



# ***GSTR 2013/D2 - Goods and services tax: supplies made by an operator of a 'moveable home estate'***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *30 October 2013*



## Draft Goods and Services Tax Ruling

### Goods and services tax: supplies made by an operator of a 'moveable home estate'

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#### **① This publication provides you with the following level of protection:**

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

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1. This Draft Ruling considers whether a moveable home estate is commercial residential premises and how section 9-5 and section 40-35 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) apply to the following transactions:

- (a) the supply by way of lease or licence of a moveable home site to a resident,
- (b) the supply by way of sale of a moveable home before it is placed on land and installed ready for occupation,
- (c) the supply by way of lease or licence of both a moveable home site and a moveable home to a resident, and
- (d) separate supplies of a moveable home site by way of lease or licence and a moveable home by way of sale to a resident.

2. For the purposes of this Draft Ruling:

- the 'operator' is the entity that makes the supplies identified at paragraph 1 of this Draft Ruling to a resident,

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- 'moveable home' means a building that is not a fixture, which is designed to be moved between sites and is capable of and intended to be occupied as a residence when placed on a site,<sup>1</sup> and
- 'moveable home estate' means an estate that is designed and operated such that the operator supplies by way of lease or licence long-term accommodation (usually for 12 months or more), by way of either:
  - (a) an area of land (moveable home site) to an individual (resident) on which the resident may place a moveable home which is owned or leased by the resident, or
  - (b) both a moveable home site and a moveable home that is owned by the operator, and

where the residents have access to communal facilities within the moveable home estate.

3. The term 'moveable home estate' does not include a caravan park or camping ground (according to their ordinary meanings). However, an estate designed as a moveable home estate (as described above) does not cease to be a moveable home estate if the operator provides some short-term accommodation on an irregular or incidental basis.

4. For the purposes of this Draft Ruling, it is assumed unless otherwise specified that a supply referred to in the Draft Ruling satisfies the requirements of a taxable supply under section 9-5 of the GST Act.

5. All legislative references are to the GST Act unless otherwise stated.

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<sup>1</sup> A moveable home includes buildings that are covered by: a 'manufactured home' as defined under section 10 of the *Manufactured Homes (Residential Parks) Act 2003* (QLD); a 'moveable dwelling' defined by section 3 of the *Residential Parks Act 1998* (NSW); a 'Part 4A dwelling' as defined by section 3 of the *Residential Tenancies Act 1997* (VIC); a 'dwelling' as defined by section 3 of the *Residential Parks Act 2007* (SA) to the extent the building is moveable; a 'relocatable home' as defined in the Glossary to the *Residential Parks (Long Stay Tenants) Act 2006* (WA); and a 'mobile home' as defined by section 4 of the *Caravan Parks Act 2012* (NT). However, a moveable home does not include a caravan or vehicle.

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## Background

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6. This Draft Ruling has been issued following a review of the Commissioner's previous view in paragraph 132 of Goods and Services Tax Ruling GSTR 2000/20 *Goods and Services Tax: commercial residential premises* concerning the treatment of a 'home park'.<sup>2</sup> The previous view was that a home park was commercial residential premises under paragraph (f) of the definition in section 195-1, as they were considered to be similar to caravan parks. Following the withdrawal of GSTR 2000/20, this view was incorporated as a transitional measure at paragraph 132 of Goods and Services Tax Ruling GSTR 2012/6 *Goods and Services Tax: commercial residential premises*.

7. Since the Commissioner's previous view was published in 2000, the caravan and moveable home estate industries have evolved considerably. Moveable home estates, which were previously considered similar to caravan parks, are now designed to provide long-term accommodation as may be found in a gated community or retirement village, without the provision of short-term accommodation. Given this change in industry practice, the Commissioner's position as to whether or not these premises are commercial residential premises has been reviewed.

