GSTR 2011/D2 - Goods and services tax: residential premises and commercial residential premises

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Draft Goods and Services Tax Ruling

Goods and services tax: residential premises and commercial residential premises

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Preamble

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the following way. 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 examines the meaning of 'residential premises' and 'commercial residential premises' for the purposes of Subdivision 40-B (Residential rent), Subdivision 40-C (Residential premises) and Division 87 (Long-term accommodation in commercial residential premises) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

2. The draft Ruling does not consider the issue of when a sale of real property is a sale of new residential premises. This issue is considered in *Goods and Services Tax Ruling GSTR 2003/3 Goods and services tax: when is a sale of real property a sale of new residential premises?*

3. Unless otherwise stated in the examples in this draft Ruling, it is assumed that the entities referred to satisfy all of the necessary requirements in section 9-5 of the GST Act for taxable supplies and section 11-20 of the GST Act for entitlement to input tax credits.

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

5. A general introduction to the GST legislation affecting residential premises and commercial residential premises can be found in the Background in Part A of Appendix 1 of this draft Ruling (paragraphs 108 to 119).

Ruling

Residential premises to be used predominantly for residential accommodation (regardless of the term of occupation)

6. The requirement in sections 40-35, 40-65 and 40-70 that premises are residential premises to be used predominantly for residential accommodation is to be interpreted as a single test that looks to the characteristics of the property.

Physical characteristics and objective intention

7. The requirement for residential premises to be used predominantly for residential accommodation does not require an examination of the subjective intention or use of any particular person. It is the objective intention with which the premises are designed, built or modified that is relevant. This focuses on the physical characteristics of the premises in terms of their suitability for residential accommodation. Premises are suitable for occupation as a residence or for residential accommodation if they possess features necessary for residential accommodation, and are able to be occupied as residential premises.

8. In limited circumstances where the premises' physical characteristics do not conclusively demonstrate suitability for occupation as a residence or for residential accommodation, design or construction documents such as architectural plans may assist in determining whether the physical characteristics and features of the premises make them suitable for occupation of this nature. This includes circumstances where the character of the premises needs to be determined before construction of the premises is completed.

Example one – purchaser's intention not to use premises for residential accommodation

9. *John carries on an enterprise which involves leasing a house on property which he owns. Based on the physical characteristics of the house it is clearly residential premises to be used predominantly for residential accommodation. The area in which the house is located has recently been rezoned by the local Council to permit higher density residential apartments. Following the rezoning, a developer, Knock Them Down Co, approaches John and offers to purchase his property. Knock Them Down Co intends to demolish the house and redevelop the property into a new apartment building.*

10. *The fact that Knock Them Down Co does not intend to use the house to provide residential accommodation does not mean that the house is not residential premises to be used predominantly for residential accommodation. Knock Them Down Co's intention is not a relevant factor in determining the character of the premises. Based on its physical characteristics the house is residential premises to be used predominantly for residential accommodation. The sale of the house from John to Knock Them Down Co is an input taxed supply under section 40-65.*

Living accommodation provided by shelter and basic living facilities

11. 'Residential premises' is not limited to premises suited to extended or permanent occupation. Residential premises provide 'living accommodation', which does not require any degree of permanence. It includes lodging, sleeping or overnight accommodation.

12. To satisfy the definition of residential premises, premises must provide shelter and basic living facilities. Premises are not residential premises where their physical characteristics indicate that they are not intended to provide living accommodation.

Fit for human habitation

13. To be capable of residential occupation, the premises must be fit for human habitation. Residential premises are not suitable for human habitation when they are in a dilapidated condition which prevents their being occupied for residential accommodation. Residential premises in a temporary state of disrepair remain residential premises. A partially built building is not residential premises until it becomes fit for human habitation. Contractual or legal prohibitions against residential occupation do not prevent premises from being suitable to provide residential accommodation.

Garages and car-parking spaces

14. If the physical characteristics of residential premises to be used predominantly for residential accommodation indicate that a garage or car-parking space is part of the premises being supplied, the garage or car-parking space forms part of the residential premises to be used predominantly for residential accommodation.

Other premises

15. Not all premises that possess basic living facilities are residential premises to be used predominantly for residential accommodation. If it is clear from the physical characteristics of the premises that any suitability for the provision of living accommodation is ancillary to the premises' prevailing function, the premises are not residential premises to be used predominantly for residential accommodation.

Example two – office building

16. *Commercial Place is a five storey building. The ground floor has a foyer and reception area. All floors have been constructed with large open spaces for staff cubicles and desks, smaller office spaces, meeting rooms and areas for storage of documents. Each floor also contains a kitchen, amenities area and toilets. The ground floor also has showers provided with the toilet facilities.*

17. *While the office building provides shelter and basic living facilities including kitchens, toilets and shower facilities, the physical characteristics of the premises indicate that it is not residential premises to be used predominantly for residential accommodation. The physical characteristics indicate that the premises are a place for office workers to undertake tasks associated with a business. A supply of the premises would not be input taxed under Division 40.*

Example three – private hospital

18. *Maxwell Hospital is a privately operated hospital. The hospital contains wards to accommodate 150 patients, an entrance foyer, waiting areas, operating theatres, recovery areas, reception areas, nurses' stations, specialists' suites, storerooms, staff amenities, utility and disposal rooms, and ambulance bays. The design of the premises is based around the needs of patients and medical practitioners in providing medical and surgical treatment.*

19. *While Maxwell Hospital provides shelter and basic living facilities, the physical characteristics of the premises indicate that it is not residential premises to be used predominantly for residential accommodation. The physical characteristics indicate that these premises are a place where the sick or injured are given medical or surgical treatment. A supply of the premises would not be input taxed under Division 40.*

Example four – residential care facility

20. *Care-res Co (Care-res) is a developer that specialises in constructing and leasing aged care facilities. Care-res designs and builds these facilities to specifications that make these premises suitable for approval for use as a residential care facility under the Aged Care Act 1997.*

21. *Care-res constructed a facility which is designed to provide both personal and nursing care on its land. The physical characteristics of this facility differ from the physical characteristics of premises for independent retirement living. This facility includes what is commonly known as a low care hostel and a nursing home. The facility meets all of the regulatory requirements of the relevant building legislation in the State in which it operates, including the applicable provisions of the Building Code of Australia for facilities of this type.*

22. *The facility includes private living rooms and separate meal, living and entertainment areas, administration offices, and commercial kitchen and laundry. All functional areas for occupants, including those areas that provide living accommodation, have been designed for fittings, furniture and equipment to provide care to persons with a condition of frailty or disability.*

23. *Overall, the physical characteristics that reflect suitability for the provision of care prevail over those which reflect suitability for the provision of residential accommodation. The physical characteristics are such that it is clear that any suitability for the provision of accommodation (which is a necessary component of residential care) is ancillary to the suitability for the provision of care.*

24. *This facility is not residential premises to be used predominantly for residential accommodation. The physical characteristics evidence that the premises are to be used predominantly to provide care to persons with a condition of frailty or disability. A supply by Care-res by way of the lease of the facility would be taxable under section 9-5.*

Premises requiring apportionment

25. The value of a supply of premises which includes residential premises to be used predominantly for residential accommodation needs to be apportioned to the extent that part of the premises is not residential premises to be used predominantly for residential accommodation.

Example five – residential premises partly converted for business use

26. *Jess sells her house to Shannon who decides to partly modify it to use in her profession as a doctor. Shannon modifies an area of the house to provide office and consulting room space, an operating theatre, a waiting room and storage for the business. A sealed car park is also added to the property. Significant modifications are made to these areas including lighting, hygiene facilities and security to meet industry standards. Objectively, part of the house is still designed predominantly for residential accommodation, comprising bedrooms, bathroom, kitchen, living room and gardens.*

27. *If Shannon later sells or leases the house, the commercial part, being the area modified for use in her business (office, consulting room, operating theatre, waiting room, storage and car park) is excluded from input taxed treatment. In this case, an apportionment of the consideration for the supply is necessary.*

28. *However, the bedroom that Shannon uses, without modification, for storage and doing her accounts retains its character as part of the residential premises, and is included in the input taxed portion of the supply.*

Example six – addition of furniture and minor fittings is not sufficient to modify the physical characteristics – no apportionment

29. *Rebecca is a solicitor. She lives in a terrace house that is not new residential premises and decides to convert a room at the front of the house into an office for her practice. Rebecca arranges the installation of an electricity point and telephone line for the place in the room where she intends to set-up a printer and facsimile machine. She has book shelves, filing cabinets, a desk, a table for the printer and facsimile machine, suitable floor coverings laid, and chairs brought in to fit-out the room. She also has an advertising sign placed outside the front door of her house. Rebecca does not modify any of the other rooms in the house.*

30. *These changes are not sufficient to modify the physical characteristics of the terrace house into premises other than residential premises to be used predominantly for residential accommodation. The furniture and fittings that Rebecca has brought into the room do not change the physical characteristics of the house itself. Also, the installation of an electricity point and telephone line, and the placement of a sign outside the house, are not sufficient modifications to alter the physical characteristics of the premises so that they are no longer residential premises to be used predominantly for residential accommodation. If Rebecca sells or leases the premises she will be making a wholly input taxed supply under section 40-65 or section 40-35 respectively.*

Land supplied with a building

31. There is no specific restriction, in the definition of residential premises, on the area of land that can be included with a building. The extent to which land forms part of residential premises to be used predominantly for residential accommodation is a question of fact and degree in each case. A relevant factor in determining this is the extent that the physical characteristics of the land and building as a whole indicate that the land is to be enjoyed in conjunction with the residential building.

Example seven – residential premises supplied with farmland

32. *Bob has carried on a dairy farming enterprise on land which he owns. The land is 80 hectares in area. Three hectares are fenced off separately and contain a large residential homestead, private tennis court, swimming pool and maintained gardens. There is a driveway for access to the public road from this part of the land.*

33. *The other 77 hectares of the land contains various sheds used in the farming enterprise. The property has two dams and related irrigation equipment. There is separate access to the public road from this part of the land. The remainder of the 77 hectares comprises fenced-off pastures for grazing.*

34. *Bob decides to sell his land. The purchaser has no intention of carrying on a farming business on the land. To determine the extent to which the premises are residential premises to be used predominantly for residential accommodation it is necessary to consider the physical characteristics of the premises. The size of the land is not, by itself, a conclusive factor, although it is unlikely that such a large area would comprise residential premises. Based on the physical characteristics of the premises, the residential homestead is residential premises to be used predominantly for residential accommodation. Additionally, based on the physical characteristics, the separately fenced-off three hectares of land containing the tennis court, swimming pool and maintained gardens is to be enjoyed with the residential homestead. However, the other 77 hectares are distinguishable on the basis of physical characteristics as land for farming rather than for enjoyment in conjunction with a residential building.*

35. *Bob's sale of the premises is input taxed under section 40-65 to the extent of the three hectares containing the residential homestead. It is a taxable supply to the extent of the other 77 hectares. Bob needs to determine the value of the taxable component using a fair and reasonable method of apportionment.*[1]

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[1] See *Goods and Services Tax Ruling GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*.

Vacant land

36. Vacant land is not capable of being occupied as a residence or for residential accommodation as it does not provide shelter and basic living facilities. Vacant land is not residential premises.

Used for residential accommodation before 2 December 1998

37. New residential premises as referred to in paragraphs 40-65(2)(b) and 40-70(2)(b) will only have been used for residential accommodation (regardless of the term of occupation) before 2 December 1998 where the premises at the time of use before 2 December 1998 were residential premises but not commercial residential premises. That is, the prior use for residential accommodation does not encompass prior use for making supplies of accommodation in commercial residential premises.

Example eight – hotel converted for sale as strata titled units

38. *Alex's Enterprises purchases a motel in January 1997 and operates it for 10 years as a motel. In December 2008, Alex's Enterprises ceases operation of the motel, strata titles the motel and sells one of the strata titled units to Tom.*

39. *Although the motel was sold as commercial residential premises in 1997, the sale of the strata titled unit to Tom in December 2008 is a sale of new residential premises. This is because the premises have not previously been sold as residential premises (other than commercial residential premises).*[2]

40. *The motel was not used for residential accommodation for the purpose of paragraph 40-65(2)(b) as it was used to supply accommodation in commercial residential premises.*

Commercial residential premises

41. The definition of commercial residential premises in section 195-1 (the definition) contains the following seven paragraphs:

(a) a hotel, motel, inn, hostel or boarding house;

(b) premises used to provide accommodation in connection with a school;

(c) a ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire;

(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;

(da) a marina at which one or more of the berths are occupied, by ships used as residences;

[2] Subsection 40-75(1).

(e) a caravan park or camping ground; or

(f) anything similar to residential premises described in paragraphs (a) to (e).

Paragraphs (a) to (e) need to be considered separately to determine if premises are commercial residential premises.

42. The definition expressly excludes premises to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school.

Relationship between residential premises and commercial residential premises

43. A supply of residential premises is only a supply of commercial residential premises under paragraphs (a) or (f) of the definition where the premises include infrastructure or other features that give the premises an overall physical character of commercial residential premises. The sale or lease of premises that consists only of the living accommodation section of a building is an input taxed supply of residential premises to be used predominantly for residential accommodation regardless of whether the building, or any part of it, is being operated as commercial residential premises.[3]

44. An entity that enters into an arrangement with a single recipient – under which multiple leases are executed between the parties over individually strata titled rooms and the infrastructure or other features located with the premises, which collectively comprise commercial residential premises – supplies commercial residential premises to the recipient.

45. Separately titled adjacent cottages or villas (that is, on adjoining or abutting land) that are combined and operated similar to a hotel, motel, inn, hostel or boarding house to provide accommodation can form commercial residential premises.

Physical character

46. Premises may have an overall physical character that establishes them as commercial residential premises even though they are not, at the time of the relevant supply, being operated as such.

[3] Assuming the sale of the premises is not a sale of new residential premises.

Example nine – sale of a vacant motel

47. *Jo's Motel was designed and built 25 years ago as a motel. Jo has owned and operated the motel for all of this period. Jo is retiring and sells the land and buildings used in her motel business to Reno Specialists. The contract of sale requires that Jo ceases trading as a motel prior to settlement and that all the furniture be removed from the premises. Jo has not made any modifications to the motel during her period of ownership. Reno Specialists has obtained development approval to develop the motel buildings into strata-titled residential apartments.*

48. *The sale of the land and buildings by Jo to Reno Specialists is the supply of a motel that is a taxable supply of commercial residential premises as the premises exhibit the physical characteristics of a motel which has not been modified since construction.*

Hotel, motel, inn, hostel or boarding house and residential premises similar to these

49. The terms in paragraph (a) of the definition must be considered by reference to their ordinary meanings and the context in which the term 'commercial residential premises' is used in the GST Act including Divisions 40 and 87. In this context, the terms hotel, motel, inn, hostel and boarding house do not include premises that provide accommodation similar to what would be expected for those who own or rent a house or apartment. Some premises may be referred to by one of the terms in paragraph (a) without falling within this class. These premises have physical characteristics or a mode of operation that takes them out of the class of premises defined by paragraph (a).

50. The characteristics that are common to operating hotels, motels, inns, hostels and boarding houses are:

(i) commercial intention

The premises are operated on a commercial basis or in a business-like manner even though they may be operated by a non-profit body.

(ii) accommodation is the main purpose

The premises provide accommodation to a transient or floating, though not necessarily short-stay, class of occupants as their primary purpose.

(iii) multiple occupancy

The premises provide accommodation on a multiple room occupancy basis.

(iv) occupants have the status of guests[4]

[4] In this draft Ruling we refer to guests, lodgers and boarders as 'guests'.

The individuals provided with accommodation do not have a right of exclusive possession or similar rights akin to those of a tenant over any part of the premises.

(v) holding out to the public

Accommodation in the premises is offered to the public or a segment of the public.

(vi) central management

There is central management of the premises. This can be provided through facilities that may be either on-site or off-site.

