# *GSTR 2007/D2 - Goods and services tax: development lease arrangements with government agencies*



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

# Draft Goods and Services Tax Ruling

## Goods and services tax: development lease arrangements with government agencies

Contents Para



***Preamble***

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way the law applies. It is not a ruling or advice for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. You can rely on this publication to provide you with protection from interest and penalties as follows. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

# What this Ruling is about

1. This draft Ruling explains the GST treatment of particular transactions arising in the context of development lease arrangements involving a government agency.[1] These development lease arrangements have the following features:

- the government agency supplies land by way of sale of the freehold or grant of a **long-term lease**[2] to a private developer for development purposes; and
- before the transfer or grant of the freehold or leasehold title to the land to the developer, the developer is required to undertake the development in accordance with the terms of a short term lease (commonly referred to as a 'development lease') granted by the government agency.

2. In particular, this draft Ruling considers for GST purposes:

(a) whether the grant of the development lease by the government agency to the developer is a supply made for consideration;

[1] For the purposes of this draft Ruling the term 'government agency' includes both **Australian government agencies** and **Government related entities**, as defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999.*

[2] Certain terms used are defined or explained in the Definitions section of this draft Ruling at paragraphs 65 to 70. These terms when first mentioned appear in **bold type**.

(b) whether the developer, in undertaking the development works on the land, makes a supply of development services to the government agency;

(c) whether the sale of the freehold or grant of the long-term lease of the land by the government agency to the developer is properly characterised as a supply of land including the completed development works or as a supply of the land without those works; and

(d) whether a subsequent sale or supply of a long-term lease by the developer of a development (or part of a development) consisting of completed **residential premises** is a supply of **new residential premises** as defined.

3. These or similar transactions may arise in the context of a variety of development lease arrangements. The GST treatment of such transactions depends on the individual facts and circumstances of each type of arrangement. This draft Ruling only applies to the particular transactions arising in the arrangements as described at paragraphs 14 to 16 of this draft Ruling.

4. This draft Ruling does not apply to development lease arrangements that do not involve a supply of land by a government agency to the developer.

5. This draft Ruling also does not consider the application of Subdivision 38-N (Grants of land by governments) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).[3]

# Date of effect

6. This draft Ruling represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applies both before and after its date of issue.

7. The final Ruling will be a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which 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.

[3] All legislative references in this draft Ruling are to the GST Act unless otherwise indicated.

**Transitional Tax Office treatment of development lease arrangements existing before the issue of this draft Ruling**

8. For pre-existing development lease arrangements, the application of the views set out in this draft Ruling or in the final public Ruling may be subject to our transitional administrative treatment.

9. Before the issue of this draft Ruling, our approach to development lease arrangements was such that we considered:

- the developer made a taxable supply of development services to the government agency which made a corresponding creditable acquisition;
- the consideration for the developer's acquisition of the land included the development services; and
- supplies of completed residential premises (commonly, strata titled units) by the developer to the third party purchasers were input taxed. This was on the basis that the residential premises were considered to have been previously sold or the subject of a long-term lease as part of the land supplied by the government agency to the developer.

10. The views set out in this draft Ruling represent a change to our previous approach (as set out in paragraph 9 of this draft Ruling) to development lease arrangements. The change in our approach has been influenced by recent Court decisions[4] on the application of the GST law. However, we will not seek to disturb the GST treatment of the relevant transactions arising under a development lease arrangement if the government agency or the developer as the case may be:

- had, before the issue of this draft Ruling, accounted for GST on all of those transactions according to our previous approach; and
- continues to account for GST on that basis for any such transactions arising under their pre-existing development lease arrangement on or after the date of issue of this draft Ruling.

11. If a developer was already committed to the development lease arrangement before the date of issue of this draft Ruling, even though work may not have commenced on the development, the developer or the government agency may also account for GST on the basis of our previous approach for transactions occurring on or after the date of the issue of this draft Ruling. Regardless of which approach a developer or government agency uses to account for GST, the same approach must be consistently applied to all of the relevant transactions arising under the arrangement.

[4] See the discussion at paragraphs 21 to 24 of this draft Ruling.