8. In developing this Draft Ruling, the Commissioner received advice from industry representatives that industry participants do not treat a moveable home placed on a moveable home site as a fixture. While it is necessary to consider the individual circumstances of each arrangement, this treatment is consistent with relevant case law pertaining to this issue.<sup>3</sup> Some State legislation specifically deems a moveable home not to be a fixture<sup>4</sup> or allows the resident to sell or deal with the moveable home.<sup>5</sup> This Draft Ruling sets out the Commissioner's preliminary views on specific transactions where a moveable home is not a fixture.

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<sup>2</sup> A 'home park' was described at paragraph 132 of Goods and Services Tax Ruling GSTR 2000/20 *Goods and services tax: commercial residential premises* as being where sites for demountable homes were rented and the homes themselves either rented or occupied by their owners. The Commissioner has adopted the terminology 'moveable home estate' in this draft Ruling so as not to conflict with terminology used in State and Territory legislation.

<sup>3</sup> See, for example: *PricewaterhouseCoopers Legal v. Perpetual Trustees Victoria Ltd & Others* (2007) 14 BPR 26,835; [2007] NSWCA 271; *Sun River Parks Pty Ltd v. Campaspe Shire Council (Land Valuation)* [2011] VCAT 2390.

<sup>4</sup> See section 85A of the *Residential Parks Act 1998* (NSW) and section 206C of the *Residential Tenancies Act 1997* (VIC).

<sup>5</sup> See section 56 of the *Manufactured Homes (Residential Parks) Act 2003* (QLD), section 80 of the *Residential Parks Act 1998* (NSW), section 206ZZH of the *Residential Tenancies Act 1997* (VIC), section 50 of the *Residential Parks Act 2007* (SA), and section 55 of the *Residential Parks (Long Stay Tenants) Act 2006* (WA).

## Ruling

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### **Whether a moveable home estate is commercial residential premises**

9. The term 'commercial residential premises' is defined in section 195-1 and relevantly includes:

- (a) a hotel, motel, inn, hostel or boarding house;
- ...
- (e) a caravan park or a camping ground; or
- (f) anything similar to residential premises described in paragraphs (a) to (e).

10. As moveable home estates are not specifically included within the definition of commercial residential premises, they must be considered under paragraph (f) as to whether they are similar to the premises referred to in paragraphs (a) and (e) of the definition.

11. A moveable home estate does not display sufficiently similar characteristics of a hotel, motel, inn, hostel or boarding house to be characterised as commercial residential premises. This is because a moveable home estate has different physical and operational characteristics to a hotel, motel, inn, hostel or boarding house.

12. While a moveable home estate does display some similarities with a caravan park and camping ground, it is not sufficiently similar to be characterised as commercial residential premises.

13. Although caravan parks and camping grounds may contain moveable homes used by long-term residents placed on the premises, they are designed and operated to accommodate caravans or tents used by travellers or short-term occupants. Moveable home estates are not designed or operated to provide accommodation to travellers or short-term occupants. They are designed and operated to provide accommodation to residents on a long-term basis.

14. A moveable home estate is not covered by, nor is sufficiently similar to, any other type of premises referred to in the definition of commercial residential premises. A moveable home estate is therefore not commercial residential premises.

**GST treatment of supplies made in a moveable home estate*****The operator of a moveable home estate supplies by way of lease or licence a moveable home site to a resident***

15. A moveable home site is vacant land. Vacant land is not 'premises' for the purposes of section 40-35 as a supply of premises requires the supply to include a building. Further, vacant land is not residential premises as defined in the GST Act. It is not suitable for, nor capable of, being occupied as residential accommodation as it does not provide shelter or basic living facilities.<sup>6</sup>

16. A supply by way of lease or licence of a moveable home site by the operator to a resident is not a supply of residential premises to be used predominantly for residential accommodation under section 40-35, and as such is not an input taxed supply. The supply of a moveable home site is therefore a taxable supply under section 9-5.

17. The subsequent placement by the resident of a moveable home on a moveable home site does not change the supply of the moveable home site made by the operator from being a taxable supply under section 9-5.