(vii) provision of, or arrangement for, services

Occupants are provided some services and facilities.

(viii) management offers accommodation in its own right

The entity operating the premises supplies accommodation in its own right rather than as an agent.

51. These characteristics also identify residential premises that are similar to the class of premises in paragraph (a) to be commercial residential premises under paragraph (f) of the definition.

52. Whether premises are commercial residential premises as a hotel, motel, inn, hostel, boarding house or similar to these, is a question of fact and degree involving a weighing up of all of the eight characteristics. Commonly all of the characteristics are exhibited by premises that fall within paragraph (a) of the definition or which are similar to such premises. However, all eight of the characteristics need not necessarily be exhibited. It is a matter of examining the extent and manner to which the characteristics are exhibited and the overall character of the premises to determine whether the premises are within this class rather than premises of another kind.

A marina at which one or more of the berths are occupied, or are to be occupied, by ships used as residences

53. In the context of marinas in paragraph (da) of the definition, it is necessary to establish that one or more berths are occupied, or are to be occupied, by ships used as residences. In this context, the ships must be used as a residence in the sense of being occupied on a permanent or long-term basis.

A caravan park or camping ground – similar premises

54. 'Home parks' in which sites for demountable homes are rented and the homes themselves either rented or occupied by their owners are commercial residential premises under paragraph (f) of the definition, as they are similar to caravan parks.

Division 87 – long-term accommodation in commercial residential premises

Commercial accommodation

55. For an entity to provide commercial accommodation to an individual, the individual must be provided a right to occupy the whole or any part of the commercial residential premises for living accommodation (that is, in the sense of a right to stay).

56. This right to occupy must be conferred at the time of the taxable supply and must extend for the full duration of the relevant supply.

Provided to an individual as long-term accommodation

57. Paragraphs 87-5(1)(b) and 87-10(1)(b) refer to commercial accommodation that is provided to an individual as long-term accommodation. These provisions do not require the supply of commercial accommodation be made to an individual.

58. For commercial accommodation to be provided to an individual as long-term accommodation, it is only necessary for the supply of commercial accommodation to be made to an entity for 28 days or more and for the accommodation, under the terms of the agreement, to be able to be taken up by an individual. It is not necessary for the commercial accommodation to be actually provided to an individual.

Predominantly for long-term accommodation

59. Commercial residential premises are predominantly for long-term accommodation for the purposes of subsection 87-20(3) where at least 70% of the accommodation supplied in the commercial residential premises is for a continuous period of 28 days or more and may, under the terms of the agreement, be taken up by an individual.

60. Any fair and reasonable method may be used to determine whether the 70% requirement is satisfied.

Option to input tax supplies of long-term accommodation

61. If a choice is made under section 87-25 to not apply Division 87 to supplies of long-term accommodation in respect of a supply of a berth at a marina, subsection 40-35(1A) applies where the berth is occupied, or is to be occupied, by a ship used as a residence. In this context, the ships must be used as a residence in the sense of being occupied on a permanent or long-term basis.

Further worked examples

Example ten – supply of the whole of a building that is similar to a hotel

62. *Developer Pty Ltd (Developer) constructs a building that consists of 120 apartment rooms, a large reception area, management offices, a restaurant and conference facilities on the ground floor, and underground parking. The physical characteristics of the premises allow the premises to be used in a manner similar to a hotel.*

63. *Developer leases the whole complex to Sky on completion for Sky to use in its accommodation business.*[5] *The complex will operate in a similar way to a hotel.*

64. *In this example, the supply by way of lease of the completed complex by Developer to Sky is a supply of commercial residential premises that is similar to the supply of a hotel.*[6]

65. *The supply by Sky of accommodation in the apartments to guests will be a taxable supply of accommodation in commercial residential premises provided to an individual by the entity that controls the commercial residential premises.*

66. *The fact that the apartments may be strata titled will not alter the conclusion in this example.*

Example 11 – serviced apartments that are a supply of residential premises and commercial residential premises

67. *Using the facts in paragraph 62 of this draft Ruling, however Developer sells 30 of the apartments on the top three levels and, under a single lease, leases the remainder of the building to Sky.* [7]

68. *The characteristics of the interest in the premises leased to Sky include living areas and infrastructure designed to be used in a similar manner to a hotel.*

69. *Developer's sales of the 30 apartments are taxable supplies of new residential premises. Developer's supply of the remainder of the premises by way of lease is a taxable supply of commercial residential premises.*

Example 12 – supplies of parts of a building that are residential premises and commercial residential premises

70. *Using the facts in paragraph 62 of this draft Ruling, however Developer retains 30 of the completed apartments on the top three*

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[5] The lease is not a long-term lease as defined in section 195-1.
[6] See paragraph 159 of this draft Ruling.
[7] The lease is not a long-term lease as defined in section 195-1.

levels of the building and supplies the remainder of the completed complex to Sky by way of separate leases for each stratum lot. [8]

71. *On completion, Developer sold all of the 30 apartments on the top floors to individual investors who may choose to live in these apartments. Developer and Sky, under one arrangement, entered into 90 leases for the remaining apartments; a lease for the management lot which includes the reception area, management offices, the restaurant and conference facilities; and a further lease for the parking lot.*

72. *Developer's sales of the 30 apartments are taxable supplies of new residential premises. The single agreement entered into between Developer and Sky results in Developer making a supply of commercial residential premises to Sky (being the 90 apartments, management lot, and car park).* [9]

Example 13 – apartments that are residential premises

73. *Using the facts provided in paragraph 62 of this draft Ruling, however, the apartments are strata-titled. Developer sells 40 apartments to investors. Each lot owner obtains an interest in the common property of the building including the reception area, lifts, corridors, access areas and grounds.*

74. *Under the body corporate bylaws, the body corporate engages a firm to provide the services of a security person in the reception area. Developer leases the remaining 80 apartments in the building to a third party.* [10]

75. *Developer's sales of the 40 apartments are taxable supplies of new residential premises. Developer's supply by way of lease of the 80 apartments is an input taxed supply of residential premises.*

Example 14 – hotel accommodation supplied with tour package

76. *Aussie Hotels Pty Ltd (Aussie Hotels) operates a hotel in Australia and sells rights to accommodation in its hotel to a tour provider, Quick Trips Pty Ltd (Quick Trips).*

77. *Quick Trips supplies the accommodation rights to Australian tourists as part of a holiday package. Aussie Hotels subsequently provides the accommodation to the tourists.*

78. *The supply made by Aussie Hotels to Quick Trips is a taxable supply. It is a supply of a right to accommodation in commercial residential premises that will be provided to an individual (that is, the tourist) by an entity that owns or controls the commercial residential premises (that is, Aussie Hotels).*

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[8] The lease is not a long-term lease as defined in section 195-1.
[9] See paragraph 44 of this draft Ruling.
[10] The lease is not a long-term lease as defined in section 195-1.

79. *The supply made by Quick Trips to the tourist is a taxable supply. It is a supply of a right to accommodation in commercial residential premises that will be provided to an individual (that is, the tourist) by an entity that owns or controls the commercial residential premises (that is, Aussie Hotels).*

Example 15 – bed and breakfast accommodation

80. *Bob advertises in a national B&B magazine that three bedrooms in his home close to a national park are available for weekend stays. The rooms are not self-contained and are cleaned on a daily basis during stays and after each stay. The daily cleaning includes replacing towels and making beds. Breakfast is provided in the kitchen. No modifications were required to Bob's home to make it suitable for bed and breakfast accommodation.*

81. *The rooms are held out as accommodation for guests and services are included. Bob operates the arrangement on a commercial basis in a business-like manner and provides accommodation on a multiple occupancy basis. In weighing up the extent to which Bob's bed and breakfast accommodation exhibits each of the characteristics of hotels, motels, inns, hostels, boarding houses and similar premises, it is evident that each characteristic is exhibited to a similar degree and in a similar manner as would be expected in the listed types of premises. Bob's supply of weekend accommodation is a taxable supply of accommodation in commercial residential premises.*

Example 16 – single room in a house available for short-term accommodation

82. *Harrison lives in a house that on its physical characteristics is residential premises to be used predominantly for residential accommodation. Harrison has a single bedroom in his house which he advertises as being available for short-term accommodation. Harrison provides linen and meals to guests.*

83. *Although the room is held out as accommodation for guests and services are included, Harrison does not provide accommodation to guests on a multiple occupancy basis. In weighing up the extent to which the premises exhibits each of the characteristics of hotels, motels, inns, hostels, boarding houses and similar premises, the accommodation is not similar to a hotel, motel, inn, hostel or boarding house. Harrison's supply of accommodation is not a supply of accommodation in commercial residential premises. Harrison's supply of accommodation in his house is input taxed under section 40-35.*

Example 17 – farm stays

84. *Delta Farm Holidays is a farm stay business conducted in association with an adjacent alpaca farm. An on-site manager*

advertises the farm stays in national lifestyle magazines as 'eco-friendly' holidays.

85. *Accommodation is offered on a bed and breakfast basis and suites are cleaned daily. Guests are invited to participate in the workings of the farm and stay in renovated farm buildings that sleep up to twelve guests in four separate suites. The accommodation is being operated on a commercial basis aimed at transient guests who are temporarily away from their usual homes.*

86. *Delta Farm Holidays' premises exhibit the characteristics of commercial residential premises to a sufficient degree and in a manner that makes them similar to a hotel, motel, inn, hostel or boarding house. The supply of the accommodation is a taxable supply of accommodation in commercial residential premises.*

Example 18 – house provided to an employee as a residence

87. *XYZ Mining operates 'Mine A', an open cut mine in a remote area of Australia. It owns a three bedroom conventional house in a nearby small town. XYZ Mining leases the house to an employee under a standard residential tenancy agreement. The employee is responsible for costs of services and grounds maintenance. XYZ Mining is responsible for any repairs and maintenance. XYZ Mining's supply of the house by way of lease is an input taxed supply of residential premises to be used predominantly for residential accommodation under section 40-35.*

Example 19 – camp-style accommodation for employees and contractors

88. *XYZ Mining also operates 'Mine B', another open cut mine in a remote area of Australia. XYZ Mining establishes camp-style accommodation consisting of 130 single person quarters at the mine site to accommodate employees and contractors of the mine.*

89. *Employees and contractors are provided accommodation in available single person quarters when the workers are on site. A single person quarter is a separately keyed room containing a bed, small wardrobe and separate bathroom.*

90. *XYZ Mining has a central office located at the site for the management of room allocation, maintenance and servicing. Cleaners are employed by XYZ Mining to service the rooms regularly, which includes changing sheets and towels. All meals are provided in a communal canteen. Communal laundry facilities are provided. Other services provided at the site include televisions and DVDs, and bar facilities.*

91. *Employees and contractors do not obtain rights akin to a tenant during their stay at the mine site. Authorised mining company personnel are able to enter and inspect rooms without providing notice. Employees and contractors are required to abide by 'camp*

rules' which, among other things, place restrictions on fixtures and fittings being added to the single person quarters, prevent smoking and prevent keeping of pets.

92. *The single person quarters are designed to provide living accommodation and are residential premises to be used predominantly for residential accommodation.*

93. *To determine whether the accommodation is commercial residential premises, it is necessary to weigh-up the extent to which it satisfies the characteristics of hotels, motels, inns, hostels and boarding houses. The premises are operated in a business-like manner. The premises are also operated on a multiple occupancy basis similar to a hotel, motel, inn, hostel or boarding house. The main purpose of the premises is to provide accommodation to a transient class of guests who are away from their home. Employees and contractors do not obtain exclusive possession or similar rights akin to a tenant. The range of services offered is typical of the level of services often provided in some hotels, motels and inns. The premises are centrally managed by XYZ Mining and it offers the accommodation in its own right. However, XYZ Mining does not hold out or advertise the single person quarters as being available to the public generally. It is only available to its employees and contractors.*

94. *On the basis of weighing up all of the characteristics, despite the fact that the accommodation is not held out to the public generally, the premises are operated in a way that is similar to a hotel, motel, inn, hostel or boarding house and the premises fall within paragraph (f) of the definition of commercial residential premises.*

95. *Therefore, XYZ Mining's supply of accommodation in the single person quarters to employees and contractors is a supply of accommodation in commercial residential premises.*[11]

[11] The Commissioner considers that accommodation provided to employees and contractors on an offshore mobile drilling unit in similar circumstances to that set out in Example 19 is also a supply of accommodation in commercial residential premises.

Example 20 – accommodation targeted at mine employees

96. *TPM Accommodation (TPM) built, owns and operates an accommodation village in a location close to a number of operating mines. TPM aims to service the accommodation requirements of mine employees and contractors. The accommodation village has 200 single person rooms in detached dwellings each comprising eight rooms. Each room has a bed, wardrobe, desk and chair, television and an ensuite. There is also a central kitchen, dining area and bar facilities. Services included in the daily room rate include meals and laundry, regular room cleaning, access to gyms, pay TV, broadband internet and sporting facilities. On-site management accepts reservations, allocates rooms to guests and arranges the provision of the various services. Occupants have the status of guests rather than having rights akin to a tenant.*

97. *TPM may contract with mining companies to provide accommodation to their employees or contractors. Alternatively, TPM may contract directly with mine employees or contractors. Tourists travelling through the area may also stay at the accommodation village.*

98. *TPM operates its business on a commercial basis and offers accommodation on a multiple occupancy basis. The premises' main purpose is to provide accommodation to a transient or floating class of occupant. Occupants are not provided with exclusive possession or similar rights akin to a tenant. While the premises are marketed particularly at employees and contractors of nearby mines, they are still held out to the public as offering accommodation and related services to persons who are away from their home. The range of services offered by TPM is typical of the level of services often provided in hotels, motels and inns. TPM centrally manages the accommodation and provides the accommodation in its own right.*

99. *In weighing up the extent to which TPM's premises exhibit the characteristics of hotels, motels, inns, hostels and boarding houses in the manner usually expected in that class of premises, it is clear that the premises are commercial residential premises under paragraph (f) of the definition. TPM's supplies of accommodation are taxable supplies under section 9-5.*

Example 21 – individual holiday apartments

100. *Gus is an owner of an apartment in a block of strata titled holiday apartments. Gus' apartment is let out for short-term stays during the year, but there are other apartments in the building that are occupied by individual owners. Items such as linen, towels and tea and coffee making facilities are provided to guests who stay in Gus' apartment. Gus has chosen to let his apartment through the on-site managers (who act as Gus' agent in letting the room). Keys are collected from the on-site manager. The body corporate maintains common areas but does not otherwise involve itself with occupants.*

101. *In weighing up the extent to which Gus' apartment exhibits each of the characteristics of hotels, motels, inns, hostels, boarding houses and similar premises, it is evident that the characteristics are not exhibited to a similar degree and in a similar manner as would be expected in the listed types of premises. The fact that the premises consists only of a single apartment outweighs the other characteristics that are common to premises referred to in paragraph (a) of the definition of commercial residential premises. Gus' apartment is not commercial residential premises. As the individual apartments provide shelter and basic living facilities, Gus' apartment is residential premises.*

102. *Gus' supply of his apartment by way of lease, hire or licence, through the on-site manager as his agent, is an input taxed supply of residential premises.*

Example 22 – caravan parks

103. *Florinda owns a caravan park where more than 70% of the caravan occupants stay for longer than 28 days. The caravan owners are permitted to leave their caravans on site and occupy them whenever they choose. She charges a GST inclusive weekly rate for the sites of $110 ($100 plus $10 GST). She also hires linen, blankets and appliances like televisions and toasters for an additional charge.*

104. *To work out the GST applicable to Florinda's long-term site-hire rate (assuming that Division 87 applies), Florinda first takes 50% of what the normal fee would be, that is, 50% of $110 or $55. The GST is 10% of this or $5.50. Florinda's long-term charge is $105.50 ($100 plus $5.50 GST). The GST for linen, blanket and appliance hire is 1/11 of the price she charges for these supplies, regardless of the period the site is occupied.*

Date of effect

105. When the final Ruling is issued, it is proposed to apply both before and after its date of issue. However, the Ruling will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 to 77 of Taxation Ruling TR 2006/10).