12. For the purposes of this draft Ruling, we would accept that a developer 'was committed to a development lease arrangement' where contractual documents between the developer and the government agency have been executed, even though work may not yet have commenced on the development. Developers in other circumstances, for example if irrevocable offers have been made, who are unable to recover any net additional GST cost, should contact the Tax Office so that their particular circumstances can be considered.

# Background

13. To ensure land development is carried out in accordance with statutory requirements and policy objectives, government agencies commonly sell, or grant long-term leases of, land to private developers subject to conditions governing the developments to be undertaken on the land. The developments commonly include commercial/retail and residential components (usually strata titled units).

14. There are variations between particular arrangements, but in general, the developer is required to carry out the development works under a development lease arrangement that involves:

- the government agency initially granting a development lease to allow the developer to enter the land and to carry out the development. The developer may be required to pay a nominal amount of rent for the supply of the land under the development lease;
- the development lease providing that all of the costs and risks relating to the development rest with the developer;
- the developer undertaking the development on its own account and not as agent or builder for the government agency;
- the government agency transferring the freehold title or granting the long-term leasehold title to the land to the developer only when the development is completed in accordance with the terms of the development lease or an associated deed;
- the developer paying the government agency a monetary amount that reflects the price for the land sold or supplied as a long-term lease but not the development works effected by the developer. In some cases, this amount is not payable until completion of the development, at which time the freehold or long-term lease is transferred or granted to the developer. In other cases, this amount may be payable upon grant of the development lease; and

- the developer selling, or granting a long-term lease of, the completed development or strata titled units in the development on its own account to a third party or parties.

15. A variation to the more common type of development lease arrangement as described above is where the government agency and developer do not at the outset agree that the freehold or leasehold interest will be transferred to the developer on completion of the works. Rather, the government agency grants the developer an option to acquire the freehold or long-term leasehold interest on completion of the works. In addition to completing the development works, the developer exercises the option and pays the agreed price for the sale or long-term lease of the land to become entitled to the transfer or grant of the freehold or long-term leasehold title. As in the more common type of arrangements, the price payable reflects the value of the land only and not the development works undertaken by the developer. If the call option is not exercised, the terms of the arrangement do not provide for the developer to be compensated for the development works undertaken nor for the developer to be entitled to remove any part of the works.

16. In some development lease arrangements the developer is required to undertake additional works, such as infrastructure works, on land that is retained by the government agency and not transferred to the developer.[5]

17. In some development lease arrangements the government agency requires the development works for its own purposes, even though a subsequent sale or long-term lease of the land to the developer is envisaged.

18. This draft Ruling does not apply to development lease arrangements to the extent that they have features of the kind referred to in paragraph 17 of this draft Ruling.

# Ruling with explanation

### Nature of development lease arrangements

19. The documentation in development lease arrangements commonly provides for a sale or long-term lease of land by the government agency to the developer. Under these arrangements the developer is required to enter into a development lease of the land for a period during which the developer will undertake the development on the land. It is only when the development works are completed that the title to the freehold or long-term leasehold of the land is transferred or granted to the developer.

[5] The GST treatment of these additional works is discussed at paragraph 42 to 43 of this draft Ruling.

20. It is acknowledged that the works form part of the land as they are constructed on the land, and that they remain so at the time legal title to the freehold or long-term leasehold interest is transferred or granted to the developer. However, that does not necessarily determine how the GST law applies to transactions arising under a development lease arrangement. The application of the GST law will depend on the proper characterisation of the transactions for GST purposes.

## Characterization of a transaction for GST purposes

### *Judicial approach*

21. In analysing a transaction for GST purposes, regard must be given to the true character of the arrangement in which the transaction arises and all the facts and circumstances surrounding it. While the legal form of a transaction is relevant, support for not unduly focussing on the legal interests in transactions involving land can be found in the *Sterling Guardian Pty Ltd v. FC of T* (*Sterling Guardian*),[6] *Saga Holidays Limited v. Commissioner of Taxation* (*Saga Holidays*)[7] and United Kingdom value added tax cases.