18. As the moveable home estate is not commercial residential premises, the supply of the moveable home site is not commercial accommodation that is provided in commercial residential premises for the purposes of Division 87. Accordingly, sections 87-5 and 87-10 which allow for concessional treatment concerning supplies of long-term accommodation do not apply.<sup>7</sup>

***The supply by way of sale of a moveable home before it is placed on land and installed ready for occupation***

19. The supply by way of sale of a moveable home before it is placed on land and installed ready for occupation is not a supply of real property nor residential premises to be used predominantly for residential accommodation. It is a taxable supply under section 9-5.<sup>8</sup>

20. However, if the moveable home has been used by the operator solely in connection with making input taxed supplies of residential premises, the sale of the moveable home is an input taxed supply under subsection 9-30(4).

<sup>6</sup> See paragraph 47 of Goods and Services Tax Ruling GSTR 2012/5 *Goods and services tax: residential premises*.

<sup>7</sup> See Goods and Services Tax Ruling GSTR 2012/7 *Goods and services tax: long-term accommodation in commercial residential premises*.

<sup>8</sup> See paragraph 49 to 51 of GSTR 2012/5.

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***The operator of a moveable home estate supplies by way of lease or licence both a moveable home site and a moveable home***

21. The operator of a moveable home estate makes an input taxed supply of residential premises to be used predominantly for residential accommodation under section 40-35 where it supplies by way of a lease or licence both a moveable home site and a moveable home that is placed on the site and installed ready for occupation.

22. This is because the physical characteristics of a moveable home in place on a moveable home site make the premises suitable and capable of being occupied predominantly for residential accommodation.

***The operator of a moveable home estate separately supplies:***

- ***a moveable home site by way of lease or licence;***  
***and***
- ***a moveable home by way of sale***

23. Where an operator of a moveable home estate makes separate supplies to a resident of a moveable home site and a moveable home, the supplies need to be characterised separately and not as if they form an aggregate supply.

24. The supply by way of lease or licence of the moveable home site by the operator is a taxable supply under section 9-5. Division 87 does not apply to the supply as the moveable home estate is not commercial residential premises.

25. The sale by an operator of a moveable home placed on a moveable home site is not an input taxed supply under section 40-65. This is because section 40-65 only applies to a sale of residential premises that are real property. The moveable home does not fall within the definition of 'real property' as it is not a fixture. Accordingly, the sale of the moveable home is a taxable supply under section 9-5.

26. This outcome is the same even if the moveable home had been previously sold (or been subject to a long-term lease) and placed on the same moveable home site.

27. However, if the moveable home has been used by the operator solely in connection with making input taxed supplies of residential premises by way of lease, hire or licence, the sale of the moveable home is an input taxed supply under subsection 9-30(4).

*Example 1 – lease of moveable home site and sale of moveable home*

28. Fizzen Home Pty Ltd (Fizzen) owns and operates the Fizzen Home Estate, which is a moveable home estate. Fizzen supplies by way of lease a moveable home site to Sandy. Under the terms of the lease she is entitled to place a moveable home on the site. Sandy separately purchases a previously sold moveable home from Fizzen which is located on the site that Sandy has leased. Fizzen had acquired the moveable home from a former resident of the moveable home estate and has not used the home to make input taxed supplies. For the purposes of this example, the moveable home does not become a fixture once placed on the moveable home site.

29. The supply by way of lease of the moveable home site made by Fizzen to Sandy is a taxable supply under section 9-5. The supply is not an input taxed supply under section 40-35 as the supply of the site is neither a supply of premises nor a supply of residential premises. It is also not a supply of accommodation in commercial residential premises.

30. The supply by way of sale of the moveable home made by Fizzen to Sandy is a taxable supply under section 9-5. The supply is not an input taxed supply under section 40-65 as the sale of the moveable home is not a sale of real property. The supply is not an input taxed supply under subsection 9-30(4) as Fizzen has not used the moveable home solely to make input taxed supplies.

