premises subdivides residential premises that have been rented out creating two blocks of land, one with a dwelling and the other a vacant block of land, will subsection 9-30(4) apply? We are of the view that the reference to "anything" in subsection 9-30(4) was intended to apply to the *whole* of the thing that was used to make input taxed supplies. In this case, the subdivided lot is not the whole of the land used to make the input taxed supply of residential premises. Accordingly, subsection 9-30(4) does not apply. The supply of the vacant land needs to be considered under section 9-5.

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

Examples

Example 1 – new residential premises – not previously sold

103. *Jo, a property developer, is registered for GST. She purchases residential premises on a large block of land in February 2001 with the intention to subdivide the land into two blocks, and builds on the second block. 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 second block of land. Both residential premises are sold in February 2002.*

104. *The first block of land, which has reduced in size (ie 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

105. *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.*

106. *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.*[34] *In any event, as the premises were used for residential accommodation before 2 December 1998, a sale of the premises would be input taxed.*[35] *An exception would be if the premises become new residential premises again on or after 2 December 1998, for example, if Grant were to substantially renovate the premises.*

107. *Further, where Grant sells the block of flats on one title to a developer who, as part of his enterprise, subdivides and sells the individual units, the sale of each unit would not be 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.*

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

108. *Indira, a property speculator, 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.*

109. *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*

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

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.

110. *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.*

111. *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, replacing old carpets and cupboards with parquetry and new walk-in robes and repainting, we would consider that substantial renovations have occurred.*

112. *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 111 she would be making a taxable supply.*

Example 4 – Non substantial renovations – renovations largely cosmetic

113. *Bob, a property speculator, is registered for GST. He acquires Tangalooma, an 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.*

114. *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.*

Example 5 – substantial renovations

115. *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, and lives in the bungalow while she carries out the renovations. She carries out the following renovations.*

116. *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.*

117. *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.*

118. *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.*

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

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

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

121. *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.*

122. *Where the restoration work affects most of the rooms in the house, 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.*

123. *The residential premises have been used only for making input taxed supplies (ie 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.

124. *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, while cosmetic in nature, and not a factor in deciding whether substantial renovations have occurred, does form part of the overall renovations of the house.*

125. *Whether renovations are substantial must be determined in light of all the facts and circumstances. There may be circumstances where it is not essential that all the work described in this example has been undertaken before there have been substantial renovations.*

126. *Where there have been substantial renovations, the sale of the residential premises by David will be a taxable supply unless:*

- *The substantial renovations occurred before 2 December 1998 and the new residential premises created were used for residential accommodation before that date also; or*
- *The substantial renovations occurred on or after 2 December 1998 and the residential premises have been rented continuously for at least 5 years during the period since the premises were last substantially renovated.*

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

127. *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.*

128. *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. In addition the residential premises which have been created by substantial renovations of the building are new residential premises*

129. *The new residential premises have not been used only for making input taxed supplies (ie 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 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

130. *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.*

131. *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 is completely replaced throughout the house 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, and the building is repainted both inside and outside. 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 sells the weekender in December 2007.*

132. *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.

133. *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, the premises are no longer new residential premises. The sale of the residential premises is not a taxable supply when sold in the course of Michael's enterprise. The sale of the property is an input taxed supply.*

Example 9 – new residential premises – progressive renovations

134. *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. He intends to sell the house within 12 months of completing the renovations.*

135. *The renovations were carried out in the following stages:*

September to November 2001	• *replacement of kitchen (including laying of new floor covering)* • *the existing bathroom was removed but for the framework and a new bathroom installed (ie. new toilet, bath, vanity, shower, tap fittings and tiling)*
February 2002	• *the carpet was removed, floorboards sanded and polished, the house rewired, all light fittings were replaced* • *the existing verandah was extended by partly demolishing and enclosing it; and 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* • *the house is repainted*

136. *Even though the work carried out in 2001 and February 2002 did 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

137. *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.*

138. *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.*

In addition, 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)

139. *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.*

140. *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,36 as the period when Henk lives in the house does not satisfy the criteria of having only been used for making input taxed supplies.*

141. *The sale of the house would be a taxable supply as it is a supply of new residential premises and is made in the course or furtherance of Henk's enterprise.*

142. *Where the residential premises had not been only used for making input taxed supplies of residential rental for a continuous period of at least 5 years we consider that subsection 9-30(4) does not apply to make the supply input taxed.*

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

143. *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 ten residential chalets 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.*

---

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

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

145. *When Jonathon later builds the ten chalets, additional residential premises are created. Land previously part of the original residential premises is now used in conjunction with the chalets, 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.*

146. *Jonathon makes a supply that comprises a taxable part and an input taxed part. The taxable part is the supply of the residential chalets (and that area of land around them that actually or substantially contributes to the enjoyment of the chalets or fulfilment of their purpose as a residence) being new residential premises. The input taxed part is the supply of his home and the remainder of the land, being residential premises.*

147. *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

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

149. *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.

