

GSTR 2003/3A5 - Addendum - Goods and services tax: when is a sale of real property a sale of new residential premises?

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Addendum

Goods and Services Tax Ruling

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

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2003/3 following the Administrative Appeals Tribunal's (AAT's) decision in *Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation* [2022] AATA 4436. In particular, the updates reflect that the AAT stated that the 5-year period in section 40-75 of the *A New Tax System (Goods and Services Tax) Act 1999* must be a continuous period.

GSTR 2003/3 has also been updated in line with current ATO style and accessibility requirements.

GSTR 2003/3 is amended as follows:

1. ATO logo

Omit outdated ATO logo; substitute current ATO logo.

2. Preamble

Omit the preamble; substitute:

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

3. Table of Contents

Omit the Table of Contents; substitute:

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4. Paragraph 1

Omit '(the GST Act)'; substitute '(GST Act)'.

5. Paragraph 2

- (a) Omit 'GST'; substitute 'goods and services tax (GST)'.
- (b) Omit 'GSTR 2000/20'; substitute 'GSTR 2012/6 *Goods and services tax: commercial residential premises*'.
- (c) Omit the wording of footnote 1; substitute:

Whether a supply is made in the course or furtherance of an enterprise is dealt with 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* and Goods and Services Tax Determination GSTD 2006/6 *Goods and services tax: does MT 2006/1 have equal application to the meaning of 'entity' and 'enterprise' for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?*

6. Paragraph 5

Omit 'These terms, when first mentioned, appear in **bold type**'.

7. Paragraph 6

After 'GST Act', insert a comma.

8. Paragraph 7

Omit the wording of the paragraph; substitute 'This Ruling applies to tax periods commencing both before and after its date of issue.'

9. Paragraph 9

- (a) Omit the wording of footnote 2; substitute:

In this Ruling, 'registered entity' includes entities that are required to be registered. It should be noted that a single activity of developing and selling a property may be sufficient to require a person to be registered – see sections 9-20 and 23-5 and Division 188. See also MT 2006/1 and GSTD 2006/6.
- (b) Omit footnote 3.
- (c) After 'Where there is a mixed supply', insert a comma.

(d) After 'GSTR 2001/8', insert '*Goods and services tax: Apportioning the consideration for a supply that includes taxable and non-taxable parts*'.

10. Paragraph 10

After 'enterprise it carries on', omit the comma.

11. Paragraph 11

Omit the wording of footnote 5; substitute:

Paragraph 244 of MT 2006/1 and paragraph 13 of GSTD 2006/6.

12. Paragraph 16

After 'specific provisions', insert a comma.

13. Paragraph 18

(a) After 'meaning of 'sale' is the transfer', insert 'of'.

(b) Omit 'ownership of land,;'; substitute 'ownership of land –'.

14. Paragraph 19

After 'previously sold', insert a comma.

15. Paragraph 20

In footnote 10, after 'See', insert 'the'.

16. Paragraph 21

Omit 'i.e.'; substitute 'that is,'.

17. Paragraph 22

In the fifth bullet point, omit 'Australia'; substitute 'the indirect tax zone'.

18. Paragraph 23

Omit 'is attached as Appendix 1'; substitute 'is in the Appendix to this Ruling'.

19. Paragraph 25

Omit 'none of the categories is satisfied'; substitute 'none of the categories are satisfied,'.

20. Paragraph 26

Omit the wording of footnote 16; substitute:

Paragraph 47 of Goods and Services Tax Ruling GSTR 2012/5 *Goods and services tax: residential premises*.

21. Paragraph 28

Omit 'paragraph 40-75(1)(b) or (c) include'; substitute 'paragraphs 40-75(1)(b) or (c) include'.

22. Paragraph 29

In footnote 18, omit '(1) (a)'; substitute '(1)(a)'.

23. Paragraph 30

- (a) After 'paragraph 40-75(1)(a)', insert a comma.
- (b) Omit the wording of footnote 19; substitute 'Paragraph 47 of GSTR 2012/5'.

24. Paragraph 35

- (a) Omit '1,000 sq m'; substitute '1,000 square metres'.
- (b) Omit both instances of '200 sq m'; substitute '200-square metre'.
- (c) Omit '800 sq m'; substitute '800 square metres'.