*Example 2 – lease of moveable home placed on moveable home site*

31. Following from Example 1, Fizzen supplies by way of lease a moveable home, which is placed on a moveable home site and installed ready for occupation, to Michael. The supply by way of lease of the moveable home site together with the moveable home is an input taxed supply under section 40-35. The physical characteristics of a moveable home in place on a moveable home site make the premises suitable and capable of being occupied predominantly for residential accommodation. It is not a supply of accommodation in commercial residential premises as the Fizzen Home Estate is not sufficiently similar to a hotel, motel, inn, hostel, boarding house, caravan park or camping ground to be characterised as commercial residential premises.

## **Date of effect**

32. When the final Ruling is issued, it is intended 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 76 of Taxation Ruling TR 2006/10).



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33. Pursuant to the transitional arrangement set out in paragraphs 131 and 132 of GSTR 2012/6, you can rely on the Commissioner's previous view about home parks expressed at paragraph 132 of GSTR 2000/20.

34. The transitional arrangement at paragraphs 131 and 132 of GSTR 2012/6 will be withdrawn when this Draft Ruling is issued as a final Ruling.

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**Commissioner of Taxation**

30 October 2013

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## 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.*

### Statutory context

35. A supply is a taxable supply where the requirements of section 9-5 are satisfied.

36. 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.

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

- (a) a hotel, motel, inn, hostel or boarding house;
- ...
- (e) a caravan park or camping ground; or
- (f) anything similar to residential premises described in paragraphs (a) to (e).

38. A supply by way of lease or licence of premises that are residential premises to be used predominantly for residential accommodation is an input taxed supply under section 40-35, unless the supply is a supply of commercial residential premises or a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises.

39. If these exceptions apply, the supply is a taxable supply where the requirements of section 9-5 are also satisfied. However, if the supply is a supply of commercial accommodation<sup>9</sup> provided in commercial residential premises to an individual as long-term accommodation, the supplier can:

- (a) apply Division 87 in calculating the value of the taxable supplies made to residents, or

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<sup>9</sup> The meaning of commercial accommodation is set out at section 87-15.

- (b) choose not to apply Division 87 under section 87-25 in which case the supply is an input taxed supply under paragraph 40-35(1)(b).

40. A sale of real property that is residential premises to be used predominantly for residential accommodation is an input taxed supply under section 40-65 unless certain exceptions apply. The sale is not input taxed to the extent that the residential premises are:

- (a) commercial residential premises, or
- (b) new residential premises other than those used for residential accommodation (regardless of the term of occupation) before 2 December 1998.

41. 'Real property' is defined in section 195-1 as including:

- (a) any interest in or right over land, or
- (b) a personal right to call for or be granted any interest in or right over land, or
- (c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

42. A supply is taken to be a supply that is input taxed under subsection 9-30(4) if it is a supply of anything (other than new residential premises) that the supplier has used solely in connection with input taxed supplies it makes, other than financial supplies.

## **Whether a moveable home estate is commercial residential premises**

43. As moveable home estates are not specifically included in the definition of commercial residential premises, they must be considered under paragraph (f) as to whether they are sufficiently similar to premises set out in paragraphs (a) to (e) of the definition. Relevantly, these premises include a hotel, motel, inn, hostel, boarding house, caravan park or camping ground.

## ***Whether a moveable home estate is sufficiently similar to a hotel, motel, inn, hostel or boarding house***

44. The Commissioner's views on when premises are sufficiently similar to a hotel, motel, inn, hostel or boarding house are set out in GSTR 2012/6, which outlines common characteristics of operating hotels, motels, inns, hostels and boarding houses as well as physical characteristics that they may display. The common operating characteristics, whilst not in themselves determinative, are:

- Commercial intention,
- Multiple occupancy,
- Holding out to the public,
- Accommodation is the main purpose,

- Central management,
- Management offers accommodation in its own right,
- Provision of, or arrangement for, services, and
- Occupants have status of guests.<sup>10</sup>

45. Whether premises are, or are sufficiently similar to, commercial residential premises is a matter of impression and degree.