106. *Goods and Services Tax Ruling GSTR 2000/20 Goods and Services Tax: commercial residential premises* will be withdrawn when the final Ruling is issued. You may rely on GSTR 2000/20 for the purposes of section 357-60 of Schedule 1 to the *Taxation Administration Act 1953* until the Ruling is withdrawn.

Commissioner of Taxation
22 June 2011

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.

107. The following explanation is divided into five parts:

- Part A provides relevant background;
- Part B provides guidance on the meaning of 'residential premises' and the principles relevant to supplies of 'residential premises' in accordance with the provisions of Subdivision 40-B and Subdivision 40-C;
- Part C provides guidance on the meaning of 'commercial residential premises';
- Part D applies the principles to some common types of supplies; and
- Part E provides guidance on the operation of Division 87 for long-term accommodation in commercial residential premises.

Part A: Background

Legislative context

108. GST is payable on taxable supplies.[12] Section 9-5 sets out the criteria that must be satisfied for a supply to be a taxable supply. A supply is not a taxable supply to the extent that it is GST-free or input taxed.

109. The term 'residential premises' is defined in section 195-1 to mean land or a building that:

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

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

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

110. 'Commercial residential premises' is defined in section 195-1 to mean:

(a) a hotel, motel, inn, hostel or boarding house;

(b) premises used to provide accommodation in connection with a school;

[12] Subsection 7-1(1).

(c) a ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire;

(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;

(da) a marina at which one or more of the berths are occupied, or are to be occupied, by ships used as residences;

(e) a caravan park or 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.

111. The main provisions in the GST Act dealing with supplies of residential premises and commercial residential premises are:

(a) Subdivision 40-B, section 40-35 – Residential rent;

(b) Subdivision 40-C, section 40-65 – Sale of residential premises, section 40-70 – Supplies of residential premises by way of long-term lease, and section 40-75 – Meaning of *new residential premises*; and

(c) Division 87 – Long-term accommodation in commercial residential premises.

112. If a supply of premises is not input taxed under Subdivisions 40-B or 40-C and no other special rules apply, the basic rules are applied to determine whether the supply is taxable.[13]

113. In summary, a supply of residential premises may be:

(a) an input taxed supply by way of lease, hire or licence of residential premises to the extent that the premises are to be used predominantly for residential accommodation (regardless of the term of occupation);

(b) a taxable supply by way of sale, or long-term lease, of new residential premises other than those used for residential accommodation (regardless of the term of occupation) before 2 December 1998; or

(c) an input taxed supply by way of sale, or long-term lease, of residential premises (other than new residential premises) to the extent that the premises are to be used predominantly for residential accommodation (regardless of the term of occupation).

[13] Other special rules may also be relevant, such as the associates provisions in Division 72.

114. In summary, a supply of commercial residential premises by way of:

(a) lease, hire or licence; or

(b) sale, or a supply by long-term lease;

is a taxable supply.

115. The supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises is a taxable supply.

116. The special rules contained in Division 87 apply to taxable supplies of commercial accommodation[14] in commercial residential premises provided to individuals as long-term accommodation.[15] A supply of accommodation by way of lease, hire or licence to which Division 87 applies may be:

(a) a taxable supply, but the value of that supply is reduced in certain circumstances; or

(b) an input taxed supply, where, under section 87-25, the supplier chooses not to apply Division 87 to any supplies of commercial accommodation that the supplier makes.

117. Thus, the definition of commercial residential premises in section 195-1 has three applications in the GST Act:

- Firstly, it describes premises for which a supply by way of lease, hire or licence is excluded from input taxed treatment by paragraph 40-35(1)(a).
- Secondly, it describes premises for which a supply by way of sale or long-term lease is excluded from input taxed treatment by paragraphs 40-65(2)(a) and 40-70(2)(a) respectively.
- Thirdly, it determines the classes of premises to which the special rules in Division 87 regarding long-term commercial accommodation may be applied.

Legislative amendments

118. The meaning of the terms 'residential premises' and 'commercial residential premises' was considered by the Full Federal Court in *Marana Holdings Pty Ltd v. Commissioner of Taxation*[16] (*Marana*). The Court also considered the expressions 'residential accommodation' and 'new residential premises'.

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[14] 'Commercial accommodation' is defined in section 195-1 to have the meaning given by section 87-15.
[15] 'Long-term accommodation' is defined in section 195-1 to have the meaning given by subsection 87-20(1).
[16] (2004) 141 FCR 299; 2004 ATC 5068; (2004) 57 ATR 521.

119. Based on the ordinary meanings of the terms 'reside' and 'residence', the Full Federal Court in *Marana* considered that these terms connote a permanent or at least long-term commitment to dwelling in a particular place. However, this interpretation represented a significant departure from the intended GST treatment of certain supplies of real property.[17] To maintain the intended GST treatment of affected premises and give certainty, the GST Act was amended in 2006 with effect from 1 July 2000 (the Marana Amendments). The amendment to the definition of 'residential premises' was to confirm that the period of occupation or intended occupation of land or a building is not relevant in determining whether premises are residential premises. Further, the change was to ensure that premises that are occupied or are intended to be occupied for residential accommodation are residential premises and therefore generally subject to input taxed treatment upon sale or rental.[18]

Part B: Residential premises

Residential premises to be used predominantly for residential accommodation (regardless of the term of occupation)

120. A supply is input taxed under sections 40-35, 40-65 and 40-70 only to the extent that it is a supply of real property or premises that are residential premises to be used predominantly for residential accommodation.

Physical characteristics and objective intention

121. In *Sunchen Pty Ltd v. Federal Commissioner of Taxation*[19] (*Sunchen*) Edmonds and Gilmour JJ in a joint judgement considered the 'architecture' of subsection 40-65(1).[20] Their Honours referred to a view that there are two discrete elements of subsection 40-65(1): firstly, whether the property is residential premises, and secondly, whether the property is to be used predominantly for residential accommodation. Their Honours considered that the phrase 'intended to be occupied' in the definition of residential premises and the phrase 'to be used predominantly for residential accommodation' are both concerned with the characteristics of the property rather than the intended use of any person. Therefore, their Honours concluded that subsection 40-65(1) contains the single test of 'residential premises to be used predominantly for residential accommodation' which looks to the characteristics of the property. The Commissioner considers that this reasoning applies equally to sections 40-35 and 40-70 which contain similar wording.

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[17] Paragraph 15.4 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006.
[18] Paragraph 15.7 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006.
[19] (2010) 190 FCR 38; 2010 ATC 20-229; (2010) 78 ATR 197.
[20] *Sunchen* at FCR 46-47; ATC 301, 655-301, 656; ATR 205-206.

122. In *Marana* the Full Federal Court considered the phrase 'intended to be occupied' in the definition of residential premises in section 195-1. The Court held that the intention to occupy is not the subjective intention of any particular entity but the objective intention with which the particular premises are designed, built or modified.[21] This intention is reflected, to a greater or lesser extent, in their suitability for occupation as a residence or for residential accommodation. The Court noted that this may also overlap with the further requirement that the premises be capable of such use.[22]

123. In *Sunchen* Edmonds and Gilmour JJ noted at [26] that the critical features of the provision considered by the Full Federal Court in *Marana* also appear in section 40-65, that is:

- to the extent that section 40-65 incorporates a concept of intention, the person having the relevant intention is not identified; and
- the expression 'to be used' has as its grammatical subject the residential premises the subject of the sale.

124. Their Honours held that the phrase 'to be used predominantly for residential accommodation' does not refer to use by any particular person, but to the attributes of the property to which its use is suited.[23] That is, the phrase is concerned with the characteristics of the property in terms of its suitability for residential accommodation.[24] However, their Honours made the following observation:[25]

> …That is not to say that actual use of the property will necessarily be irrelevant; as the Full Court (Bowen CJ, Deane and Fisher JJ) said in the Hamilton Island Enterprises case: '[T]he use to which an item is actually put will ordinarily be illustrative of at least some aspects of its character.'

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[21] *Marana* at FCR 313; ATC 5079; ATR 534.
[22] See also comments of Perram J discussing the *Marana* decision in *Sunchen Pty Ltd v. FC of T* [2010] FCA 21 at [17]-[18]; 2010 ATC 20-161 at 10628-10629; (2010) 75 ATR 13 at 19.
[23] *Sunchen* at FCR 46; ATC 301,655; ATR 205.
[24] *Sunchen* at FCR 47; ATC 301, 655-301, 656; ATR 205-206. This position may be contrasted to the decision of White J in *Toyama Pty Ltd v. Landmark Building Developments Pty Ltd* 2006 ATC 4160; (2006) 62 ATR 73; [2006] NSWSC 83 which erected a test in which the intentions of the purchaser are relevant and important – see *Sunchen* at FCR 42; ATC 301, 651; ATR 201.
[25] *Sunchen* at FCR 46; ATC 301, 655; ATR 205.

125. In *Hamilton Island Enterprises v. FC of T*[26] (*Hamilton Island Enterprises*), the Full Federal Court considered whether helicopters were 'plant or articles for use in, or primarily and principally in connection with, amusement or recreation' for the purposes of subparagraph 82AF(2)(f)(i) of the *Income Tax Assessment Act 1936*. The Court found that subparagraph 82AF(2)(f)(i) was constructed so as to describe the attributes of the property which the draftsman was seeking to identify and did not, in its terms, introduce any notion of use by a particular person.[27] The character of the helicopters was that of machines of utility constructed and designed for use in supporting and transporting people and things in and through the air. Their character did not change according to how they were used.[28] The Court made the following observation:[29]

> The above comments of the Full Court should not be read as indicating that the use to which the relevant item of personal property is put will necessarily be irrelevant for the purposes of determining whether, for the purposes of s 82AF(2)(f)(i), the item answers the description 'plant or articles for use in, or primarily and principally in connection with, amusement or recreation'. It may, in a particular case, be common ground that the use to which the relevant item is put corresponds with the use which it is of its character to serve. In such a case, the examination of the actual use of the item could well be decisive of the question whether it was or was not of the designated character. Quite apart from such cases, the use to which an item is actually put will ordinarily be illustrative of at least some aspects of its character.

126. The Commissioner considers that the observation made by Edmonds and Gilmour JJ in *Sunchen* recognises that in the majority of instances, premises that possess characteristics suitable for residential accommodation will be used for that purpose. However, the actual use of such premises for a purpose other than residential accommodation will not prevent the premises from being residential premises to be used predominantly for residential accommodation. This is consistent with the approach taken by the Full Federal Court in *Hamilton Island Enterprises*.

127. In the context of the definition of residential premises and sections 40-35, 40-65 and 40-70, suitability refers to the suitability of the premises in question by reference to their physical characteristics.[30] Premises are suitable for occupation as a residence or for residential accommodation if they possess the necessary features to provide residential accommodation and are able to be occupied as residential premises.

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[26] 82 ATC 4302; (1982) 13 ATR 220.
[27] At ATC 4305; ATR 224.
[28] At ATC 4306; ATR 225.
[29] At ATC 4305; ATR 224.
[30] See Example one at paragraphs 9 and 10 of this draft Ruling.

128. In limited circumstances where the premises' physical characteristics do not conclusively demonstrate suitability for occupation as a residence or for residential accommodation, design or construction documents such as architectural plans may assist in determining whether the physical characteristics and features of the premises make them suitable for occupation of this nature. This includes circumstances where the character of the premises needs to be determined before construction of the premises is completed.

129. The reference in *Marana* to premises being 'modified' recognises that the physical characteristics of premises may be altered after the time when the premises are first designed and built. In each case it is necessary to determine the suitability of the premises by reference to their physical characteristics at the time the relevant supply is made.

Living accommodation provided by shelter and basic living facilities

130. The ordinary meaning of the word 'residence' connotes a degree of permanent or long-term commitment to the occupation of premises.[31] However, the Marana amendments broaden the definition of residential premises, ensuring that it is not limited to premises suited to extended or permanent occupation. The amendments included the words 'residential accommodation' and 'regardless of the term of occupation or intended occupation'. This gives 'residential premises' a broader meaning in the GST Act than they ordinarily have.[32]

131. Residential premises, as defined in the GST Act, provide living accommodation.[33] Living accommodation does not require any degree of permanence of occupation. It includes lodging, sleeping or overnight accommodation. In *South Steyne Hotel Pty Ltd v. FC of T*[34] (*South Steyne*), Stone J referred to a number of overseas decisions on this point including *Urdd Gobaith Cymru*[35] and *Owen.*[36] Her Honour noted:

> 37. … [In *Urdd Gobaith Cymru*] The Tribunal chairman agreed that 'a residence' clearly implied a building with a significant degree of permanence of occupation but added:

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[31] *Marana* (2004) 141 FCR 299 at 312]; 2004 ATC 5068 at 5078; (2004) 57 ATR 521 at 533.
[32] *South Steyne Hotel Pty Ltd v. FC of T* [2009] FCA 13 at [34]; 2009 ATC 20-090 at 9331; (2009) 71 ATR 228 at 240; per Stone J; and the Full Federal Court decision in *South Steyne Hotel Pty Ltd v. Federal Commissioner of Taxation* (2009) 180 FCR 409 at 426; 2009 ATC 20-145 at 10345; (2009) 74 ATR 41 at 59; per Edmonds J.
[33] 'Living accommodation' is not a defined term in the GST Act.
[34] [2009] FCA 13; (2009); 2009 ATC 20-090; 71 ATR 228.
[35] *Urdd Gobaith Cymru v. Commissioner of Customs and Excise* [1997] V & DR 273.
[36] *Owen v. Elliott (Inspector of Taxes)* [1990] 1 CH 786.

> However, the word loses that clear meaning when used as an adjective. In ordinary English 'residential accommodation' merely signifies lodging, sleeping or overnight accommodation. It does not suggest the need for such accommodation to be for any fixed or minimum period.
>
> 38. … In *Owen* the Court of Appeal expressed a similar view as to the meaning of 'residential accommodation' used in the context of the *Capital Gains Tax Act 1979*. The position was put succinctly by Leggat LJ who said:
>
> > In my judgment the expression 'residential accommodation' does not directly or by association mean premises likely to be occupied as a home. It means living accommodation, by contrast, for example with office accommodation.

132. In *South Steyne* it was held that only the elements of shelter and basic living facilities are necessary for premises to satisfy the definition of residential premises.[37] This includes, for example, shelter and basic living facilities provided by a bedroom and bathroom.[38] However, premises may provide shelter and basic living facilities without necessarily having a conventional bedroom or bathroom.[39]

133. The premises may be in any form, including detached buildings, semi-detached buildings, strata title apartments, single rooms or suites of rooms within larger premises. Premises that lack the features of shelter and basic living facilities are not residential premises.

Human habitation

134. The condition of the premises supplied is relevant to deciding whether they are capable of being occupied as a residence or for residential accommodation. To be residential premises as defined, premises must be fit for human habitation. Premises are not suitable for human habitation if they are in a dilapidated condition which prevents occupation for residential accommodation (for example, as may be evidenced by a demolition notice issued by the relevant authority because of the premises' condition). In these circumstances, the condition of the premises would indicate that the premises are no longer capable of providing shelter and the basic living facilities. However, residential premises that are in a temporary state of disrepair remain residential premises.

135. Conversely, a partially built building is not residential premises until the premises are suitable for human habitation. While ultimately a question of fact, an occupancy permit/certificate, a certificate of final inspection, or similar document issued by the relevant authority may provide evidence that the premises are fit for human habitation.