22. In Sterling Guardian, Stone J said:

> The clear thrust of the GST Act, both in its wording and as explained in the EM, is that of a practical business tax imposed with respect to elements of commerce. As Senior Counsel for the respondent pointed out, although in economic terms the burden of the GST is borne by the ultimate consumer, in terms of 'imposition, collection and administration' it is a tax on business. It is for the taxpayer to prepare business activity statements and pay the appropriate GST and in this context abstract propositions about interests in land and the acquisition of a brand new set of rights arising from registration of a strata plan are irrelevant.[8]

23. Her Honour's approach was upheld on appeal by the Full Federal Court.[9]

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[6] *Sterling Guardian Pty Ltd v. FC of T* [2005] FCA 1166;[2005] ATC 4796; [2005] 60 ATR 502; *Sterling Guardian Pty Ltd v. FC of T* [2006] FCAFC 12; [2006] ATC 4227; [2006] 62 ATR 119.

[7] *Saga Holidays Limited v. Commissioner of Taxation* [2006] FCAFC 191; [2006] ATC 4841; [2006] 64 ATR 602.

[8] *Sterling Guardian Pty Ltd v. FC of T* [2005] FCA 1166; (2005) ATC 4796; (2005) 60 ATR 502 at paragraph 39.

[9] *Sterling Guardian Pty Ltd v. FC of T* [2006] FCAFC 12; (2006) ATC 4227; (2006) 62 ATR 119.

24. The practical business approach to GST as described by Stone J was confirmed by the Full Federal Court decision in *Saga Holidays*[10] where her Honour, with whom the other members of the Full Court agreed, saw this as part of the context for the interpretation of the GST legislation. Her Honour also regarded the approach of Lord Hoffman in *Beynon and Partners v. Commissioner of Customs and Excise* (*Beynon*)[11] in focussing on the 'social and economic reality' of a transaction as being relevant in an Australian GST context.[12]

### *Supply and consideration*

25. 'Supply' is defined in section 9-10 which states in subsection (1) that 'a supply is any form of supply whatsoever'. Subsection 9-10(2) in turn refers to 'supply' as including a supply of things such as goods, services, advice or information, real property, rights or obligations.

26. Where parties to a transaction have reduced their understanding of the transaction to writing, that documentation is the logical starting point in determining the supplies that have been made.[13] However, in determining whether the documentation represents the substance and reality of the transaction, regard must also be had to the surrounding facts and circumstances.[14]

27. Consideration for GST purposes is defined in section 195-1 to mean 'any consideration, within the meaning given by section 9-15, in connection with the supply or acquisition'.

28. Section 9-15 expands on the meaning of 'consideration for a supply'. Consideration includes any payment, act or forbearance in connection with, in response to, or for the inducement of, a supply of anything[15]. Consideration may be provided voluntarily, or by someone other than the recipient of the supply.[16]

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[10] *Saga Holidays Limited v. Commissioner of Taxation* (2006) ATC 4841; (2006) 64 ATR 602; [2006] FCAFC 191 at [29].
[11] *Beynon and Partners v. Commissioner of Customs and Excise* [2005] 1 WLR 86.
[12] *Saga Holidays Limited v. Commissioner of Taxation* (2006) ATC 4841; (2006) 64 ATR 602; [2006] FCAFC 191; at [43]. The Full Federal Court also considered the 'social and economic reality approach' in its decision in *Reliance Carpet Co Pty Limited v. Commissioner of Taxation* [2007] FCAFC 99, from which the Commissioner has sought special leave to appeal to the High Court.
[13] Paragraph 222 of Goods and Services Tax Ruling 2006/9: Goods and services tax: supplies.
[14] The circumstances in which a contract or other legal arrangements will not represent the total fact situation include those that are set out in paragraph 226 of GSTR 2006/9.
[15] Subsection 9-15(1).
[16] Subsection 9-15(2).

29. However, things such as acts, rights and obligations provided in connection with, in response to, or for the inducement of, a supply can often be disregarded as consideration if they do not have economic value and independent identity separate from the transaction.[17]

30. In determining whether a payment is consideration under section 9-15, the test is whether there is a sufficient nexus between the supply and the payment made.[18]

31. In determining whether a sufficient nexus exists between supply and consideration, regard needs to be had to the true character of the transaction. The test as to whether there is a sufficient nexus is an objective test.[19] The motive of the supplier and the recipient also may be relevant in determining whether the supply was made for consideration, if a reasonable assessment of the evidence supports that motive.