***Whether moveable home estates that only supply moveable home sites are sufficiently similar to a hotel, motel, inn hostel or boarding house?***

46. Hotels, motels, inns, hostels, or boarding houses are buildings in which accommodation is provided to occupants.

47. A moveable home estate operated on the basis of supplying by way of lease or licence moveable home sites, being vacant land, is sufficiently distinct in terms of both its physical characteristics and the way that it is operated from a hotel, motel, inn, hostel or boarding house so as not to be characterised as commercial residential premises.

***Whether moveable home estates that supply both a moveable home site and a moveable home are sufficiently similar to a hotel, motel, inn hostel or boarding house?***

48. A moveable home estate operated on the basis of supplying by way of lease or licence both a moveable home site and a moveable home is also not sufficiently similar to a hotel, motel, inn, hostel or boarding house to be characterised as commercial residential premises.

49. While not of itself determinative, the accommodation in a moveable home estate is supplied on a long-term basis, as opposed to the short-term accommodation that is most commonly supplied in a hotel, motel, inn, hostel or boarding house.

50. In considering services provided to occupants of a 'mobile home park' in *Tingari Village North Pty Ltd v. Federal Commissioner of Taxation*, the Administrative Appeals Tribunal observed that the services (being the provision of communal facilities, mowing of public areas, cleaning of gutters in common areas and occasional rubbish collection) were remote from any comparison with the kind of personal services commonly provided by hotels, boarding or lodging house keepers and the like.<sup>11</sup>

<sup>10</sup> See paragraphs 11 to 40 of GSTR 2012/6.

<sup>11</sup> [2010] AATA 233 at [42] to [43]; (2010) 78 ATR 693 at 705; 2010 ATC 10-131 at 3355.

51. The physical and operating characteristics of a moveable home estate that supplies by way of lease or licence both moveable home sites and moveable homes are similar to a retirement village, albeit that the moveable homes are not fixtures.<sup>12</sup> These characteristics are not sufficiently similar to those displayed by a hotel, motel, inn, hostel or boarding house to be characterised as commercial residential premises.

***Whether a moveable home estate is sufficiently similar to a caravan park or a camping ground***

52. The terms 'caravan park' and 'camping ground' are not defined in the GST Act and so take their ordinary meanings. The *Australian Oxford Dictionary* (AOD) and the *Macquarie Dictionary* (Macquarie) provide the following relevant meanings for each of these terms:

*Caravan Park*

A place where caravans are parked as dwellings, often with special amenities. (AOD)

An area of land with spaces for the parking of caravans or the erection of tents, with access to electrical power and water, and having buildings containing toilets, showers, laundry facilities, etc., and sometimes having other features like a swimming pool, playground, barbecue, etc., and cabins in which people can stay. (Macquarie)

*Caravan*

1. A vehicle equipped for living in and usually towed by a motor vehicle. (AOD)

1. A vehicle in which people may live, whether temporarily or permanently, usually having two wheels and designed to be drawn by a car. (Macquarie)

*Camping Ground*

A (usually privately-owned) piece of land with washing and toilet facilities etc., for rent as camp and caravan sites to holidaymakers. (AOD)

A supervised site, often with amenities, on which tents may be erected and caravans parked for holiday occupation. (Macquarie)

*Camp*

2. Temporary overnight lodging in tents etc. in the open. (AOD)

A group of tents, caravans, or other temporary shelters in one place. (Macquarie)

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<sup>12</sup> See paragraphs 242 to 245 of GSTR 2012/6.

53. Occupants of a caravan park or camping ground may stay in a caravan, a moveable home, 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.

54. While a moveable home estate does display some similarities with a caravan park and camping ground, it is not sufficiently similar to be characterised as commercial residential premises.