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[37] *South Steyne* per Stone J at FCA [31]; ATC 9331; ATR 239; accepted by the Full Federal Court per Emmett J (with whom Finn J agreed) at FCR 416; ATC 10337; ATR 49 and Edmonds J at FCR 427; ATC 10345; ATR 59; refer also to the Full Federal Court in *Vidler v. Federal Commissioner of Taxation* (2010) 183 FCR 440 at 445-446; 2010 ATC 20-186 at 20-22; (2010) 75 ATR 825 at 830-831.

[38] *South Steyne* per Stone J at FCA [31]; ATC 9331; ATR 239.

[39] *Vidler v. FC of T* [2009] FCA 1426 at [12]; 2009 ATC 20-149 at 12; (2009) 74 ATR 520 at 523 per Stone J.

136. Contractual or legal prohibitions against long-term or short-term occupation as a residence do not prevent premises from being suitable for residential accommodation.

Applying the test of 'residential premises to be used predominantly for residential accommodation'

Identifying the premises

137. In considering whether a supply of premises is characterised as a supply of residential premises, commercial residential premises, or another types of premises, it is necessary to identify the premises subject to the supply.[40] In this context it is possible for premises to be part of larger premises. For example, if the subject of the supply is limited to a strata-titled room or apartment within a larger complex, it is necessary to consider the character of that room or apartment, not the character of the complex when operated as a whole.

Garages and car-parking spaces

138. The subject of the supply may be a residential unit with a physically separate garage or car-parking space. Where the physical characteristics indicate that the garage or car-parking space is part of the premises being supplied, the garage or car-parking space also forms part of the residential premises to be used predominantly for residential accommodation. The garage or car-parking space must be related to the residential unit by being part of the same site in a broader sense. For example, the garage or car-parking space may be part of the same building, complex or site. A car-parking space would not be sufficiently related if, for example, it is part of a separately owned and operated commercial parking station.

139. A garage or car-parking space may be on a separate legal title to a residential unit. This does not prevent the garage or car-parking space from being part of the residential premises to be used predominantly for residential accommodation. For a sale of a separately titled garage or car-parking space to be part of a sale of residential premises to be used predominantly for residential accommodation, the sale contract will usually refer to the garage or car-parking space. The garage or car-parking space must be supplied as part of the same transaction. It is sufficient if completion of the sale of the unit and completion of the sale of the garage or car-parking space are each conditional upon the other. A supply of a garage or car-parking space independent of a residential unit is not a supply of residential premises to be used predominantly for residential accommodation.

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[40] *South Steyne* at FCA [41]; ATC 9332; ATR 241.

Other premises

140. A variety of buildings may include basic living facilities, including office buildings and hospitals. However, it does not follow that all premises that have these facilities are necessarily residential premises to be used predominantly for residential accommodation.

141. Although these premises have, in part, physical characteristics common to premises that provide living accommodation, they also have physical characteristics which reflect their suitability for another purpose. Where premises' suitability for the provision of living accommodation is ancillary to the premises' prevailing function, they are not residential premises to be used predominantly for residential accommodation.[41]

142. Even if an office worker eats and sleeps overnight in an office building for a period, it does not follow that the premises are residential premises to be used predominantly for residential accommodation. Rather, the physical characteristics of the premises reveal that the building is an office. Similarly, a squatter might eat and sleep in an otherwise vacant factory or warehouse but this does not make it residential premises to be used predominantly for residential accommodation.

143. These outcomes are consistent with the legislative policy. The legislative intention is that Subdivisions 40-B and 40-C operate so that those renting a house, flat or home unit are on the same footing as persons who own their own homes: neither is to bear the cost of GST in connection with such occupation.[42] There is nothing to suggest that the legislative intention is that a supply of non-residential structures (such as a factory, warehouse or office) should be input taxed simply because someone occupies the premises when they are supplied, even if that person could be said to be living there.

Premises requiring apportionment

144. In some circumstances premises consist of two or more parts, one part residential premises to be used predominantly for residential accommodation and the other part not residential premises to be used predominantly for residential accommodation. The phrase 'to the extent that the premises are to be used predominantly for residential accommodation' requires the value of the supply be apportioned.

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[41] See Examples two, three and four at paragraphs 16 to 24 of this draft Ruling.
[42] See *Marana* at FCR 306-307; ATC 5074-5075; ATR 528-529 and paragraphs 5.164 to 5.168 of the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998.

145. This means that, if there is a single supply of the premises but only part of premises is residential premises to be used predominantly for residential accommodation, the supply is input taxed to that extent. For example, if residential premises are designed, built or modified so that part is a house and part is for commercial purposes such as a shop (based on its physical characteristics) a supply of the premises would be a taxable supply to the extent that it relates to the shop. Only the part of the premises which has not been designed, built or modified as a shop is residential premises to be used predominantly for residential accommodation. To the extent that the supply relates to that part which is the residence, the supply of the premises is input taxed.[43] See Examples five and six at paragraphs 26 to 30 of this draft Ruling.

Land supplied with a building

146. The GST Act does not restrict the area of land that can be included in residential premises. It is a question of fact and degree in each case whether, and to what extent, the land forms part of the residential premises. A relevant factor in determining this is the extent to which the physical characteristics of the land and building as a whole indicate that the land is enjoyed in conjunction with the residential building. See Example seven at paragraphs 32 to 35 of this draft Ruling.

Vacant land

147. Vacant land cannot be residential premises. In *Vidler v. Federal Commissioner of Taxation*,[44] Sundberg, Bennett and Nicholas JJ stated that 'vacant land is not land that is capable of being occupied as a residence or for residential accommodation'. This is because vacant land, of itself, does not provide shelter and basic living facilities, and cannot, therefore, be occupied as a residence or for residential accommodation.

Used for residential accommodation before 2 December 1998 – paragraph 40-65(2)(b) and paragraph 40-70(2)(b)

148. A supply by sale or long-term lease of residential premises is not input taxed to the extent that the residential premises are new residential premises other than those used for residential accommodation (regardless of the term of occupation) before 2 December 1998.[45] The meaning of 'new residential premises' is considered in GSTR 2003/3.

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[43] This position is consistent with paragraph 5.164 of the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998.
[44] *Vidler v. Federal Commissioner of Taxation* (2010) 183 FCR 440 at 448; 2010 ATC 20-186 at 38; (2010) 75 ATR 825 at 833.
[45] Paragraph 40-65(2)(b) and paragraph 40-70(2)(b).

149. The reference to prior use for residential accommodation in paragraphs 40-65(2)(b) and 40-70(2)(b) only applies where the premises at the time of use before 2 December 1998 was residential premises but not commercial residential premises. That is, the prior use referred to in paragraphs 40-65(2)(b) and 40-70(2)(b) does not encompass prior use for accommodation in commercial residential premises.[46] See Example eight at paragraphs 38 to 40 of this draft Ruling.

Floating homes and ships

150. Floating homes are included in the definition of residential premises. 'Floating home' is defined in section 195-1 to mean a structure that is composed of a floating platform and a building designed to be occupied (regardless of the term of occupation) as a residence that is permanently affixed to the platform but does not include any structure that has means of, or is capable of being readily adapted for, self-propulsion.

151. The words 'regardless of the term of occupation' in the definition mean that floating homes are not limited to structures that are suited to extended or permanent occupation. To be a floating home, the structure must be designed to provide living accommodation. As such, basic living facilities, such as the facilities for sleeping and bathing, must be available.

152. In *Case 54/95*,[47] the Administrative Appeals Tribunal considered whether accommodation provided on an offshore mobile drilling unit (being a drilling rig capable of drilling holes at sea) was 'residential accommodation' for the purposes of paragraph 30(2)(c) of the *Fringe Benefits Tax Assessment Act 1986*. The Tribunal found that the accommodation was residential accommodation as the sleeping, mess and recreational quarters, together with food provided on board, provided the drill crew with a place to reside (or lodge) and meals.[48]

153. A vessel may be adapted for self-propulsion by the fitting of an outboard motor. Most houseboats are not residential premises because they are either self-propelled or readily adaptable for self-propulsion in this way.

154. A supply of a floating home by way of lease, hire or licence is an input taxed supply under section 40-35. However, as floating homes are not real property, they are subject to the basic rules for taxable supplies upon sale.[49] A sale of a floating home is not an input taxed supply, even if it is not a new floating home.

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[46] *South Steyne (FFC)* at FCR 429-430; ATC 10347-10348; ATR 61-62.
[47] 95 ATC 447; (1995) 31 ATR 1264.
[48] At [37] – [38]. While the case was appealed to the Federal Court in *Maretech CMDL Pty v. FC of T* 97 ATC 4033; (1996) 34 ATR 459, this issue was not raised on appeal.
[49] Section 40-65 only applies to a sale of real property.

Part C: Commercial residential premises

155. 'Commercial residential premises' is defined in section 195-1.[50] The definition of commercial residential premises is relevant to the operation of Subdivisions 40-B and 40-C and also the special rules regarding long-term accommodation in Division 87. Each of the paragraphs of the definition needs to be considered separately to determine if premises are 'commercial residential premises'.

Relationship between residential premises and commercial residential premises

156. There is a relationship between residential premises and some commercial residential premises in the GST Act. In some cases there may be an overlap in that some premises which fit within the definition of residential premises also fit within the definition of commercial residential premises.[51] However, some things listed in the definition of commercial residential premises do not also come within the definition of residential premises, such as ships referred to in paragraphs (c) and (d) of the definition.

157. The primary function of premises that fit within both definitions is to provide various types of living accommodation. In *Meridien Marinas Horizon Shores Pty Limited v. FC of T*[52] (*Meridien Marinas*) Greenwood J observed:

> Premises such as a hotel, motel, inn, hostel, boarding house, a caravan park or anything 'similar to residential premises' falling within (a) to (e) of the definition, comprehended premises incorporating a facility for residential occupation *associated with* some other activity on or in connection with the premises and in some cases included a multiplicity of places within the premises capable of residential occupation. The statutory characterisation of premises as commercial residential premises suggested residential use as part of a related commercial activity.[53]

158. As such, the living accommodation areas of these commercial residential premises exhibit the fundamental characteristics of residential premises in providing shelter and basic living facilities.

159. In addition to living accommodation areas, buildings that are commercial residential premises often include infrastructure or other features to support the commercial operation of the premises. This infrastructure or other features are necessary to provide some level of service to occupants such as reception or office areas and may include conference and meeting rooms, a commercial kitchen, and laundry.

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[50] The definition is set out at paragraph 110 of this draft Ruling.
[51] *Marana* at FCR 310-311; ATC 5077-5078; ATR 532-533.
[52] [2009] FCA 1594; 2009 ATC 20-158; (2009) 74 ATR 787.
[53] *Meridien Marinas* at FCA [56]; ATC 56; ATR 801.

160. A sale or lease of only the living accommodation parts of buildings that are commercial residential premises, for example strata titled hotel rooms, is a supply of residential premises[54] and not a supply of commercial residential premises.

161. Emmett J considered the circumstance of the supply of 83 apartments under individual leases in *South Steyne (FFC)*[55] and agreed with the earlier decision of Stone J that:

> …there is nothing in the GST Act or the policy underlining the GST Act that suggests that the characterisation of an individual supply can be approached by treating it as if it were the aggregate of that supply and other supplies.

However, his Honour went on to state:[56]

> Even if the individual leases of the 83 apartments were granted pursuant to a single agreement, the apartments by themselves do not amount to or constitute a hotel; nor do they amount to or constitute a motel, inn, hostel or boarding house.

162. This observation by Emmett J focussed on the supply of apartments only. On the facts of the case the commercial infrastructure was supplied separately and this can be seen as a critical factor in Emmett J's decision. His Honour stated:[57]

> A hotel, motel, inn, hostel or boarding house consists of more than the rooms or apartments that are occupied by guests. It must also of necessity include common areas such as reception areas, dining areas, car parks and the like, such as were the subject of the management lot. The supply that consisted only of the rooms or apartments or accommodation units in a hotel complex is not, without those other areas, the supply of commercial residential premises. The management lot is an essential part of the Sebel Hotel.

163. His Honour did not comment on circumstances where apartments are supplied with the commercial infrastructure. However, his Honour's statements above suggest that rooms separately leased in conjunction with the commercial infrastructure may together be characterised as a supply of commercial residential premises.

164. An entity that enters into an arrangement with a single recipient – under which multiple leases are executed between the parties over individually strata titled rooms and the infrastructure or other features located with the premises, which collectively comprise commercial residential premises – supplies commercial residential premises to the recipient.

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[54] See *South Steyne (FFC)* at FCR 416ATC 10336-10337; ATR 48-49 per Emmett J and at FCR 426-427; ATC 10345; ATR 58-59 per Edmonds J. See also paragraph 15.16 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006.
[55] *South Steyne (FFC)* at FCR 416; ATC 10336-10337; ATR 48.
[56] *South Steyne (FFC)* at FCR 416; ATC 10336-10337; ATR 48.
[57] *South Steyne (FFC)* at FCR 416; ATC 10337; ATR 49.

165. Separately titled adjacent cottages or villas (that is, on adjoining or abutting land) that are combined and operated similar to a hotel, motel, inn, hostel or boarding house to provide accommodation can form commercial residential premises.[58] However, this does not alter the basic character of the separate cottages as residential premises, should they be supplied separately rather than as part of the larger commercial residential premises. In this circumstance the supply of the cottage is input taxed.

Physical character of commercial residential premises

166. Commercial residential premises may be identified by physical characteristics that establish the purpose of the premises. In addition, where the physical characteristics of the premises do not conclusively demonstrate that they are commercial residential premises, design or construction documents such as architectural plans may assist in determining whether the physical character and features of the premises identify them as commercial residential premises. If after considering these factors it remains inconclusive, it is necessary to consider how the premises are operated at the time of the relevant supply to determine whether the premises are commercial residential premises.[59]

167. For some premises it is clear, based on their overall physical character, that they are commercial residential premises. These premises can be classified as commercial residential premises even when not being operated as such.[60]

Extended definition under paragraph (f) of the definition

168. Paragraph (f) of the definition of commercial residential premises includes in the definition 'anything similar to residential premises described in paragraphs (a) to (e)'. Each of paragraphs (a) to (e) of the definition provides for a class of premises that is commercial residential premises. While paragraph (f) extends the scope of the definition, its operation is limited to premises which have some or all of the characteristics of both residential premises and one or other of the classes of premises listed in paragraphs (a) to (e) of the definition.[61]

169. In this draft Ruling, each of paragraphs (a) to (e) is considered separately. Paragraph (f) is most relevant to paragraph (a) and paragraph (e), so its operation is explained within the discussions of these two paragraphs.

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[58] In this context, adjacent means on adjoining or abutting land. Residential premises making up commercial residential premises by being aggregated and let in this manner is similar to offering resort style accommodation. That is, more or less self-contained accommodation is offered within the larger precincts of the resort.
[59] See paragraphs 50 and 176 to 209 of this draft Ruling.
[60] See Example nine at paragraphs 47 to 48 of this draft Ruling.
[61] *Marana* at FCR 311; ATC 5078; ATR 532-3.