32. In *Westley Nominees Pty Ltd v. Coles Supermarkets Australia Pty Ltd* (*Westley Nominees*),[20] the Full Federal Court said that in determining whether expenditure secures an ancillary or incidental supply separate and discrete from the main supply or whether it forms part of the consideration for a single supply one should consider 'what the expenditure is calculated to effect from a practical and business point of view, rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process'.

33. The discussion at paragraphs 21 to 32 of this draft Ruling, sets out our approach to characterising, for GST purposes, transactions arising in the context of development lease arrangements. In determining the true character of an arrangement, it is necessary to examine all the relevant documentation and the commercial substance of the transactions entered into, including the surrounding circumstances, in the context of GST as a 'practical business tax'.

### Is the grant of a development lease a supply made for consideration?

34. When a government agency grants a development lease to a developer to allow the developer to undertake the required development works on the land, it is making a supply of the land to the developer by way of lease.

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[17] Paragraph 80 of Goods and Services Tax Ruling 2001/6: Goods and services tax: non monetary consideration (GSTR 2001/6).
[18] Paragraph 66 of GSTR 2001/6.
[19] Paragraph 72 of GSTR 2001/6.
[20] *Westley Nominees Pty Ltd v. Coles Supermarkets Australia Pty* Ltd (2006) ATC 4363; (2006) 62 ATR 682; [2006] 152 FCR 461 at [59].

35. Where the development lease expressly provides for a rental amount to be paid by the developer for the term of the lease, the rental payments are consideration for the supply of the land under the development lease. In these circumstances there is a clear nexus between the supply of the land and the payment of the rental under the development lease.

36. In some cases, a monetary amount reflecting the value of the land is paid by the developer upon the grant of the development lease by the government agency. In the circumstances covered by this draft Ruling, in the absence of any express statement or other evidence to the contrary, we consider that the payment of this amount is properly characterised as consideration for the sale or the long-term lease rather than for the supply of the development lease.

37. As a development lease arrangement may create various rights and obligations for the parties to the arrangement, the question arises as to whether those rights and obligations are consideration (or additional consideration) for the grant of the development lease or for another supply. Ultimately, this is a matter of fact to be determined in the context of each case. Goods and Services Tax Ruling GSTR 2001/6, which is about non monetary consideration, provides further guidance in this regard.

**Is the undertaking of the development works on the land by the developer a supply of development services to the government agency?**

38. The undertaking of the development works by the developer is neither a supply of development services from the developer to the government agency nor (non-monetary) consideration for any supply made to the developer.

39. While the undertaking of the development works by the developer is an obligation that needs to be fulfilled for the developer to become entitled to the freehold or leasehold title to the land, it does not have a separate identity or an independent value to the government agency. It is merely a condition of the primary transaction between the parties, being the sale or long-term lease of land by the government agency to the developer.

40. Consideration for a supply may include acts, rights, or obligations provided in connection with, in response to, or for the inducement of a supply but these things may be disregarded as consideration where they do not have economic value and separate identity.[21]

[21] Paragraph 80 of GSTR 2001/6.

41. Under the development lease arrangements, the development works undertaken on the land are not retained by the government agency for its own use. The terms of the development lease effectively require the government agency to transfer the freehold or long-term lease title in the land to the developer immediately upon completion of the works.

### *Additional works on land that is retained by the government agency*

42. In some cases, it is a condition of the arrangement that the developer is also required to undertake additional works, such as infrastructure works, on land that is retained by the government agency and not transferred to the developer.

43. In these cases, the undertaking of the additional works constitutes a supply of development services to the government agency. Unless separate payment is provided by the government agency for these additional works, the works undertaken form part of the consideration for the sale or long-term lease of the land to the developer and part of the value of the land represents consideration for the development services.

### Is the sale of the freehold or grant of the long-term lease of land to the developer by the government agency properly characterised as a sale or lease of the undeveloped land or of the land and completed development?

44. The sale of the freehold or grant of the long-term lease of the land to the developer is merely a supply of land (not land and the attached development works). The consideration for the supply is the agreed amount payable to the government agency by the developer.[22]

45. Although the development works (for example, buildings constructed on the land) form part of the land when the freehold or long-term leasehold title is transferred to the developer, the substance of the transaction is that the government agency is supplying only the land. This is evidenced by the agreed price payable for the supply of the land, which reflects only the value of the land itself and not the development works completed by the developer. It is also evidenced by the fact that the developer bears all of the risks associated with the development. It is only because of the need to ensure government policy objectives are met that the sale or long-term lease is subject to the developer completing the development before the legal title is transferred to the developer. The developer has developed the land for its own benefit.