55. Although caravan parks and camping grounds may contain moveable homes that are used by long-term residents and placed on a site within the premises, they are designed and operated to accommodate caravans or tents used by travellers or short-term occupants. Moveable home estates are not designed or operated to provide accommodation to travellers or short-term occupants. They are designed and operated to provide accommodation to residents on a long-term basis similar to residential housing provided in a gated community or retirement village.

56. A moveable home estate is not covered by, nor is sufficiently similar to, any other type of premises referred to in the definition of commercial residential premises. A moveable home estate is therefore not commercial residential premises.

### **GST treatment of supplies made in a moveable home estate**

#### ***The operator of a moveable home estate supplies by way of lease or licence a moveable home site to a resident***

57. A moveable home site is vacant land. Vacant land is not premises for the purposes of section 40-35 as a supply of premises requires the supply to include a building.<sup>13</sup> Further, vacant land is not residential premises as defined in the GST Act.<sup>14</sup> It is not suitable for, nor capable of, being occupied as residential accommodation as it does not provide shelter or basic living facilities.<sup>15</sup>

58. A supply by way of lease or licence of a moveable home site by the operator to a resident is not a supply of residential premises to be used predominantly for residential accommodation under section 40-35, and as such is not an input taxed supply. A supply by way of lease or licence of a moveable home site by the operator to a resident is therefore not input taxed, but a taxable supply under section 9-5.

<sup>13</sup> See: *Turner v. York Motors Pty Ltd* (1951) 85 CLR 55; [1951] HCA 52 at [7] and [41] to [43]; *Bonnington & Co Pty Ltd v. Lynch* (1952) 86 CLR 259; [1952] HCA 46 at [4]; and *Sydney Markets Ltd v. Wilson* (2011) 16 BPR 30,583; [2011] NSWCA 201 at [37] to [42] and [60] to [68].

<sup>14</sup> *Vidler v. Federal Commissioner of Taxation* (2010) 183 FCR 440; [2010] FCAFC 59 at [34].

<sup>15</sup> See paragraph 47 of GSTR 2012/5.

59. The subsequent placement by the resident of a moveable home on a moveable home site does not change the character of the supply of the moveable home site made by the operator being a taxable supply under section 9-5.

60. As the moveable home estate is not commercial residential premises, the supply of the moveable home site is not commercial accommodation that is provided in commercial residential premises for the purposes of Division 87. Accordingly, sections 87-5 or 87-10 which allow for concessional treatment concerning supplies of long-term accommodation do not apply.<sup>16</sup>

***The supply by way of sale of a moveable home before it is placed on land and installed ready for occupation***

61. The supply by way of sale of a moveable home before it is placed on land and installed ready for occupation is not a supply of real property, nor residential premises to be used predominantly for residential accommodation.

62. A moveable home does not fall within the definition of 'real property' in section 195-1 as it is not a fixture. The extended definition of 'real property', being:

- any interest in or right over land,
- a personal right to call for or be granted any interest in or right over land, or
- a licence to occupy land or any other contractual right exercisable over or in relation to land,

is not applicable to a moveable home.

63. A transportable building such as a demountable dwelling or a moveable home that is designed as a residence, or to provide residential accommodation, is residential premises when placed on land and installed ready for occupation.<sup>17</sup> A moveable home that is not placed on land and installed ready for occupation does not satisfy the definition of 'residential premises' because it is not occupied as a residence or for residential accommodation or capable of being occupied as a residence or for residential accommodation.<sup>18</sup> It is therefore not residential premises to be used predominantly for residential accommodation. The sale of such a moveable home is a taxable supply under section 9-5.<sup>19</sup>

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<sup>16</sup> See GSTR 2012/7.

<sup>17</sup> See paragraph 49 of GSTR 2012/5.

<sup>18</sup> Section 195-1.

<sup>19</sup> See paragraphs 49 to 51 of GSTR 2012/5.