170. Premises that fall within paragraph (f) may be described as something other than those premises listed in paragraphs (a) to (e). For example, resort or serviced apartment[62] complexes. These premises are commercial residential premises if they are used in a particular way.[63] In circumstances where the whole of the premises is supplied by way of sale or lease and the premises are not being operated when supplied, their physical characteristics may establish that the premises are similar to those listed in paragraphs (a) to (e).[64]

Hotel, motel, inn, hostel or boarding house – paragraph (a) of the definition

Ordinary meanings

171. Paragraph (a) of the definition of commercial residential premises includes a hotel, motel, inn, hostel, or boarding house. These terms are not defined in the GST Act and take their ordinary meanings in context. The *Macquarie Dictionary*[65] (*Macquarie)*, the *Shorter Oxford English Dictionary* (*Shorter Oxford*) and the *Oxford English Dictionary* (*OED*) provide the following relevant meanings for each of the terms in paragraph (a):

Hotel

> 1. a building in which accommodation and food, and alcoholic drinks are available. (*Macquarie*)
>
> 3. An establishment, esp. of a comfortable or luxurious kind, where paying visitors are provided with accommodation, meals, and other services. (*Shorter Oxford)*
>
> 3. A house for the entertainment of strangers and travellers, an inn; *esp.* one that is, or claims to be, of a superior kind. (*OED*)

Motel

> 1. a roadside hotel which provides accommodation for travellers in self-contained, serviced units, with parking for their vehicles. (*Macquarie*)
>
> A roadside hotel catering primarily for motorists; *spec.* one comprising self-contained accommodation with adjacent parking space. (*Shorter Oxford*)
>
> A hotel catering primarily for motorists, *spec.* one comprising self-contained accommodation with adjacent parking space. *(OED)*

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[62] A reference to a 'serviced apartment' in this draft Ruling is to an apartment in a building complex in which all apartments provide for self-contained accommodation and where integrated reception, business and leisure facilities may be provided. These serviced apartments do not satisfy the definition of a 'serviced apartment' (in the context of residential care) contained in section 195-1.
[63] See paragraphs 50 and 176 to 209 of this draft Ruling.
[64] See Examples 10 to 13 at paragraphs 62 to 75 of this draft Ruling.
[65] *The Macquarie Dictionary,* [Multimedia], version 5.0.0, 1/10/01.

Inn

> 1. a small hotel that provides lodging, food, etc., for travellers and others. *(Macquarie)*
>
> 3. A public house providing accommodation, refreshments, etc., for payment, esp. for travellers. Now also, a public house serving alcoholic liquor for consumption on the premises, whether providing accommodation or not. *(Shorter Oxford*)
>
> 4. A public house kept for the lodging and entertainment of travellers, or of any who wish to use its accommodation; a hostelry or hotel; sometimes, erroneously, a tavern which does not provide lodging. (*OED*)

Hostel

> 1. A supervised place of accommodation, usually supplying board and lodging provided at a comparatively low cost, as one for students, nurses, or the like.
>
> 2. [cross reference] Youth hostel: a simple lodging place for young travellers. (*Macquarie*)
>
> 3. A public house of lodging and entertainment for strangers and travellers; an inn, a hotel. *Arch*
>
> [cross reference] Youth hostel: providing cheap accommodation for (orig. young) people, esp. on hiking or cycling holidays. (*Shorter Oxford*)
>
> 2. *spec.* a. A public house of lodging and entertainment for strangers and travellers; an inn, a hotel. b. = *youth hostel.* (*OED*)

Boarding house

> 1. a place, usually a home, at which board and lodging are provided. (*Macquarie*)
>
> A house offering board and lodging for paying guests. *(Shorter* Oxford)

'boarding, *vbl.*

> 6. The supplying of stated meals; the obtaining of food, or food and lodging, at another person's house for a stipulated charge…**boarding-house,** a house in which persons board. (*OED*)

Statutory context

172. In their ordinary meanings, the terms 'hotel', 'motel', 'inn' and 'hostel' are largely synonymous, as they provide accommodation to guests and travellers. The meaning of each of these terms in the GST Act is derived from the context in which the term 'commercial residential premises' is used in the GST Act including Divisions 40 and 87.

173. This includes commercial residential premises being a carve-out of supplies of certain types of premises from being input taxed as supplies of residential premises in subsections 40-35(1), 40-65(2) and 40-70(2). As noted in paragraph 143 of this draft Ruling, input taxed treatment of residential premises is provided so that those renting a house, flat or home unit are on the same footing as persons who own their own homes.

174. In this context, the Commissioner construes the terms hotel, motel, inn, hostel and boarding house as not including premises that provide accommodation similar to what would be expected for those who own or rent a house or apartment.

175. Calling premises a hotel, motel, inn, hostel, or boarding house does not necessarily mean that they are covered by the definition. Some premises may be referred to as one of these, but have physical characteristics or a mode of operation that takes them out of this class of premises when construed in this way.

Characteristics of operating hotels, motels, inns, hostels, boarding houses and residential premises similar to these

176. Characteristics that are common to operating hotels, motels, inns, hostels and boarding houses are:

(i) commercial intention

(ii) accommodation is the main purpose

(iii) multiple occupancy

(iv) occupants have the status of guests

(v) holding out to the public

(vi) central management

(vii) provision of, or arrangement for, services, and

(viii) management offers accommodation in its own right.

177. Paragraph 15.12 of the Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006 refers to each of these eight characteristics as characteristics that may be exhibited by hotels, motels, inns, hostels and similar premises.

178. Also, while not needing to specifically decide the characteristics that identify premises that fall within the definition of commercial residential premises, Greenwood J observed in *Meridien Marinas*[66] that commercial residential premises exhibit particular characteristics normally including:

> …premises run by a controller for a commercial purpose; premises having multiple occupancy; premises so held out to the public; premises having central management; premises providing services in addition to commercial accommodation; and, premises normally used for the main purpose of accommodation…

[66] *Meridien Marinas* at FCA [74], ATC 20-158; ATR 807.

When are premises 'similar to'

179. These characteristics are also relevant for identifying premises that are 'similar to' this class and are included under paragraph (f) of the definition.

180. The question of what are 'similar establishments' to hotels, inns and boarding houses has been examined on several occasions in the context of the relevant United Kingdom legislation[67] by the VAT Tribunal.[68] In *The Lord Mayor and Citizens of the City of Westminster*,[69] the Tribunal took the approach that a 'similar establishment' must have sufficient characteristics in common with the class of premises described, rather than with premises of another kind. To determine this, the Tribunal examined the characteristics of the premises and compared them with the characteristics it identified for the class 'hotel, inn, or boarding-house' as a whole.[70]

181. The determination of whether particular premises are 'commercial residential premises' under paragraphs (a) or (f) of the definition is a matter of fact and degree and involves a weighing up of the various characteristics. No single characteristic is necessarily determinative. Commonly all of the characteristics are exhibited by premises that fall within paragraph (a) of the definition or which are similar to such premises. For instance, premises within the ordinary meaning of a hotel will satisfy all eight characteristics. However, all eight of the characteristics need not necessarily be exhibited. It is a matter of examining the extent and manner to which the characteristics overall are exhibited to determine whether the premises are within this class rather than premises of another kind.

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[67] *Value Added Tax Act 1994* (UK), Schedule 9, Part II, Group 1, Item 1(d). There are some differences between the UK and Australian legislation. However, those provisions concerning 'similar' establishments in the UK legislation bear a sufficiently close resemblance to the provisions concerning 'similar' premises in the GST Act for the findings of the Tribunal to be relevant.

[68] See, for example, *Namecourt Ltd* (1984) 2 BVC 208,028; *The Lord Mayor and Citizens of the City of Westminster* (1988) 3 BVC 847; *McGrath* (1989) 4 BVC 779; *McGrath v. Customs and Excise Commissioners* [1992] BVC 51; *International Students House* [1996] BVC 2975; *Acorn Management Services Ltd* [2001] BVC 2388; *BJ Group* [2003] BVC 2614; *Leez Priory v. The Commissioners of Customs and Excise* VAT Decision 18185; *Asington Ltd v. The Commissioners of Customs and Excise* VAT Decision 18171; *Geoffrey Ross Holding and June Monica Holding v. The Commissioners for Her Majesty's Revenue & Customs* VAT Decision 19573; *Acrylux Limited v. Commissioners for Her Majesty's Revenue & Customs* [2009] UKFTT 223(TC).

[69] (1988) 3 BVC 847.

[70] See also *Geoffrey Ross Holding and June Monica Holding v. The Commissioners for Her Majesty's Revenue & Customs* VAT Decision 19573 at [33].

Commercial intention

182. Hotels, motels, inns, hostels and boarding houses offer accommodation on such a scale as to be operating on a commercial basis or in a business-like manner.[71]

183. Although they must be operated in a business-like manner, non-profit entities can also operate commercial residential premises. For example, various non-profit organisations operate hostels. Although these organisations are non-profit bodies, their enterprises are run in a business-like fashion, and the accommodation they offer may be accommodation in commercial residential premises.

Accommodation is the main purpose

184. A threshold feature of commercial residential premises is that they are designed to provide accommodation as their main purpose. The provision of accommodation is the primary purpose of a hotel, motel, inn, hostel or boarding house and similar premises.

185. Commercial residential premises are designed to provide accommodation that is targeted to 'a transient or floating, though not necessarily short-stay class'[72] of occupants 'who are for varying periods away from their home, or who, for the time being have no home'.[73] Generally, it is accommodation people 'go to with a view to moving on from in due course'.[74]

186. However, the length of stay of particular individual occupants is not necessarily indicative of whether their accommodation is provided in residential premises or commercial residential premises. Although commercial residential premises are aimed at people who are transient and away from their home (or who have no permanent home), they can also provide long-term stays. As was pointed out by the United Kingdom VAT Tribunal in *McGrath* (1989) 4 BVC 779:

> Some hotels have long-stay residents who have no other place of residence. Such permanency may distinguish one guest from another but it does not affect the function and description of the establishment.

187. Division 87 recognises longer stays in commercial residential premises by providing concessional treatment for long-term commercial accommodation in such premises.

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[71] For the indicators of carrying on a business, refer to *Taxation Ruling TR 97/11 Income tax: am I carrying on a business of primary production?* See also the Commissioner's views on the meaning of carrying on an enterprise in *Miscellaneous Taxation Ruling MT 2006/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*.

[72] *Namecourt Ltd* (1984) 2 BVC 208,028.

[73] *The Lord Mayor and Citizens of the City of Westminster* (1988) 3 BVC 847.

[74] *Namecourt Ltd* (1984) 2 BVC 208,028. See also *Geoffrey Ross Holding and June Monica Holding v. HMRC* VAT Decision 19573 at [35]–[36].

Multiple occupancy

188. It is a common characteristic of hotels, motels, inns, hostels and boarding houses that they are available to the public, or a particular segment of the public, to be let on a multiple occupancy basis. The size of the premises or the scale of the activity is indicative of a commercial operation.

189. In *South Steyne*, Stone J considered whether a supply of an apartment in a complex was a supply of 'anything similar to' a hotel, motel, inn, hostel or boarding house under paragraph (f) of the definition. Her Honour commented:

> The definitions of motels, inns, hostels and boarding houses indicate that, in common with hotels, they provide accommodation, although of varying types. In addition to providing accommodation they also have in common that, large or small, they provide for multiple occupancies. The terms are not used where only one apartment, room or other space is provided.[75]

190. On appeal to the Full Federal Court, Emmett J noted at [28]-[29]:

> 28. … The term hotel or motel would not be used, as a matter of ordinary English, where a single apartment, room or other space is supplied.
>
> 29. The fact that the use and occupation by guests of an apartment in the Sebel Hotel may be similar to the use and occupation by guests of a room in a hotel or motel does not make an individual apartment similar to a hotel or motel. It might be appropriate to describe an individual apartment as being similar to part of a hotel, namely a hotel room. It is not an ordinary use of English to describe a single or individual apartment as being similar to a hotel or motel.

191. Edmonds J also indicated agreement with Stone J's conclusion on the relevant issue 'generally for the reasons she has given'. His Honour referred to and did not cast any doubt over Stone J's comments regarding the commonality between hotels, motels, inns, hostels and boarding houses being to provide for 'multiple occupancies'.

192. Greenwood J also made an observation about the relevance of multiple occupancy in *Meridien Marinas*.[76]

193. The scale of the premises, or their ability to provide for multiple occupancy, has been considered relevant in other jurisdictions. In *Case L75*,[77] Keane DJ considered scale in deciding whether premises were a 'boarding house' and hence a commercial dwelling under the New Zealand GST law.[78] Keane DJ determined that the larger the number of guests catered for, the more likely it is that premises are a commercial dwelling.

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[75] *South Steyne* at FCA [44]; ATC 9333; ATR 241-242.
[76] *Meridien Marinas* at FCA [56]; ATC 56; ATR 801. Set out at paragraph 157 of this draft Ruling.
[77] (1989) 11 NZTC 1,435.
[78] Section 2 of the *Goods and Services Tax Act 1985* (NZ).

194. Premises that only offer accommodation to one person or a small group living or travelling together do not demonstrate the characteristic of multiple occupancy. Premises limited to single occupancy, even where they are regularly let for short-term stays, for example, a cottage let as a weekender, do not have this common characteristic of a hotel, motel, inn, hostel or boarding house.

Occupants have the status of guests

195. Individuals who are being provided with accommodation in hotels, motels, inns, hostels and boarding houses are commonly referred to as guests. Guests can expect a reasonable amount of privacy from management, their staff and other guests, but not to the same level expected by a tenant. Guests have the right to occupy and enjoy the premises, but not to the extent of having a right of exclusive possession or similar rights akin to those of a tenant.

196. When hiring a room in a hotel, it is accepted that management retains rights over it, such as the right of entry. This is a relevant determining feature when classifying premises such as holiday accommodation and serviced apartments. If, for example, a landlord enters into a residential tenancy agreement that provides a right of exclusive possession, the occupant does not have the status of a guest.

197. This characteristic is consistent with the policy of input taxing supplies under residential rental arrangements.[79]

Holding out to the public

198. Commercial residential premises are held out to the public as offering accommodation and related services to persons who are itinerant (that is, who are away from home or have no home). Directing a marketing strategy to a particular segment of the general public or servicing a niche market does not prevent premises from being commercial residential premises.[80]

199. Holding premises out for hire also demonstrates a commercial intention. The making of representations to the public, for example, by advertising, naming or signage, that indicates premises offer accommodation for hire, demonstrates this characteristic.

200. An indicator of premises being held out to the public is compliance with the necessary local and State regulatory requirements for hotels, motels and the like. Such regulations include zoning, building code and health regulations.

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[79] See paragraphs 143; 173 and 174 of this draft Ruling.
[80] See *Leez Priory v. The Commissioners of Customs and Excise* VAT Decision 18185 at [52]-[53].

201. Premises that accommodate an extended family or a group of acquaintances, even when most pay rent or board, would not meet this characteristic if the household does not offer accommodation to the public and makes no representations that it would do so.

Central management

202. These premises usually have central management to accept reservations, allocate rooms, receive payments and arrange the services provided throughout the premises.

203. Most hotels, motels and inns have management or employees on the premises, with some facility for guest reception. Premises that operate in a manner similar to a hotel, motel or inn usually have an operator or manager present or readily accessible, holding some control over the premises as a whole and managing them. Commonly, hotels, motels, inns and hostels have staff that perform functions such as making bookings, receiving travellers, taking payments and providing or arranging services for guests. In some cases, however, the management presence may be limited in hours or management may be provided through an office off-site.

204. Because commercial residential premises are targeted at transient guests, the operator or manager of the premises exercises a greater degree of control over the premises than arises with the rental of residential premises. For example, the operator or manager may have a duty to take reasonable care for the safety of any property brought by the occupant into the premises under the operator's or manager's control.

Provision of, or arrangement for, services

205. These premises usually provide accommodation together with some level of services and facilities. This may simply consist of making facilities available, or arranging for services to be performed by others. The kinds of services typically provided to guests include regular cleaning (usually daily or weekly), food service (for example, room service, a restaurant), laundering services, telephone and other services, such as taxi and tour bookings. Other facilities may include the use of facsimile and internet services. The tariff usually reflects the standard and range of services and facilities provided.

206. These services take into account the fact that commercial residential premises are designed to serve a more transient clientele who have a less permanent relationship with the premises than, for example, a tenant in rented premises. Commercial residential premises usually provide furnished accommodation and the tariff commonly also includes utilities such as electricity, gas, heating and air-conditioning.

207. Guests' expectations of service levels vary with the style of accommodation and, to some extent, the tariff charged. A minimal level of services does not necessarily indicate that the premises are not commercial residential premises.

Management offers accommodation in its own right

208. The entity operating the accommodation offers and supplies the accommodation as principal rather than as an agent.

209. Whether an entity is acting as an agent or in its own right when supplying accommodation is a question of fact which needs to be determined by examining the whole arrangement between the parties. Agency is considered further in this draft Ruling at paragraphs 236 to 240.