25. Paragraph 37

After 'At the time of sale', insert a comma.

26. Paragraph 38

- (a) Omit '1600 sq m'; substitute '1,600 square metres'.
- (b) Omit 'two 800 sq m'; substitute 'two 800-square metre'.
- (c) Omit 'and the 800 sq m'; substitute 'and the 800 square metres'.

27. Paragraph 39

Omit '2½'; substitute '2.5'.

28. Paragraph 43

After 'paragraphs 53 to 83', insert 'of this Ruling'.

29. Paragraph 52A

Omit 'Amongst'; substitute 'Among'.

30. Paragraph 53

After 'see paragraph 22', insert 'of this Ruling'.

31. Paragraph 54

- (a) Omit 'The term substantial renovations'; substitute 'The term 'substantial renovations''.
- (b) In the quote, omit "**substantial renovations**' of'; substitute '**substantial renovations** of'.

32. Paragraph 58

After the first instance of 'floors, roofs or staircases', omit the comma.

33. Paragraph 59

Omit the wording of the paragraph; substitute:

A building comprises a number of components, which can be termed either structural (including things such as the foundations, external walls, interior supporting walls, floors or roof) or non-structural (including things such as fixtures, fittings, plumbing, mechanical, fire systems, electrical, lifts or air conditioning).

34. Paragraph 62

After 'is not satisfied', insert a comma.

35. Paragraph 63

After 'Under this heading', insert a comma.

36. Paragraph 64

- (a) Omit 'entirety, that is'; substitute 'entirety – that is,'.
- (b) After 'For renovations to be substantial', insert a comma.

37. Paragraph 65

Omit '4 bedroom'; substitute '4-bedroom'.

38. Paragraph 68

In footnote 23, after 'paragraph 58', insert 'of this Ruling'.

39. Paragraph 72

After 'building is removed or replaced', insert a comma.

40. Paragraph 74

- (a) Omit 'eg'; substitute 'for example,'.
- (b) Omit 'kitchen cupboards, bathroom fixtures, etc'; substitute 'items such as kitchen cupboards or bathroom fixtures'.

41. Paragraph 75

- (a) Omit 'at paragraphs 104 to 114'; substitute '(at paragraphs 104 to 114)'.
- (b) Omit 'at paragraphs 124 to 130'; substitute '(at paragraphs 124 to 130)'.
- (c) After 'Example 8', insert 'of this Ruling'.

42. Paragraph 78

After 'paragraphs 109 to 110', insert 'of this Ruling'.

43. Paragraph 81

After 'paragraphs 128 to 130', insert 'of this Ruling'.

44. Paragraph 82

Omit '5 year rule'; substitute '5-year rule'.

45. Paragraph 84

After 'paragraph 40-75(1)(c)', insert a comma.

46. Paragraph 89

In the heading, omit '**5 year rule**'; substitute '**5-year rule**'.

47. Paragraph 90

- (a) After the first instance of 'at least 5 years', insert a comma.
- (b) Omit 'i.e.'; substitute 'that is,'.
- (c) After 'paragraphs 124 to 127', insert 'of this Ruling'.

48. Paragraph 91

- (a) Omit 'We consider the'; substitute 'The'.
- (b) After 'must be a continuous period.', insert new footnote 26A:

^{26A} *Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation* [2022] AATA 4436 at [49].

49. Paragraph 92

- (a) Omit the wording of the paragraph; substitute:

However, a continuous period would not include periods when the premises are used for a private purpose, or left vacant with no attempt to lease, hire or licence. See Example 9 at paragraphs 128 to 130 of this Ruling. Nor would a continuous period include periods during which premises are used to make GST-free supplies^{26B} or periods when the premises are held for sale or marketed for sale. See Example 8 at paragraphs 124 to 127 of this Ruling.

- (b) After 'GST-free supplies', insert new footnote 26B:

^{26B} For example, under section 38-250.

50. Paragraph 95

After 'paragraphs 136 to 140', insert 'of this Ruling'.

51. Paragraph 100

Omit '*i.e.*'; substitute '*that is,*'.

52. Paragraph 103

Omit '*5 year rule*'; substitute '*5-year rule*'.