[22] Provided that the requirements of section 75-5 are satisfied, the government agency will be able to use the margin scheme to work out the amount of GST applicable to its supply of the land to the developer.

46. The above analysis also applies where the developer, upon completion of the development works, has an option to call for a transfer of the legal title to the freehold or leasehold interest.

47. We acknowledge that, until the option is exercised, there is neither a contract of sale nor a transfer or grant of the legal interest in the land. However, the option is merely a contractual mechanism which in practical terms is similar to those arrangements where the government agency agrees at the outset to transfer title on completion of the works in return for payment of any required sum for the land. The developer is not compensated for the development works undertaken, nor allowed to remove them if the option is not exercised. The expectation of the parties is that in the normal course the option will be exercised.

48. Such an analysis of the transaction in the GST context is consistent with the 'social and economic reality' of the arrangements and properly reflects what the parties have agreed to supply and pay for rather than unduly focussing upon the legal interest conveyed to complete the transaction.

49. An alternative view to our view above is discussed at paragraphs 51 to 56 of this draft Ruling.

### Where the development includes a residential component, are the sales or long-term leases of the residential premises (for example, strata titled units) by the developer supplies of new residential premises as defined in section 40-75?

50. As discussed at paragraphs 44 to 49 of this draft Ruling, our view is that the transaction is properly characterised as a sale or long-term lease of land (not land and the attached development works). Therefore, when the developer sells or supplies the completed residential premises by way of long-term lease, it is making supplies of new residential premises,[23] as the premises 'have not previously been sold as residential premises and have not previously been the subject of a long-term lease'.

### Alternative view

51. An alternative view of the GST treatment of the transactions as discussed at paragraphs 44 to 49 of this draft Ruling is that the character of the supply the government agency makes to the developer reflects the completed development works that form part of the land at the time the legal interest is granted or transferred. This view is based on the argument that as a matter of property law works such as buildings constructed on the land form part of the land.

[23] As defined in section 40-75.

52. On this view, the government agency makes a supply of new residential premises to the developer if the development includes residential premises. It follows on this view that the developer's supplies of the residential premises to third party purchasers are input taxed under section 40-65 or section 40-70.

53. On this analysis, the developer also makes a supply of development services to the government agency that would constitute non-monetary consideration for the supply of the land by the government agency to the developer.

54. We consider that this alternative view does not reflect the true character of the arrangement between the government agency and the developer, unduly focussing on the legal interests in land in the context of analysing transactions for GST purposes, contrary to the approach of the Full Federal Court in the *Sterling Guardian*[24] and *Saga Holidays*[25] cases.

55. We consider this alternative view would also be inconsistent with the evident object of the GST legislation, which contemplates GST being borne on the value added to new residential premises. On the alternative view, the value added by the developer would not be fully taxed.

56. It has been suggested that the approach of the Courts in stamp duty cases (in particular, *Bambro (No. 2) Pty Ltd v. CSD*)[26] (*Bambro*) supports the alternative view. In *Bambro*, the Court held that the duty fell to be calculated 'by reference to the property agreed to be sold or conveyed regarded as that which, viewing the matter as at the date of the agreement, will be, under the terms of the agreement, the subject of the conveyance at the time when, under the terms of the agreement, the conveyance is to be executed'.[27] *Bambro* was decided in the context of a duty then imposed on instruments where the relevant inquiry was as to the subject matter of the conveyance. In the current context, the relevant inquiry for GST purposes is not as to the subject matter of a conveyance, but rather: does the government agency make a supply of residential premises by way of sale or long-term lease? We consider that as a matter of substance, the answer is that the government agency supplies the land and the developer constructs the development.

[24] *Sterling Guardian Pty Ltd v. FC of T* [2005] FCA 1166; (2005) ATC 4796; (2005) 60 ATR 502; *Sterling Guardian Pty Ltd v. FC of T* [2006] FCAFC 12; (2006) ATC 4227; (2006)] 62 ATR 119.
[25] *Saga Holidays Limited v. Commissioner of Taxation* [2006] FCAFC 191; (2006) ATC 4841; (2006) 64 ATR 602.
[26] (1963) SR (NSW) 522.
[27] At 528.