Applying the characteristics to hostels and boarding houses

210. The term 'hostel' can be used to refer to a wide variety of accommodation, and hostels can take a number of forms.[81] Given the context in which the term is used in paragraph (a) of the definition, however, the comments made by McLauchlan J in *Noosa Shire Council v. Staley* [2002] QPEC 18 are apt. His Honour stated that the ordinary meaning:

> …implies budget accommodation involving shared sleeping arrangements and shared toilet and ablution facilities between people who are unrelated and who cannot be regarded as constituting a household.[82]

211. The meaning of the term 'boarding house' in the context of the definition of commercial residential premises was considered by the Administrative Appeals Tribunal (AAT) in *Re Karmel & Co Pty Ltd (as trustee for Urbanski Property Trust) v. FC of T* (*Karmel*).[83] In this case, a property owner rented out a dwelling's two garages which had been converted into accommodation units. The rent included utilities, and the use of facilities such as a clothes-drier. The occupants were offered a choice of hiring furnishings or using their own.

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[81] See, for example, *Keith Reginald Hamlin Brown and Austrust Limited v. The Commonwealth Bank of Australia* [1993] SASC 4232 at [36]-[39].
[82] [2002] QPEC 18 at [14].
[83] [2004] AATA 481; 2004 ATC 2075; (2004) 56 ATR 1012.

212. The AAT held that the garage premises were not a boarding house because the property owner was not required to provide meals to the occupants. The AAT cited with approval[84] the following passage from the judgment of Hope JA in *Roberts v. Waverley Municipal Council*:

> In ordinary parlance a boarding-house is a place where a business is carried on of providing food and lodging to the boarders, and the food comprises meals. It is a place where the boarders pay for their board and lodging, and the concept of a place where the boarders are not required to pay anything and do their own cooking is inconsistent with the natural meaning.[85]

213. This approach is consistent with the approach adopted by the London Tribunal Centre in *Geoffrey Ross Holding and June Monica Holding v. HMRC*[86] which considered the term 'boarding house' in the context of whether sleeping accommodation had been provided in a hotel, inn, boarding house or similar establishment. It stated at [43] to [44]:

> The Appellants pointed to the definition of a boarding house in the Shorter Oxford English Dictionary as a house 'in which persons board', and the meaning given to 'board' in the sense as 'to provide with daily meals; now generally to provide with both food and lodging at a fixed rate; to live with a family as one of its members for a stipulated charge.'
>
> It seems to us however that the natural meaning of board involves the daily provision of meals to the boarder. It suggests the sitting at a table and being fed for at least one meal a day. … In a boarding house dining in rather than eating out or making your own dinner (even if from materials provided by the owner) is the general rule.

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[84] *Karmel* at AATA [19]; ATC 2077; ATR 1015.

[85] (1988) 14 NSWLR 423 at 430. *Karmel* and *Roberts v. Waverley Municipal Council* have been referred to subsequently in *Warlam Pty Ltd v. Marrickville Council* [2009] NSWLEC 23. This case considered the term 'boarding house' in a planning law context and took into account the definition of the term in the *Marrickville Local Environment Plan* 2001. The Court considered that the provision of board was not required in a boarding house in the particular planning context and therefore distinguished *Roberts v. Waverley Municipal Council*. However, the Commissioner considers that the approach taken in *Karmel* is to be preferred in the context of the definition of commercial residential premises in the GST Act.

[86] VAT Decision 19573.

214. Paragraphs 173 and 174 of this draft Ruling discuss the policy of input taxing supplies under residential rental arrangements. It is consistent with this policy that premises that principally provide accommodation under conditions analogous to residential rental arrangements not be regarded as commercial residential premises. Therefore, if an accommodation provider enters into an agreement with occupants that provides exclusive possession or similar rights akin to those of a tenant, the presence of this feature is strongly indicative of the premises not being commercial residential premises. This is so even when the premises are referred to as a 'hostel' or 'boarding house'. Furthermore, the manager or owner of the premises does not have 'control' over those parts of the premises that are subject to the residential tenancy agreements or similar.[87] These premises are unlikely to be commercial residential premises under paragraph (a) or the extended definition in paragraph (f).

Premises used to provide accommodation in connection with a school – paragraph (b) of the definition

215. The boarding facilities provided by schools, or by another organisation on behalf of or in connection with a school or schools, are commercial residential premises.

216. This does not necessarily mean that supplies of accommodation for students undertaking school courses are subject to GST. Section 38-105 makes supplies of student accommodation to those undertaking primary, secondary or special education courses GST-free where:

- the supplier of the accommodation also supplies the course; or
- the accommodation is provided in a hostel whose primary purpose is to supply such accommodation to students from rural or remote locations.

217. Other supplies of accommodation made in connection with a school may be taxable supplies under section 9-5 or subject to the rules in Division 87. This includes supplies of accommodation made to teachers and staff.

A ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire – paragraph (c) of the definition

218. If a ship, such as a charter vessel, is let out on a short-term or long-term basis, the supply is subject to GST. 'Ship' means any vessel used in navigation, other than air navigation.[88] The inclusion of this paragraph in the definition of commercial residential premises ensures that Division 87 may apply to a supply of commercial accommodation on such a ship.[89]

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[87] See paragraphs 208 to 209 of this draft Ruling.
[88] Section 195-1.
[89] See Part E of this draft Ruling from paragraph 270 for a discussion of Division 87.

A ship that is mainly used for entertainment or transport in the ordinary course of a business of providing ships for entertainment or transport – paragraph (d) of the definition

219. If a ship that is mainly used for entertainment[90] or transport is let out on a short-term or long-term basis, the supply is subject to GST as commercial residential premises as defined. The inclusion of this paragraph in the definition of commercial residential premises ensures that Division 87 may apply to a supply of commercial accommodation on such a ship.[91]

A marina at which one or more of the berths are occupied, or are to be occupied, by ships used as residences – paragraph (da) of the definition

220. Paragraph (da) of the definition requires a marina that is commercial residential premises to have one or more berths occupied or to be occupied by ships used as residences.

221. A marina is a place that provides berths and other services for ships to dock. While a marina is usually a place that provides multiple berths by means of pontoons, jetties, piers or similar structures, it may be a place that has only a single berth.

222. The reference to ships being used as residences requires that the ships must be used as a residence in the sense of a place for permanent or long-term occupation.[92] Vessels like a dinghy or a ski boat are not capable of use as a residence.

223. The requirements of any government or statutory authority such as the by-laws of a local council, may also be relevant, but not necessarily determinative, in working out whether a berth at a marina may be occupied by a ship used as a residence.

224. The inclusion of this paragraph in the definition of commercial residential premises ensures that Division 87 may apply to a supply of a berth at a marina.[93]

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[90] 'Entertainment' is defined in section 195-1 of the GST Act as having the meaning given by section 32-10 of the *Income Tax Assessment Act 1997* which provides that entertainment means (a) entertainment by way of food, drink or recreation; or (b) accommodation or travel to do with providing entertainment by way of food, drink or recreation.

[91] See Part E of this draft Ruling from paragraph 270 for a discussion of Division 87.

[92] See the discussion of the meaning of 'residence' in *Marana* at FCR 304-5; ATC 5072-5073, ATR 526-527.

[93] See Part E of this draft Ruling from paragraph 270 for a discussion of Division 87.

A caravan park or camping ground – paragraph (e) of the definition

225. The terms 'caravan park' and 'camping ground' are not defined in the GST Act and take their ordinary meanings in context. Dictionaries provide the following meanings for each of these terms:

> *Caravan park:*
>
> > 1. a supervised area where caravans may park or may be hired (*Macquarie*)
> >
> > 4. a place where caravans may be parked as holiday accommodation or as more permanent dwellings (*Shorter Oxford*)
>
> *Caravan*
>
> > 4. A covered carriage or cart…Now freq. one able to be towed by a motor car and used as a stationary dwelling (esp. while on holiday). Also *attrib.,* as caravan park, site, a place where caravans are parked and used as dwellings (*OED*)
>
> *Camping ground*
>
> > 1. a supervised site, often with amenities, on which tents may be erected and caravans parked for holiday occupation (*Macquarie*)
> >
> > [cross reference] *camp-site* a place for camping (*Shorter Oxford*)
> >
> > *Camping* 1. Going into a camp, encamping; a lodging in tents, etc. 2. *attrib.,* as in *camping-place,-ground*. (*OED*)

226. There are some differences between the way these premises operate and the operation of hotels and similar premises. Guests may stay in a caravan, a demountable home,[94] a permanent cabin or villa, or a tent provided by the operator on the site. Alternatively, guests may park their own caravan, motor home, camper trailer or the like on a site or pitch their own tent on a site. Such sites may be powered or un-powered. Accommodation in a caravan park or camping ground is held out to the public. Caravan parks and camping grounds are operated on a commercial basis or in a business-like manner.

227. 'Home parks' in which sites for demountable homes are rented and the homes themselves either rented or occupied by their owners are commercial residential premises under paragraph (f) of the definition, as they are similar to caravan parks. The same rules apply to home parks as to caravan parks. The rental of a site is subject to GST, as is the rental of a home *in situ*.

228. Supplies of sites within a caravan park or camping ground are taxable under the basic rules, but may also receive the concessions under Division 87. See also paragraph 279 and 'Meaning of predominantly for long-term accommodation' at paragraphs 296 to 299 of this draft Ruling.

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[94] In this draft Ruling, the term 'demountable home' is used to cover moveable dwellings, such as pre-fabricated or relocatable homes.

Premises to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school – expressly excluded from the definition

229. The definition of commercial residential premises excludes premises to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school.[95] The premises must satisfy one of the forgoing paragraphs of the definition before the exclusion to the definition applies. For example, where a university residential college is operated in a manner such that it falls within paragraph (a) as referred to previously, the accommodation would be excluded from being commercial residential premises because a university is an education institution that is not a school. These supplies are input taxed under paragraph 40-35(1)(a).

230. The exclusion may not apply to all supplies of accommodation a residential college makes. For example, a college may be used to provide accommodation, meals and services to non-students during recess periods, and based on this operation, it may fit within paragraph (f) of the definition of commercial residential premises. In such cases, the supplies of accommodation are not input taxed, unless the operator chooses not to apply the concessions for long-term accommodation in Division 87.[96]

231. For further information on this exclusion to the definition, see paragraphs 146 to 157 of *Goods and Services Tax Ruling GSTR 2001/1 Goods and services tax: supplies that are GST-free for tertiary education courses*.

A supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises

232. An exception applies in paragraph 40-35(1)(a) such that a supply of residential premises by way of lease, hire or licence is not input taxed if it is a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises.

233. Accommodation in commercial residential premises is provided to individuals by the entity that operates the accommodation business of the premises. However, the supply of the accommodation by the operator of the accommodation business that is taxable under this exception may not be 'supplied to an individual'.[97]

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[95] Refer to the definition of 'school' in section 195-1.
[96] See Part E of this draft Ruling from paragraph 270 for a discussion of Division 87.
[97] See paragraphs 130-134 of *Goods and Services Tax Ruling GSTR 2006/9 Goods and services tax: supplies*. See also Greenwood J in *Meridien Marinas* at FCA [88]; ATC 20-158; ATR 810-811.

234. This is because the supplies of the accommodation in commercial residential premises covered by this exception may be made to an entity other than the individual to whom the accommodation is provided. For example, the entity that owns or controls commercial residential premises may provide accommodation to an individual such as an employee of a company even though the supply of accommodation is made by the entity to the employer company.[98]

235. A supply of a right to accommodation[99] in commercial residential premises located in Australia that is supplied to an accommodation wholesaler who then on-supplies that right to an individual is a taxable supply. This is because the accommodation is provided to the individual by the entity that owns or controls the commercial residential premises. See Example 14 at paragraphs 76 to 79 of this draft Ruling.

Distinction between agency and 'control'

236. The exception in paragraph 40-35(1)(a) requires the identification of the entity that is making the supply of commercial residential premises or accommodation in commercial residential premises. The exception applies where the entity making the supply owns or controls the commercial residential premises, for example, an entity that operates the accommodation business. However, this is to be distinguished from a situation where the entity is making the supply as an agent for another entity.

237. An agent is a person who is authorised, either expressly or impliedly, by a principal to act for that principal so as to create or affect legal relations between the principal and third parties.[100] Whether an entity is an agent is a question of fact. An agreement that states that an agency relationship exists must be considered with all of the other terms of the agreement. It does not necessarily mean that the relationship is actually one of agency if it contradicts the effect of the agreement as a whole.[101]

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[98] Refer to paragraph 15.10 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006.

[99] *Saga Holidays Ltd v. FC of T* [2005] FCA 1892; 2006 ATC 4001; 61 ATR 384 confirmed that a supply of hotel accommodation is a supply of real property as defined in section 195-1. See paragraphs 94 and 95 of *Goods and Services Tax Ruling GSTR 2003/7 Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?* and *Goods and Services Tax Determination GSTD 2004/3 Goods and services tax: Is a supply of rights to accommodation a supply of real property for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?*.

[100] *International Harvester Company of Australia Proprietary Limited v. Carrigan's Hazeldene Pastoral Company* (1958) 100 CLR 644; for further guidance on agency relationships refer to *Goods and Services Tax Ruling GSTR 2000/37 Goods and services tax: agency relationships and the application of the law*.

[101] See paragraph 34 of GSTR 2000/37.

238. The focus of the analysis is on whether the entity is a principal or acting as an agent in making the supply of commercial residential premises or accommodation in commercial residential premises, irrespective of the fact that the entity may be an agent for other purposes.

239. An on-site agent or manager may contract with third parties in relation to supplying accommodation without disclosing that it is acting for a principal. In determining whether in so doing the agent's acts are its own or the principal's, it is necessary to consider the relationship between principal and agent having regard to the whole of the arrangement.

240. In *South Steyne (FFC)*, the Full Federal Court concluded that the supply of the hotel room to a guest was a taxable supply as the hotel operator contracted as a principal in supplying the accommodation and could make that supply because it controlled the premises.[102] This conclusion was drawn despite the fact that the hotel operator was acting as agent for the lessee for some purposes.

Part D: Application to some common types of supplies

241. The following sections apply the principles discussed in the context of Subdivisions 40-B and 40-C, to a range of common types of supplies.

Strata titled hotel rooms

242. Strata titled hotel rooms are designed to provide residential accommodation as they provide shelter and basic living facilities. They are, therefore, residential premises, but may form part of commercial residential premises.

243. A single strata titled hotel room cannot, by itself, exhibit the characteristics of commercial residential premises. A supply of a hotel room or a number of hotel rooms without the hotel infrastructure or other features to support the operation of the premises commercially and which are necessary to provide some level of services to guests is an input taxed supply of residential premises.

244. The accommodation provided to guests in an individual room is accommodation in commercial residential premises when the room forms part of the commercial residential premises operated by the supplier.

Agency agreements in strata titled premises

245. Strata titled premises are commonly let by agents who are either real estate agents, or on-site agents/managers.

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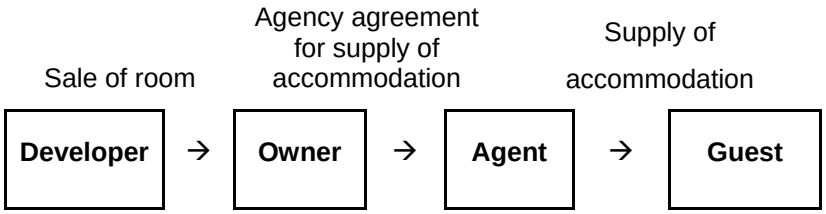
[102] *South Steyne (FFC)* at FCR 411; ATC 10333; ATR 44. Refer also to Stone J in *South Steyne* at FCA [89]; ATC 9340; ATR 250.