53. Paragraph 104

Omit '*2 storey*'; substitute '*2-storey*'.

54. Paragraph 106

After '*is significant*', insert a comma.

55. Paragraph 108

After '*paragraph 107*', insert '*of this Ruling*'.

56. Paragraph 110

After '*all the rooms*', insert a comma.

57. Paragraph 112

After '*upstairs extension*', insert a comma.

58. Paragraph 114

After '*renovated house*', insert a comma.

59. Paragraph 117

Omit ‘*As part of this process a new kitchen, bathroom etc may be installed.*’; substitute ‘*As part of this process, a new kitchen and bathroom may be installed.*’.

60. Paragraphs 119 and 123

Omit ‘*i.e.*’; substitute ‘*that is,*’.

61. Paragraph 125

Omit the last sentence; substitute ‘*Michael puts the weekender up for sale in June 2007 and sells it in December 2007.*’.

62. Paragraph 127

After ‘*last substantially renovated*’, insert new footnote 29A:

^{29A} That is, from March 2001 to June 2007. The continuous period ended when the premises were first marketed for sale in June 2007.

63. Paragraph 129

Omit the table; substitute:

Table 1: Stages of renovation

Period of time	Renovations
September to November 2001	<ul style="list-style-type: none"> • replacement of kitchen (including laying of new floor covering); • existing bathroom removed other than the framework and a new bathroom installed (including new toilet, bath, vanity, shower, tap fittings and tiling)
February 2002	<ul style="list-style-type: none"> • carpet removed, floorboards sanded and polished, the house rewired, all light fittings replaced; • existing verandah extended by partly demolishing and rebuilding and enclosing it; • modification of the roofline
March to June 2002	<ul style="list-style-type: none"> • exterior brickwork rendered; • roof replaced; • all windows and doors (interior and exterior) replaced; • plaster on the walls and ceilings in the lounge room, hallway and all the bedrooms replaced with gyprock; • house repainted

64. Paragraph 131

(a) Omit ‘*run down two-storey 19th century*’; substitute ‘*run-down two-storey 19th-century*’.

(b) Omit both instances of ‘*façade*’; substitute ‘*facade*’.

(c) Omit '*three-story*'; substitute '*three-storey*'.

65. Paragraph 133

In the heading, omit '**5 year rule**'; substitute '**5-year rule**'.

66. Paragraph 136

Omit the third sentence; substitute '*In January 2000, Jonathon decides to sell the property and, to maximise his return, he builds one residential chalet on the property.*'.

67. Paragraph 137

After '*the chalet*', insert a comma.

68. Paragraph 138

After '*(as part of his overall sale)*', insert a comma.

69. Paragraph 142

- (a) Omit 'Commercial residential premises means'; substitute "Commercial residential premises' means".
- (b) In the quote, after each of semi-colons in (a) to (da), insert 'or'.

70. Paragraph 143

Omit 'Long-term lease means'; substitute "Long-term lease' means".

71. Paragraph 144

Omit 'Real property includes'; substitute "Real property' includes".

72. Paragraph 145

Omit the wording of the paragraph; substitute:

'Residential premises' means:

land or a building that:

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

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

73. Paragraph 146

Omit 'Substantial renovations of a building'; substitute "Substantial renovations' of a building'.

74. Paragraph 147

Omit the wording of the paragraph; substitute:

'New residential premises' is defined in section 4-75 of the GST Act.³¹

Meaning of new residential premises

- (1) Residential premises are **new residential premises** if they:
- (a) have not previously been sold as residential premises (other than commercial residential premises) and have not previously been the subject of a long-term lease; or
 - (b) have been created through substantial renovations of a building; or
 - (c) have been built, or contain a building that has been built, to replace demolished premises on the same land.
- ...
- (2) However, the premises are not **new residential premises** if, for the period of at least 5 years since:
- (a) if paragraph (1)(a) applies (and neither paragraph (1)(b) nor paragraph (1)(c) applies) – the premises first became residential premises; or
 - (b) if paragraph (1)(b) applies – the premises were last substantially renovated; or
 - (c) if paragraph (1)(c) applies – the premises were last built;
- the premises have only been used for making supplies that are input taxed because of paragraph 40-35(1)(a).
- ...
- (3) To avoid doubt, if the residential premises are new residential premises because of paragraph (1)(b) or (c), the new residential premises include land of which the new residential premises are a part.