150. *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.

151. *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.

152. *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.

153. *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.

154. *New residential premises* is defined in section 40-75 of the GST Act:[37]

Meaning of *new residential premises*

(1) Residential premises are *new residential premises* if they:

[37] Subsection 40-75(1).

(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;

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.

Detailed contents list

155. Below is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	**1**
Date of effect	**7**
Background	**8**
Context	**15**
Ruling with explanations	**23**
Residential premises not previously sold as residential premises and not previously subject to a long-term lease	30
Changes in the size of land	33
Residential premises previously sold as commercial property	38

Subdivision of apartments by strata title 39
Subdivision of land 41
Alternative view 43
Company title converted to strata title 45
Tenants in common 51
New residential premises where building relocated 54
New residential premises created through substantial renovations
Section 40-75(1)(b) 58
Criteria for a substantial renovations 64
Substantial renovations need to affect the building 67
Building in its entirety 68
Curtilage 70
Additions 71
Removal or replacement of substantially all of the building 72
Renovation work done by previous owners 84
Progressive renovations by the same owner 85
New residential premises that have been built to replace demolished premises on the same land – section 40-75(1)(c) 88
New residential premises that were used for residential accommodation before 2 December 1998 – section 40-65(2)(b) 92
Sales of rented housing and the 5 year rule 93
Sale of residential premises with more than one residential building 98
Application of subsection 9-30(4) 100
Examples **103**
Example 1 – new residential premises – not previously sold 103
Example 2 – new residential premises used for residential accommodation before 2 December 1998 105
Example 3 – non-substantial renovations – large part of building not affected 108
Example 4 – non-substantial renovations – renovations largely cosmetic 113
Example 5 – substantial renovations 115
Example 6 – Residential premises built, rented, restored and then sold 119

Example 7 – residential premises not previously sold as residential premises 127

Example 8 – new residential premises created through substantial renovations of a building – rented for over 5 years 130

Example 9 – new residential premises – progressive renovations 134

Example 10 – new residential premises that have been built to replace demolished premises on the same land 137

Example 11 – 5 year rule and interaction with subsection 9-30(4) 139

Example 12 - where additional residential buildings are built on land that already has existing residential premises 143

Definitions **148**

Detailed contents list **155**

Your comments **156**

Your comments

156. If you wish to comment on this draft Ruling, please send your comments promptly by 20 November 2002 to:

Contact officers: **Liz Pash / Harvey Dolby**
Telephone: **(07) 321 35793 (07) 321 35817**
Facsimile: **(07) 3213 5055**
E-mail: **liz.pash@ato.gov.au**
harvey.dolby@ato.gov.au
Address: **GST Rulings Unit**
GPO Box 920
Brisbane QLD 4001

Commissioner of Taxation
9 October 2002

Previous draft:
GSTR 2001/D3

Related Rulings/Determinations:

GSTD 2000/8; GSTR 1999/1; GSTR 2000/20; GSTR 2001/D3; GSTR 2001/8; GSTR 2000/21; MT 2000/1

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:

- ANTS (GST) A99 9-5
- ANTS (GST) A99 9-5(a)
- ANTS (GST) A99 9-5(b)
- ANTS (GST) A99 9-5(c)
- ANTS (GST) A99 9-5(d)
- ANTS (GST) A99 9-10(1)
- ANTS (GST) A99 9-10(2)(d)
- ANTS (GST) A99 9-20
- ANTS (GST) A99 9-25
- ANTS (GST) A99 9-25(4)
- ANTS (GST) A99 9-30(4)
- ANTS (GST) A99 9-80
- ANTS (GST) A99 11-15(2)(a)
- ANTS (GST) A99 23-5
- ANTS (GST) A99 40-A
- ANTS (GST) A99 40-35
- ANTS (GST) A99 40-35(1)(a)
- ANTS (GST) A99 40-65
- ANTS (GST) A99 40-65(1)
- ANTS (GST) A99 40-65(2)
- ANTS (GST) A99 40-65(2)(b)
- ANTS (GST) A99 40-70
- ANTS (GST) A99 40-70(2)(b)
- ANTS (GST) A99 40-75
- ANTS (GST) A99 40-75(1)
- ANTS (GST) A99 40-75(1)(a)
- ANTS (GST) A99 40-75(1)(b)
- ANTS (GST) A99 40-75(1)(c)
- ANTS (GST) A99 40-75(2)
- ANTS (GST) A99 40-75(2)(a)
- ANTS (GST) A99 40-75(2)(b)
- ANTS (GST) A99 40-75(3)
- ANTS (GST) A99 Div 75
- ANTS (GST) A99 Div 188
- ANTS (GST) A99 195-1
- TAA 1953 37

ATO references:
NO: 2001/002148
ISSN: 1443-5160

Appendix 1

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