64. However, if the moveable home has been used by the operator solely in connection with a supply of residential premises by way of lease, hire or licence, the sale of the moveable home is an input taxed supply under subsection 9-30(4). For example, if an operator sells a moveable home that has solely been used by the operator to make input taxed supplies under section 40-35, the sale of the moveable home is an input taxed supply under subsection 9-30(4) rather than a taxable supply under section 9-5.

***The operator of a moveable home estate supplies by way of lease or licence both a moveable home site and a moveable home***

65. The operator of a moveable home estate makes an input taxed supply of residential premises to be used predominantly for residential accommodation under section 40-35 where it supplies by way of a lease or licence both a moveable home site and a moveable home that is placed on the site and installed ready for occupation.

66. This is because the physical characteristics of a moveable home in place on a moveable home site make the premises suitable and capable of being occupied predominantly for residential accommodation.

***The operator of a moveable home estate separately supplies:***

- ***a moveable home site by way of lease or licence; and***
- ***a moveable home by way of sale***

67. Where an operator of a moveable home estate makes separate supplies to a resident of a moveable home site and a moveable home, the supplies need to be characterised separately and not as if they form an aggregate supply. In the Full Federal Court decision of *South Steyne Hotel Pty Ltd and Others v. Federal Commissioner of Taxation (South Steyne)*, Emmett J stated:<sup>20</sup>

...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.

68. The supply by way of lease or licence of a moveable home site by the operator is a taxable supply under section 9-5. Division 87 does not apply to the supply as the moveable home estate is not commercial residential premises.

<sup>20</sup> *South Steyne Hotel Pty Ltd and Others v. Federal Commissioner of Taxation* (2009) 180 FCR 409 at 416; [2009] FCAFC 155 at [24]. Finn J at [1] agreed with the reasoning of Emmett J.



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69. The sale by an operator of a moveable home that is placed on a moveable home site is not an input taxed supply under section 40-65. This is because section 40-65 only applies to a sale of residential premises that are real property. The moveable home does not fall within the definition of 'real property' as it is not a fixture. Accordingly, the sale of the moveable home is a taxable supply under section 9-5.

70. This outcome is the same even if the moveable home had been previously sold (or been subject to a long-term lease) and placed on the same moveable home site.

71. However, if the moveable home has been used by the operator solely in connection with a supply of residential premises by way of lease, hire or licence, the sale of the moveable home is an input taxed supply under subsection 9-30(4). For example, if an operator sells a moveable home that has solely been used by the operator to make input taxed supplies under section 40-35, the sale of the moveable home is an input taxed supply under subsection 9-30(4) rather than a taxable supply under section 9-5.

## Appendix 2 – Alternative views

**❶** *This Appendix sets out alternative views and explains why they are not supported by the Commissioner. It does not form part of the proposed binding public ruling.*

72. An alternative view to that expressed at paragraphs 9 to 14 of the Draft Ruling is that a moveable home estate is commercial residential premises. This was the view previously taken in GSTR 2000/20.<sup>21</sup>

73. Under this alternative view, a moveable home estate is considered similar to a caravan park or a camping ground for the purposes of paragraph (f) of the definition of commercial residential premises in section 195-1. This is because

- the operation of a moveable home estate may be regulated under the same statutory regulation as caravan parks and camping grounds,
- sites are supplied by way of lease in caravan parks and camping grounds, and
- caravan parks and camping grounds often contain sites on which moveable homes are placed.

74. Under this alternative view, the supply made by the operator by lease or licence of both the moveable home site and the moveable home to a resident is a supply of accommodation in commercial residential premises by the entity that owns or controls the commercial residential premises for the purposes of section 40-35 and Division 87.

75. Consequently, an operator of a moveable home estate supplies by way of lease or licence commercial accommodation that is provided to residents in commercial residential premises. Where the commercial accommodation is long-term accommodation, the operator can:

- (a) apply Division 87 in calculating the value of the taxable supplies made to residents; or
- (b) choose not to apply Division 87 under section 87-25 in which case the supplies are input taxed supplies under paragraph 40-35(1)(b).<sup>22</sup>

<sup>21</sup> Paragraph 132 of GSTR 2000/20 referred to 'moveable home estates' as 'home parks'.