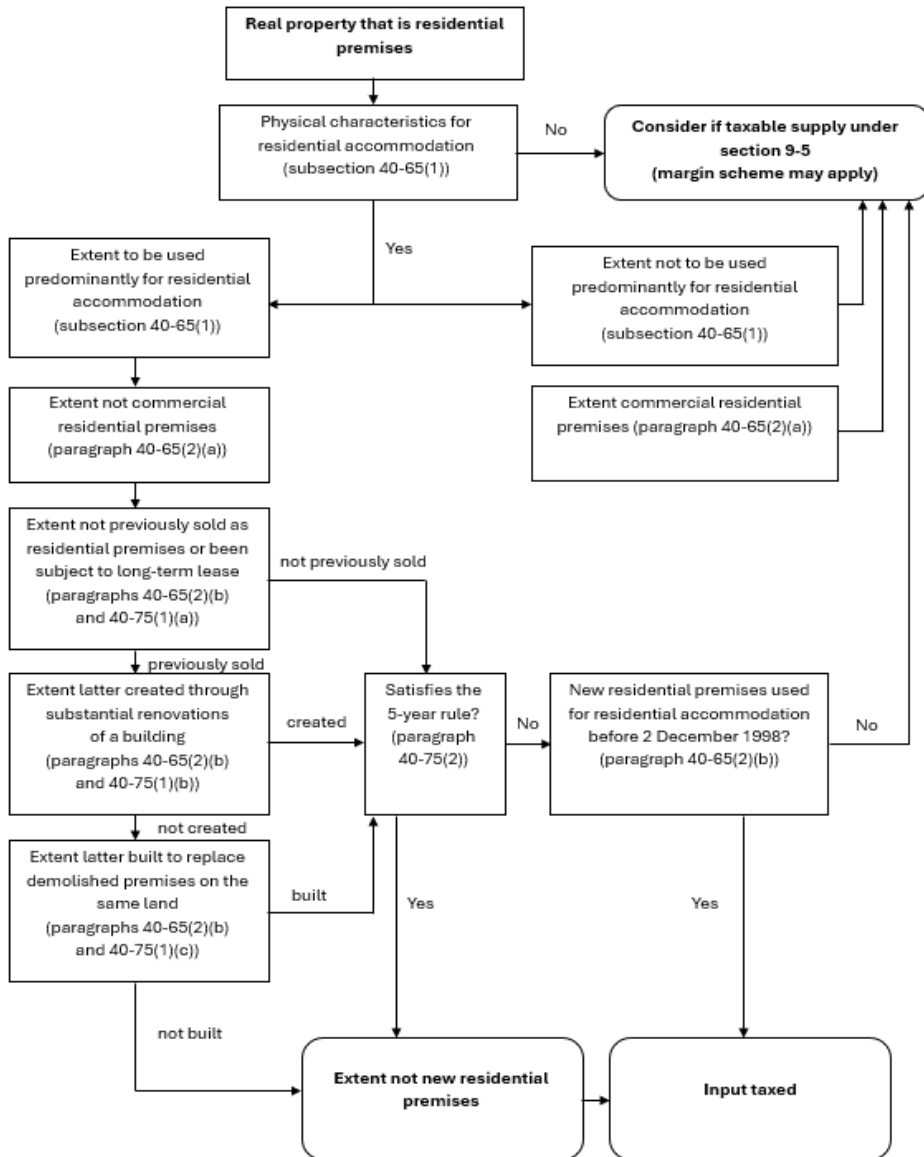
75. Paragraph 148

- (a) Omit the paragraph, including heading.
- (b) Omit following heading 'Appendix 1'.
- (c) After the paragraph, insert new paragraph 149, including heading and flowchart.

Appendix

This flowchart is a general guide only and should be used in conjunction with the relevant paragraphs of this Ruling.

Diagram 1: Treatment of the sale of residential premises in the course or furtherance of an enterprise



This Addendum applies both before and after its date of issue.

Commissioner of Taxation
 18 March 2026

ATO references

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Goods and services tax ~~ Property ~~ Premises ~~ New residential premises

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