246. A common arrangement for on-site agents or managers is for an entity to purchase the management rights from the developer and then enter into individual agreements with room or unit owners who want to let their properties. An agency relationship exists for the supply of accommodation in premises where the rights conferred under these arrangements are not sufficient to enable the on-site agent to let the rooms as principal in its own right. Under these arrangements, the agent may supply the accommodation in the premises on the owner's behalf.

247. The diagram below shows a series of transactions where a developer that has constructed a holiday complex sells a strata titled apartment in the complex to an investor.[103] The investor enters into an agency agreement with a local real estate agent to rent the apartment for holiday letting.



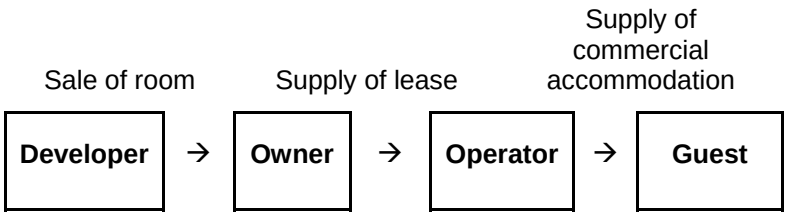
248. Where accommodation is supplied through an entity acting in the capacity as an agent, the treatment of each of the supplies in the arrangement (illustrated above) is as follows:

- The sale of the hotel room from the Developer to the Owner is a taxable supply of new residential premises.
- The Owner is not entitled to input tax credits on the acquisition of the room as the room is acquired by the Owner for making input taxed supplies of residential premises.[104]
- The Agent is liable for GST on the supply of its services to the Owner. The Owner is not entitled to input tax credits on the acquisition of the agency services as these services are acquired by the Owner for making input taxed supplies of residential premises.
- The supply of accommodation by the Owner, through the Agent to the Guest, is an input taxed supply of residential premises.

[103] This scenario assumes that subsection 40-75(2) does not apply.
[104] Sections 11-5, 11-15 and 11-20 and *Goods and Services Tax Ruling GSTR 2008/1 Goods and services tax: when do you acquire anything or import goods solely or partly for a creditable purpose?*

Strata titled premises operated as commercial residential premises

249. The diagram below shows a series of transactions where a developer that has constructed a hotel complex sells a strata titled hotel room to an investor who leases it to an operator. [105] The operator, which has also leased the commercial infrastructure of the hotel, then hires a room in the complex to guests:



250. The treatment of each of the supplies is as follows:

- The sale of the room from the Developer to the Owner is a taxable supply of new residential premises. The sale of the hotel room is not an input taxed supply of residential premises[106] as this is the first sale of the room as residential premises.
- The Owner is not entitled to input tax credits on the acquisition of the room from the Developer as the room is acquired by the Owner for making input taxed supplies of residential premises.[107]
- The supply of the room by way of lease by the Owner to the Operator is an input taxed supply of residential premises.
- The Operator is not entitled to input tax credits on the acquisition of the lease from the Owner, as the supply of the room to the Operator is not a taxable supply.
- The supply of commercial accommodation from the Operator to the Guest is a taxable supply.

[105] This scenario assumes that subsection 40-75(2) does not apply.
[106] Section 40-65.
[107] Sections 11-5, 11-15 and 11-20. See GSTR 2008/1.

Bed and breakfast accommodation, farm stays and home stays

251. Bed and breakfast, farm stay and home stay accommodation generally describes short-term holiday accommodation provided in a private home. The term home stay is also used to refer to accommodation provided to international students who stay in a private residence with a host family while studying.

252. A supply of accommodation provided in these premises is an input taxed supply of residential premises unless the premises are operated in a similar manner to a hotel, motel, inn, hostel or boarding house.[108] In these circumstances, parts of the premises may be commercial residential premises under paragraph (f) of the definition of commercial residential premises because the premises are used to provide accommodation similar to that provided in a hotel, motel, inn, hostel or boarding house. See Examples 15 to 17 at paragraphs 80 to 86 of this draft Ruling.

Display homes

253. A purchaser of new residential premises may lease their premises back to the builder for use as a display home. The display home has the physical characteristics that enable it to be occupied as a residence. The lease of the display home is input taxed under section 40-35 being residential premises to be used predominantly for residential accommodation. The subsequent use by the builder is not a relevant consideration.

254. The contract for the sale and leaseback of the display home may contain a contractual prohibition relating to its use as a residence or for residential accommodation during the period of its leaseback. This prohibition does not change the character of the premises as a house designed for residential accommodation and fit for human habitation. The Commissioner's view is that the supply of the house by leaseback to the builder is an input taxed supply, despite the contractual prohibition.

[108] See paragraphs 50 and 176 to 209 of this draft Ruling for the characteristics of these types of premises and premises that are similar to such premises.

Employee and contractor accommodation

255. Premises in which accommodation is provided to employees and contractors are residential premises where the premises provide shelter and basic living facilities, and are designed and built primarily to provide living accommodation. These premises are occupied, or are intended to be and are capable of being occupied, as a residence or for residential accommodation. This accommodation includes accommodation supplied by the employer to an employee or contractor in houses and apartments. These premises do not display characteristics for them to satisfy the definition of commercial residential premises. Where these premises are supplied by way of lease, hire or licence, the supply is input taxed under section 40-35.[109] See Example 18 at paragraph 87 of this draft Ruling.

256. Premises designed and operated to provide accommodation to employees and contractors may be commercial residential premises. It is a matter of weighing up the eight characteristics discussed in paragraphs 50 and 176 to 209 of this draft Ruling. It is necessary to determine the extent and manner to which the characteristics overall are exhibited to determine whether the premises used to provide accommodation to employees and contractors are similar to the class of 'hotel, motel, inn, hostel or boarding house' rather than with premises of another kind, and therefore commercial residential premises under paragraph (f) of the definition. Accommodation provided to employees and contractors in a caravan park or similar premises may also be commercial residential premises under paragraph (e) of the definition. While it is necessary to consider the facts in each circumstance as to how the premises are operated, an example of commercial residential premises may include 'camp-style accommodation'. See Examples 19 and 20 at paragraphs 88 to 99 of this draft Ruling.

Holiday houses, apartments and units

257. The physical characteristics of holiday houses, apartments and units indicate that they are residential premises to be used predominantly for residential accommodation. It is necessary to consider the characteristics identified in paragraphs 50 and 176 to 209 of this draft Ruling to determine whether the premises are commercial residential premises. See Example 21 at paragraphs 100 to 102 of this draft Ruling.

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[109] Refer to paragraph 123 of GSTR 2008/1 regarding creditable purpose.

Retirement village accommodation

258. Retirement villages provide living accommodation in communal or semi-communal dwellings.[110] Retirement village 'independent living units' are residential premises to be used predominantly for residential accommodation based on their physical characteristics. In addition, some of the buildings and facilities that residents can directly enjoy in conjunction with their residency form part of the residential premises. This includes, for example, barbeque areas, gardens, car-parks and driveways. This is consistent with the discussion of garages in paragraph 138 of this draft Ruling, and land supplied with a building in paragraph 146 of this draft Ruling.

259. However, a retirement village may also include parts that are not residential premises to be used predominantly for residential accommodation. This includes, for example, site offices, staff rooms, medical centres, and commercial premises, such as hairdressers, golf courses, shops, and restaurants or cafes. These are commercial premises the value of which should be apportioned or treated as separate supplies under the basic rules, depending on the circumstances of the supply.

260. The accommodation provided in a retirement village is not accommodation in commercial residential premises. While a retirement village will display a number of the characteristics referred to at paragraphs 50 and 176 to 209 of this draft Ruling, the main purpose of the premises is not to provide accommodation to a transient class of guests who are away from their home. Occupants are also typically provided a right of exclusive possession, or similar rights akin to those of a tenant, over at least part of the premises. The presence of these features outweighs the other characteristics such that the premises do not fall within either paragraphs (a) or (f) of the definition of commercial residential premises.

Rooming houses

261. Legislation in a number of States and Territories deals with a class of premises known as rooming houses or rooming accommodation. These premises in the main provide low-cost housing. Rooming houses usually provide single room, or small suite, accommodation with some shared facilities (such as bathroom, laundry and kitchen). State and Territory legislation may confer, or allow to be granted, a right to exclusive possession or similar rights akin to those of a tenant over individual rooms within the premises.

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[110] Refer to the *Macquarie Dictionary*. 'Retirement village' is defined in section 195-1 for the purposes of the GST Act.

262. As noted in paragraph 214 of this draft Ruling, if an accommodation provider enters into an agreement with occupants that provides exclusive possession or similar rights akin to those of a tenant, this will be a strong indicator that the premises do not fall within either paragraph (a) or (f) of the definition of commercial residential premises. Therefore, if an occupant of a rooming house is granted a right of exclusive possession, or similar rights akin to those of a tenant, over at least part of the premises – such as a bedroom – it will strongly indicate that the premises are not commercial residential premises.

Transportable buildings and houses removed from land

263. Transportable buildings such as demountable dwellings and relocatable homes designed as a residence, or for residential accommodation, and placed on a site are residential premises where they are plumbed and wired in a similar way to a conventional house.[111] Supplies of such plumbed and wired transportable buildings by way of lease, hire or licence are input taxed under section 40-35.

264. A transportable building, by itself, is not capable of being occupied as a residence or for residential accommodation until affixed to land. A supply of a transportable building is therefore taxable.[112] Similarly, a supply of a house that has been removed from land is a taxable supply.

265. Additionally, a supply of a transportable building or house that is not affixed to land and is supplied separately is not a supply of real property and, for this reason as well, is not input taxed under section 40-65.

266. Transportable buildings that are not designed to provide residential accommodation (for example, transportable buildings that lack basic living facilities such as facilities for sleeping and bathing) are not residential premises to be used predominantly for residential accommodation. Supplies of demountable buildings that are not residential premises to be used predominantly for residential accommodation are subject to GST under the basic rules.

Vehicles designed for road use

267. Road vehicles, including motor homes, caravans and campervans, are not residential premises.

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[111] However, a 'home park' containing transportable buildings may be commercial residential premises. See paragraph 227 of this draft Ruling.
[112] Unless subsection 9-30(4) applies.

268. This includes caravans and other road vehicles, even if they are left on a site for permanent occupation. A supply of accommodation in a caravan is a supply of commercial accommodation in commercial residential premises, if it takes place on a site in a caravan park.[113]

269. Road vehicles are not covered by the definition of residential premises as they are neither land nor buildings. Even when stationary, they do not become affixed to and part of the land but rather remain chattels.

Part E: Division 87 – long-term accommodation in commercial residential premises

270. The GST payable on supplies of long-term commercial accommodation in commercial residential premises is calculated on a reduced value.[114] For the concessions to apply, several conditions must be met:

- the supply must be a taxable supply;
- the premises in which the supply of accommodation; takes place must be commercial residential premises
- the supply must be of commercial accommodation;
- the supply of commercial accommodation must be for 28 days or more and the accommodation must be able to be taken up by an individual.[115]

271. Where premises are predominantly for long-term accommodation, the value of a supply of accommodation in the premises for 28 days or more, on which GST is calculated, is reduced to 50% of its price.[116] This equates to a rate of GST of 5.5%.

272. Where premises are not predominantly for long-term accommodation, the value on which GST is calculated in respect to the 28th and additional days of a supply of long-term accommodation in the premises is reduced to 50% of its price.[117]

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[113] See paragraph (e) of the definition of 'commercial residential premises' in section 195-1.
[114] Sections 87-5 and 87-10.
[115] See paragraphs 282 – 290 of the draft Ruling for further explanation to this requirement.
[116] Section 87-5.
[117] Section 87-10.

Meaning of 'commercial accommodation'

273. Section 87-15 provides that 'commercial accommodation' means the right to occupy the whole or any part of commercial residential premises, including, if it is provided as part of the right so to occupy, the supply of:

(a) cleaning and maintenance; or

(b) electricity, gas, air-conditioning or heating; or

(c) telephone, television, radio or any other similar thing.

274. In considering the meaning of 'commercial accommodation', Greenwood J stated in *Meridien Marinas*:[118]

> 73. The definition of commercial accommodation is not concerned with actual use or an act of occupation of the whole or any part of the range of premises falling within the definition of commercial residential premises. Commercial accommodation is defined as the 'right' to occupy the whole or any part of the premises which confers a right to stay as contemplated by s 87-1.
>
> 74. The right to occupy, however, is necessarily given meaning by the context in which the definition operates, in conjunction with the other defined terms within Division 87 and the GST Act more generally. The right to occupy the whole or any part of the marina or any other premises falling within the definition of commercial residential premises is not a right to occupy *at large*, for the purposes of the definition of 'commercial accommodation', in a way divorced from any corresponding purpose serving the statutory objectives of Division 87. …

275. In applying section 87-15 within the context of a marina, Greenwood J found at FCA [75]; ATC 20-158; ATR 807 that:

> The 'right to occupy' contemplated by the definition of commercial accommodation in the context of the division is properly understood as a right to occupy the marina or a berth in the marina as a residence, in the sense of a right to stay rather than in any sense of permanent or long-term residence, which is consistent with the notion that a marina satisfying the description of commercial residential premises is a marina at which one or more of the berths are occupied, or to be occupied, by ships used as residences.

276. The Commissioner considers that Greenwood J's reference to 'residence' in this context is consistent with how the term 'living accommodation' has been referred to in this draft Ruling.[119] Therefore, for an entity to provide commercial accommodation to an individual, the individual must be provided a right to occupy the whole or any part of the commercial residential premises for living accommodation (that is, in the sense of a right to stay).

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[118] *Meridien Marinas* at FCA [73]-[74]; ATC 20-158; ATR 807.
[119] See paragraph 131 of this draft Ruling.

277. The scope of the definition of commercial residential premises in section 195-1 includes references to things which may not necessarily include facilities that allow for occupation by an individual in the sense articulated by Greenwood J. For example, the definition refers to:

> (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.

278. It is therefore necessary, for section 87-15 to be satisfied, that the ships referred to in paragraphs (c) and (d) have sufficient facilities such that the supplier can provide a right to occupy to individuals.

279. In the case of caravan parks and camping grounds[120], the 'premises' are the grounds themselves, rather than any specific accommodation in buildings. Thus, an owner who places their caravan on a site for a fee is occupying the premises. Whether they are physically occupying their caravan is, in this particular case, immaterial.[121]

280. The right to occupy the whole or any part of the commercial residential premises for living accommodation must be conferred at the time of the taxable supply.[122]

281. The Commissioner considers that this right to occupy must extend for the full duration of the relevant supply. This is supported by *Meridien Marinas* at FCA [89]; ATC 20-158; ATR 811 where Greenwood J referred to determining whether the lessees had obtained at the date of grant of each lease a right to occupy their berths as a residence at any time during the period of the 20-year lease.

Meaning of 'provided to an individual as long-term accommodation'

282. Paragraphs 87-5(1)(b) and 87-10(1)(b) refer to commercial accommodation that is provided to an individual as long-term accommodation. 'Individual' is defined to mean a natural person.[123] These provisions do not require the supply of commercial accommodation be made to an individual.

283. A taxable supply of commercial accommodation may be provided to an individual in cases where that individual is not the recipient of the supply.[124] This allows corporate entities acquiring long-term accommodation for their employees to benefit from the concessionary treatment of long-term accommodation.

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[120] Paragraph (e) of the definition of commercial residential premises.
[121] See *Meridien Marinas* at FCA [83]; ATC 20-158; ATR 809-810.
[122] See *Meridien Marinas* at FCA [83]; ATC 20-158; ATR 809-810.
[123] Section 195-1.
[124] See *Meridien Marinas* at FCA [88]; ATC 20-158; ATR 810-811.

284. For example, where a corporation books and pays for long-term accommodation for an employee, the employee is being provided with the accommodation, while the company is the recipient of the supply. The company is entitled to the benefit of the concessions in Division 87.