# Example

**Government agency transfers freehold title to land to developer upon completion of works**

57. Government A enters into a deed with DevCo for the sale of land to DevCo. The deed provides for the grant of a development lease for a period of 3 years. The development lease specifies a nominal rental of $11 per annum to be paid by DevCo to Government A, DevCo is required to undertake certain development works on the land subject to the terms of the development lease.

58. The development to be undertaken on the land includes construction of residential premises. Government A retains legal title to the land during the period of development. In accordance with the terms of the development lease, all of the risks relating to the development and its costs rest with DevCo. DevCo undertakes the development works on its own account and not as agent or builder for Government A.

59. The deed between Government A and DevCo provides that upon completion of the development works, Government A will transfer freehold title to the land to DevCo in return for payment of $22 million. This amount reflects the value of the land exclusive of the development works undertaken by DevCo.

60. Government A makes a supply of land by way of lease to DevCo under the development lease. This supply is made for consideration, being the nominal rental of $11 per annum.

61. DevCo does not make a supply of construction services to Government A.

62. Government A is merely selling land and not completed residential premises to DevCo. The $22 million payment is consideration for the sale of the land.

63. When DevCo sells the completed residential premises to third parties, it is making a supply of new residential premises,[28] as the premises have not previously been sold or the subject of a long-term lease as residential premises.

64. If the deed in this example was in relation to a supply of a long-term lease of the land to DevCo, the GST consequences would be the same for Government A and DevCo.

[28] As defined in section 40-75 of the GST Act.

# Definitions

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

66. ***Australian government agency*** has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*. Section 995-1 defines an Australian government agency as:

(a) the Commonwealth, a State or Territory; or

(b) an authority of the Commonwealth or of a State or a Territory.

67. ***Government related entity*** is:

(a) a government entity; or

(b) an entity that would be a government entity but for subparagraph (e)(i) of the definition of government entity in the *A New Tax System (Australian Business Number) Act 1999*; or

(c) a local governing body established by or under a State law or Territory law.

68. ***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.

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

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

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

(regardless of the term of occupation or intended occupation)

(c) and includes a floating home.

70. ***New residential premises*** is defined in section 40-75:[29]

Meaning of new residential premises

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

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

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

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

(2) However, the premises are not new residential premises if, for the period of at least 5 years since:

(a) if paragraph (1)(a) applies (and neither paragraph (1)(b) nor paragraph (1)(c) applies) – the premises first became residential premises; or

(b) if paragraph (1)(b) applies – the premises were last substantially renovated; or

(c) if paragraph (1)(c) applies – the premises were last built;

the premises have only been used for making supplies that are input taxed because of paragraph 40-35(1)(a).

(2A) A supply of the premises is disregarded as a sale for the purposes of applying paragraph (1)(a):

(a) if it is a supply by a member of a GST group to another member of the GST group; or

(b) if:

(i) it is a supply by the joint venture operator of a GST joint venture to another entity that is a participant in the joint venture; and

(ii) the other entity acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into.

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.

[29] Subsection 40-75(1).

# Your comments

71. We invite you to comment on this draft Goods and Services Tax Ruling. Please forward your comments to the contact officer by the due date. (Note: the Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel or relevant Tax officers. The Tax Office may use a version (names and identifying information removed) of the compendium in providing responses to persons providing comments. Please advise if you do not want your comments included in the latter version of the compendium.)

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# Detailed contents list

72. Below is a detailed contents list for this draft Goods and Services Tax Ruling:

**Commissioner of Taxation**
3 October 2007

*Previous drafts:*

Not previously issued as a draft

*Related Rulings/Determinations:*

GSTR 1999/1; GSTR 2001/6; GSTR 2006/9

*Subject references:*

- commercial premises
- consideration
- development leases
- development works
- freehold title
- government agencies
- long term leases
- new residential premises
- property developers
- residential premises
- sale of property
- strata titled units
- supply
- taxable supply

*Legislative references:*

- ANTS(GST) Act 1999 9-10
- ANTS(GST) Act 1999 9-10(2)
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