<sup>22</sup> See GSTR 2012/7.

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76. The Commissioner does not consider this to be the better view for the reasons set out in paragraphs 9 to 14. Premises that are similar to a caravan park or camping ground are designed and operated to provide accommodation to travellers or short-term occupants even though they may supply sites by way of lease on which moveable homes are placed. The fact that moveable home estates may be subject to similar, or the same, statutory regulations as caravan parks does not, of itself, mean that a moveable home estate is sufficiently similar to a caravan park so as to be commercial residential premises.

## **Appendix 3 – Your comments**

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

78. A compendium of comments is 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
- be published on the ATO website at [www.ato.gov.au](http://www.ato.gov.au).

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

<b>Due date:</b>	<b>29 November 2013</b>
<b>Contact officer:</b>	<b>Stephen Iselin</b>
<b>Email address:</b>	<b><a href="mailto:steven.iselin@ato.gov.au">steven.iselin@ato.gov.au</a></b>
<b>Telephone:</b>	<b>(07) 3213 8417</b>
<b>Facsimile:</b>	<b>(07) 3213 8069</b>
<b>Address:</b>	<b>PO Box 9977 Chermside QLD 4032</b>

## Appendix 4 – Detailed contents list

79. The following is a detailed contents list for this Ruling:

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## References

### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 2006/10; GSTR 2000/20;  
GSTR 2012/5; GSTR 2012/6;  
GSTR 2012/7

### *Subject references:*

- goods and services tax
- GST caravan parks
- GST commercial residential premises
- GST lease and real property
- GST residential premises
- GST sale of real property
- GST sale of residential premises

### *Legislative references:*

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-30(4)
- ANTS(GST)A 1999 40-35
- ANTS(GST)A 1999 40-35(1)(b)
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- ANTS(GST)A 1999 Div 87
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- ANTS(GST)A 1999 87-10
- ANTS(GST)A 1999 87-15
- ANTS(GST)A 1999 87-25
- ANTS(GST)A 1999 195-1
- Caravan Parks Act 2012 (NT)
- Manufactured Homes (Residential Parks) Act 2003 (QLD)
- Residential Parks Act 1998 (NSW)
- Residential Parks Act 2007 (SA)
- Residential Parks (Long Stay Tenants) Act 2006 (WA)
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- *Bonnington & Co Pty Ltd v. Lynch* (1952) 86 CLR 259; [1952] HCA 46
- PricewaterhouseCoopers Legal v. Perpetual Trustees Victoria Ltd & Others (2007) 14 BPR 26,835; [2007] NSWCA 271
- South Steyne Hotel Pty Ltd and Others v. Federal Commissioner of Taxation (2009) 180 FCR 409; [2009] FCAFC 155; 74 ATR 41; 2009/ATC 20-145
- Sun River Parks Pty Ltd v. Campaspe SC (Land Valuation) [2011] VCAT 2390.
- Sydney Markets Ltd v. Wilson (2011) 16 BPR 30,583; [2011] NSWCA 201
- Tingari Village North Pty Ltd v. Federal Commissioner of Taxation [2010] AATA 233; (2010) 78 ATR 693; 2010 ATC 10-131
- Turner v. York Motors Pty Ltd (1951) 85 CLR 55; [1951] HCA 52;
- Vidler v. Federal Commissioner of Taxation (2010) 183 FCR 440; [2010] FCAFC 59; 75 ATR 825; 2010 ATC 20-186

### *Other references:*

- The Australian Oxford Dictionary, [online], viewed 16 August 2013, [www.oxfordreference.com](http://www.oxfordreference.com)
- The Macquarie Dictionary, [online], viewed 16 August 2013, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au)

### *Case references:*

#### ATO references

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