285. Subsection 87-20(1) sets out the meaning of 'long-term accommodation' which is provided to an individual if commercial accommodation is provided, for a continuous period of 28 days or more, in the same premises:

(a) to that individual alone; or

(b) to that individual, together with one or more other individuals who:

(i) are also provided with that commercial accommodation; and

(ii) are not provided with it at their own expense (whether incurred directly or indirectly).

286. In *Meridien Marinas*, Greenwood J made the following observations:

> Section 87-5(a) and particularly (b) are concerned with the provision of commercial accommodation to an individual in the sense that ultimately a person, that is, a natural person consistent with the definition of 'individual' in s 195-1 of the GST Act, will occupy the whole or a part of the commercial residential premises. One example is the common case where a mining company might take a lease of all of the rooms in a motel proximate to a mining site, to be used by its employees from time to time. Some of those rooms might be used, some might not. The rooms when used will be allocated to individuals employed by the company. The supply of commercial accommodation is a supply to the corporation yet the particular rooms will be provided to individuals as the company determines. That analogue explains the operation of the section.[125]

287. After determining that the terms of the leases made by the lessor to lessees (including non-individual entities) did not result in the lessor making a supply of commercial accommodation, his Honour observed:

> If each of the 118 lessees had obtained at the date of grant of each lease a right to occupy their berths as a residence at any time during the period of the 20-year lease, it would then be possible to use the proportion those leases bear to all leases conferring a right to occupy for residential purposes (short-term and long-term), to satisfy s 87-20(3), because Mr McCart's figures show that the 20-year leases constituted a consistently high proportion of total berth rentals, and they would therefore constitute an even higher proportion of residential berth rentals.[126]

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[125] *Meridien Marinas* at FCA [88]; ATC 20-158; ATR 810-811.
[126] *Meridien Marinas* at FCA [89]; ATC 20-158; ATR 810-811.

288. In discussing the application of subsection 87-20(3), his Honour did not refer to any evidence showing that the commercial accommodation had been provided to individuals for a continuous period of 28 days or more.

289. When read together, these passages indicate that it may be inferred that his Honour would have found that the requirements of subsection 87-20(1) would be satisfied where a supply of commercial accommodation is for 28 days or more and is able, under the terms of the agreement, to be taken up by an individual.

290. On this basis, to determine whether the commercial accommodation is provided to an individual as long-term accommodation, it is only necessary to establish that the supply of commercial accommodation made to an entity is for 28 days or more and is permitted, under the terms of the agreement, to be taken up by an individual. It is not necessary for the commercial accommodation to be actually provided to an individual.

Long-term accommodation in caravan parks and camping grounds

291. Caravan owners may choose to leave their caravans at a caravan site for an extended period. For this, they pay site fees regularly and have the right to use their caravans whenever they choose, sometimes subject to payment of additional fees when in occupation of the caravan on the site.

292. In the case of a caravan park, the right to occupy is granted when a site is hired for a caravan, even if the caravan is left unoccupied for most of the time. This means that the special GST treatment for long-term stays applies to supplies made to those who leave their caravans on site for an extended period at a caravan park.

293. Where the operator for convenience moves a caravan from one site to another within the park, but maintains the booking, this is a continuous site rental. However, if the owner of a caravan and the park operator agree to 'store' the caravan in another area of the park which is not suitable for occupation, for an agreed fee, the continuity of the site rental ceases when the caravan is moved. The storage of the caravan is a separate supply, subject to the basic rules; the concessions for long-term accommodation are not available in respect of the storage arrangement.

294. The concessions in Division 87 apply to the base tariff the operator charges for the hire of a site. If the tariff usually includes items such as linen and electricity, then the whole of the tariff is subject to the concessions in Division 87.[127] If, however, the operator charges extra for these items, it can be inferred that these supplies are not provided as part of the right to occupy the commercial residential premises. In this case, the concessions in Division 87 do not apply to them and they are subject to GST at the rate of 1/11th of the GST inclusive price.

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[127] Section 87-15: these things are included in the supply of 'commercial accommodation', to which the concessions apply.

295. See Example 22 at paragraphs 103 to 104 of this draft Ruling for an example on the application of Division 87 to supplies of long-term accommodation in a caravan park.

Meaning of 'predominantly for long-term accommodation'

296. Based on the observation of Greenwood J in *Meridien Marinas* referred to above[128], commercial residential premises are predominantly for long-term accommodation for the purposes of subsection 87-20(3) where at least 70% of the accommodation supplied in the commercial residential premises is for a continuous period of 28 days or more and is permitted, under the terms of the agreement to be taken up by an individual.

297. Any fair and reasonable method may be used to determine whether the 70% requirement is satisfied. The Commissioner accepts that one of the following methods or a combination of both can be used in calculating the occupancy of individuals:

(a) the actual occupancy of the premises for the twelve months preceding the month for which the booking is made; or

(b) the projected occupancy for the twelve months following the month in which the booking is made.

298. If it is inappropriate to use either of these methods, a reasonable alternative may be adopted.

299. When looking at actual or projected occupancy, the number of supplies of accommodation, or the number of bookings that are for 28 days or more, rather than the number of people in each room, should be calculated. Bookings made by corporate entities for individuals can be included provided each booking is for a period of 28 or more days.

Option to input tax supplies of long-term accommodation

300. Greenwood J summarised the interaction between Division 87 and section 40-35 as follows:

> …Rather than simply input tax the supply of commercial accommodation (in the same way as residential premises) which would require the supplier to attribute GST payments on inputs in an enterprise comprising the supply of commercial accommodation and other activities constituting taxable supplies, so as to isolate input tax credits referable to the other activities apart from the supply of accommodation, Division 87 seeks to avoid difficulty by a 'concessionary treatment of long-term accommodation'. Section 40-35(1)(b) treats that part of such a supply as input taxed, although the supplier may elect to avoid the difficulties of segmentation, attribution and calculation by applying Division 87 to reduce the value of the supply by 50%.[129]

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[128] See paragraphs 286 – 289 of this draft Ruling.
[129] See *Meridien Marinas* at FCA [61]; ATC 20-158; ATR 804-805.

301. Section 87-25 allows an entity to choose not to apply the special rules for reducing the value on which GST is calculated on supplies of commercial accommodation. If the supplier chooses not to apply the special rules, a supply of commercial accommodation (excluding commercial accommodation in a marina) is input taxed under paragraph 40-35(1)(b) if it is also a supply of premises by way of lease, hire or licence. This includes the first 27 days of the supply, even if the supplies of the premises are not predominantly long-term accommodation. Any supplies of accommodation of 27 days or less are not subject to the Division 87 concession and are not input taxed – they are taxable supplies under the basic rules.

302. The choice not to apply Division 87 in respect to supplies of commercial accommodation in marinas (being the supply of a berth at a marina that falls within the definition of commercial residential premises) only results in the supply being input taxed where the additional requirement in paragraph 40-35(1A)(a) is satisfied. This additional requirement is that the berth is occupied, or is to be occupied, by a ship used as a residence. Paragraph 40-35(1A)(a) differs to the requirements in section 87-5 in that the former is concerned with a berth occupied or to be occupied by a ship used as a residence in the sense of occupation of a permanent or long-term nature whereas the latter is concerned with the conferral of a right to occupy the berth for living accommodation.[130]

303. If the choice is made to input tax supplies of long-term accommodation, all supplies of commercial accommodation for 28 or more days must be input taxed. The choice remains in force for at least 12 months after the day on which the choice was first made. However, the choice may be revoked after 12 months or more. All supplies of long-term accommodation must then be taxed under the special rules for at least the next 12 months after the day the choice was revoked. That is, a further choice cannot be made within 12 months of the revocation of the previous choice.

304. There is no requirement to advise the Australian Taxation Office about these choices.

[130] See *Meridien Marinas* at FCA [77]; ATC 20-158; ATR 808.

Appendix 2 – Comparison with GSTR 2000/20

This Appendix does not form part of the proposed binding public ruling.

Comparison between GSTR 2000/20 and GSTR 2011/D2

305. The following table lists each of the key issues/topics dealt with in this draft Ruling and cross-references the relevant paragraphs in this draft Ruling with the relevant paragraphs in GSTR 2000/20. The significant changes are also identified.

Issue / Topic	Paragraph References		Main Differences
	GSTR 2000/20	GSTR 2011/D2	
Residential premises to be used predominantly for residential accommodation			

Physical characteristics and objective intention	19; 24-27; 31-36	7-10; 121-129	Reference added to *Sunchen* to interpret 'residential premises to be used predominantly for residential accommodation' as a single test. Largely equivalent in placing focus on physical characteristics. Reference added to *Marana* and *Sunchen* regarding focus on objective intention with which the premises are designed, built or modified and the need to look at the premises' suitability for occupation as a residence or for residential accommodation. GSTR 2000/20 made reference to services, status of occupant and zoning (paragraphs 27; 32-36) as relevant factors in addition to physical characteristics. There is no equivalent to these in GSTR 2011/D2.
Living accommodation provided by shelter and basic living facilities	20; 26; 28-30	11-12; 130-133	Largely equivalent. Reference added to *South Steyne*.
Fit for human habitation	No equivalent	13; 134-136	New
Identifying the premises	No equivalent	137	New
Garages and car-parking spaces	No equivalent	14; 138-139	New
Other premises	No equivalent	15-24; 140-143	New

Premises requiring apportionment	21-23	25-30; 144-145	Additional explanation and examples
Land supplied with a building	No equivalent	31-35; 146	New
Vacant land	25	36; 147	Reference to *Vidler v. Federal Commissioner of Taxation* has been added.
Used for residential accommodation before 2 December 19 98	No equivalent	37-40; 148-149	New
Floating homes and ships	40-43	150-154	Additional explanation of the meaning of 'residence' in the context of the definition of a floating home.
Commercial residential premises			
Definition of commercial residential premises – each paragraph need s to be considered separately in context	No equivalent	41-42; 49; 168	New
Relationship between residential premises and commercial residential premises	No equivalent	43-45; 62-75; 156-165	New. Incorporates discussion of 'adjacent' premises – paragraph 124 of GSTR 2000/20.
Commercial residential premises – physical character	No equivalent	46-48; 62-75; 166-167	New

Extended definition under paragraph (f) of the definition	No equivalent (Serviced apartment complexes discussed at 118-121)	51; 62-75; 168-170	New New examples on serviced apartment complexes that cover the first supply or supplies of the premises by a developer have been added. The discussion of serviced apartments and the example from GSTR 2000/20 has been removed.
Hotel, motel, inn, hostel or boarding house – ordinary meanings	75-76	49; 171	Additional references to *Shorter Oxford* and *OED*.
Hotel, motel, inn, hostel or boarding house – statutory context	No equivalent	49; 172-175	New

Characteristics of a 'hotel, motel, inn, hostel or boarding house' and residential premises similar to these	78-109	50-52; 176-214	It is noted that commonly all eight are exhibited, but not all are necessary. It is a matter of examining the extent and manner to which the characteristics overall are exhibited to determine whether the premises are placed within this class rather than with premises of another kind. Under the characteristic of 'accommodation is the main purpose' greater emphasis has been placed on the fact that the accommodation is provided to a transient or floating, though not necessarily short-stay, class of occupants as their primary purpose. Reference to *South Steyne* and *South Steyne FFC* has been added to the discussion of multiple occupancy. It is noted that 'holding out to the public' can include a particular segment of the public or a niche market. A section has been added in regard to applying the characteristics to hostels and boarding houses. It is considered that if an accommodation provider enters into an agreement with occupants that provides exclusive possession or similar rights akin to a tenant, this will be a strong indicator that the premises are not commercial residential premises, even when the premises are referred to as a 'hostel' or 'boarding house'.

Premises used to provide accommodation in connection with a school – paragraph (b) of the definition	65-67	215-217	Minor changes only
A ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire – paragraph (c) of the definition	68-69	218	Largely equivalent
A ship that is mainly used for entertainment or transport in the ordinary course of a business of providing ships for entertainment or transport – paragraph (d) of the definition	70	219	Largely equivalent
A marina at which one or more of the berths are occupied, or are to be occupied, by ships used as residences – paragraph (da) of the definition	No equivalent	53; 220-224	New
A caravan park or camping ground – paragraph (e) of the definition	71; 129-133	54; 225-228	Addition of dictionary definitions. It is noted that accommodation in a caravan park or camping ground is held out to the public and operated on a commercial basis.

Premises to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school – expressly excluded from the definition	74	229-231	Additional explanation
A supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises	No equivalent	76-79; 232-235	New
Agency agreements in strata titled premises	56-61	236-240; 245-248	The paragraph on the features of agency agreements based on Queensland State law has been removed. The diagram and GST consequences have been clarified.
Strata titled hotel rooms / premises	51-55	242-250	The diagram and GST consequences have been clarified.
Bed and breakfast accommodation farm stays and home stays	122-128	80-86; 251-252	Clarification of the explanation and alternative examples. Discussion on 'adjacent' premises (paragraph 124 of GSTR 2000/20) has been moved.
Display homes	No equivalent	253-254	New

Employee and contractor accommodation	37-39	87-99; 255-256	Employee and contractor accommodation in premises that provide shelter and basic living facilities, and are designed and built primarily to provide living accommodation are residential premises. However, they may be commercial residential premises depending on the extent and manner to which the characteristics of such premises are exhibited. New examples have been added. Extended to cover accommodation provided to contractors.
Holiday houses, apartments and units	116-117	100-102; 257	Clarification of the explanation and alternative example.
Retirement village accommodation	No equivalent	258-260	New
Rooming houses	No equivalent	261-262	New

Transportable buildings and houses removed from land / Demountable housing	44-47	263-266	Clarification of the explanation. The footnote in GSTR 2000/20 suggesting that it is possible for a building that is not affixed to land, such as a demountable, to fall within the definition of residential premises, has been removed and it has been made clear that a supply of a transportable building, by itself, (which is not affixed to land) is a taxable supply (subject to subsection 9-30(4)).
Vehicles designed for road use	48-50	267-269	Minor changes only
Division 87 – long-term accommodation in commercial residential premises			
Long-term accommodation in commercial residential premises	134-136	270-272	Changed to reflect *Meridien Marinas*.
Meaning of commercial accommodation	137-138	55-56; 273-281	Changed to reflect *Meridien Marinas* on meaning of commercial accommodation.
Meaning of provided to an individual as long-term accommodation	139-145	57-58; 282-290	Changed to reflect *Meridien Marinas*. The commercial accommodation is not required to be provided to an individual for 28 days or more. The commercial accommodation needs to be permitted to be taken up by an individual for a continuous period of 28 days or more.

Long-term accommodation in caravan parks and camping grounds	146-149	103-104; 291-294	Largely equivalent
Meaning of predominantly for long-term accommodation	150-154	59-60; 296-299	Changed to reflect *Meridien Marinas*. Subsection 87-20(3) is satisfied where at least 70% of the accommodation supplied in the commercial residential premises is permitted to be provided to individuals for a continuous period of 28 days for more.
Option to input tax supplies of long-term accommodation	155-157	61; 300-304	Changed to discuss paragraph 40-35(1A)(a).

Appendix 3 – Your comments

306. You are invited to comment on this draft Ruling. Please forward your comments to the contact officer by the due date.

307. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	**5 August 2011**
Contact officer:	**Steve Iselin**
Email address:	**Steven.Iselin@ato.gov.au**
Telephone:	**(07) 3213 8417**
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	Chermside, QLD, 4032

Appendix 4 – Detailed contents list

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 2000/37;GSTR 2001/1;GSTR 2001/8;GSTR 2003/3;GSTR 2003/7;GSTR 2006/9;GSTR 2008/1;GSTD 2004/3;MT 2006/1;TR 97/11;TR 2006/10

Previous Rulings/Determinations:

GSTR 2000/20

Subject references:

- Goods and services tax
- GST boarding/rooming houses
- GST caravan parks
- GST commercial residential premises
- GST display homes
- GST lease and real property
- GST long term accommodation
- GST long term lease
- GST marina berths
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