GSTR 2012/6 - Goods and services tax: commercial residential premises

This cover sheet is provided for information only. It does not form part of *GSTR 2012/6 - Goods and services tax: commercial residential premises*

There is a Compendium for this document: **GSTR 2012/6EC** .

From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

This document has changed over time. This is a consolidated version of the ruling which was published on *20 December 2013*

Goods and Services Tax Ruling

Goods and services tax: commercial residential premises

Contents Para

LEGALLY BINDING SECTION:

What this Ruling is about **1**

Ruling **6**

Date of effect **123**

NOT LEGALLY BINDING SECTION:

Appendix 1:

Explanation **134**

Appendix 2:

Detailed contents list **248**

This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling considers how section 9-5, Subdivision 40-B, and Subdivision 40-C of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) apply to supplies of commercial residential premises and supplies of accommodation in commercial residential premises.

2. The Ruling does not consider when premises are residential premises for the purposes of the GST Act.[1]

3. Unless otherwise stated in the examples in this Ruling, it is assumed that supplies and acquisitions made by the entities mentioned satisfy all of the necessary requirements in section 9-5 of the GST Act for taxable supplies and section 11-5 for creditable acquisitions respectively. It is also assumed that a sale of residential premises is not a sale of new residential premises unless otherwise stated. Nor is any reference to a lease of premises a reference to a long-term lease unless otherwise stated.

[1] The Commissioner's views on the application of Subdivision 40-B and 40-C to supplies of residential premises are set out in Goods and Services Tax Ruling GSTR 2012/5 *Goods and services tax: residential premises*.

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

5. A general introduction to the GST legislation affecting commercial residential premises can be found in the Background in Part A of Appendix 1 (paragraphs 135 to 139 of this Ruling).

Ruling

Commercial residential premises

6. The definition of 'commercial residential premises' in section 195-1 (the definition) includes 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, or are to be occupied, by ships used as residences;

(e) a caravan park or a camping ground; or

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

7. 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.

8. A supply by way of sale or lease of commercial residential premises is a taxable supply. A supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises is also a taxable supply.[2]

[2] Taxpayers that supply long-term accommodation provided in commercial residential premises to individuals for the purposes of Division 87 may be able to choose to treat the supplies as input taxed supplies under either paragraph 40-35(1)(b) or subsection 40-35(1A). The Commissioner's views on the operation of paragraph 40-35(1)(b), subsection 40-35(1A) and Division 87 are set out in Goods and Services Tax Ruling GSTR 2012/7 *Goods and services tax: long-term accommodation in commercial residential premises*.

Hotel, motel, inn, hostel or boarding house or similar premises

Ordinary meanings

9. The terms in paragraph (a) of the definition are not defined within the GST Act and therefore take their ordinary meanings in context.

10. Objective factors that are relevant to characterising premises as falling within either paragraph (a) or (f) of the definition include the overall physical character of the premises and how the premises are operated. Where these objective factors do not give a clear characterisation, the following may also be considered:

- contractual documentation that provides evidence of current or future use, and
- government zoning and planning permissions.

Characteristics of operating hotels, motels, inns, hostels, boarding houses or similar premises

11. The tests to be applied are whether the premises are a hotel, motel, inn, hostel or boarding house for the purposes of paragraph (a), or whether the premises are similar to these types of premises, in the sense that they have a sufficient likeness or resemblance to any of these types of establishments for the purposes of paragraph (f). These tests necessarily raise questions of fact involving matters of impression and degree.

12. Common characteristics of operating hotels, motels, inns, hostels and boarding houses that are relevant, though not necessarily determinative, to characterising premises as commercial residential premises are:

- Commercial intention

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

- Multiple occupancy

  The premises have the capacity to provide accommodation to multiple, unrelated guests or residents at once in separate rooms, or in a dormitory.

- Holding out to the public

  The premises offer accommodation to the public or a segment of the public.

- Accommodation is the main purpose

  Providing accommodation is the main purpose of the premises.[3]

- Central management

  The premises have central management to accept reservations, allocate rooms, receive payments and perform or arrange services. This can be provided through facilities on-site or off-site.

- Management offers accommodation in its own right.

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

- Provision of, or arrangement for, services

  Management provides guests and residents with some services and facilities, or arranges for third parties to provide them.

- Occupants have status as guests

  Predominantly, the occupants are travellers who have their principal place of residence elsewhere. The occupants do not usually enjoy an exclusive right to occupy any particular part of the premises in the same way as a tenant.

Features of hotels, motels and inns

13. A motel is a particular type of hotel that primarily caters to the needs of motorists seeking roadside accommodation. An inn is a small hotel at which board (meals) and lodging are provided to travellers. Subject to those qualifications, the following features of hotels are equally relevant to motels and inns.

14. Hotels provide accommodation for a commercial purpose. Non-profit entities can also operate commercial residential premises. For example, various non-profit organisations operate hotels in a business-like manner.

15. Hotels have the capacity to supply accommodation for multiple occupancies.

16. Hotels usually offer meals to guests and they usually have a kitchen where meals are prepared for guests. The premises usually include a restaurant or dining room for guests. A motel does not necessarily have a dining room, but guests of the motel may still be provided meals.

[3] The main purpose of a hotel may include serving food and beverages as well as providing accommodation.

17. The guest rooms in a hotel are invariably furnished, and always include a bed, and some living area, and usually an adjoining bathroom. In some cases, hotel rooms may also have a kitchenette for self-catering.

18. Linen and towels are usually supplied. The rooms are usually cleaned and serviced by staff on a daily basis, with the costs of these services being included in the tariff.

19. Predominantly, the guests of hotels are travellers who ordinarily have their principal place of residence elsewhere, and who need or desire accommodation while away for business or pleasure. However, this feature may not be evident in hotels, sometimes referred to as residential or private hotels, that provide accommodation to long-term residents for whom the premises are a permanent place of residence.

20. Guests of hotels do not usually enjoy an exclusive right to occupy any particular part of the premises in the same way as a tenant to whom a house or apartment is let. Nor does a guest of a hotel usually let a room for a term. The guest is usually charged at a daily rate multiplied by the number of days of occupancy. However, it is not essential that all guests in a hotel stay for a short period. This feature may not be evident in hotels that provide accommodation to long-term residents.

21. Hotels usually have a reception desk to handle the requirements of both management and guests, particularly when guests check in or check out of the establishment. Hotels may also offer concierge services either at the reception desk or at a separate concierge's desk.

22. Hotels do not normally provide shared accommodation to guests in the sense of having a number of unrelated guests sharing a kitchen and living facilities.

23. A hotel is centrally managed by the operator, typically having at least one person present, or offsite but readily accessible, to manage the accommodation and arrange or provide services.

24. Accommodation in a hotel is supplied by the operator of the hotel in its own right and not in the capacity of agent for a third party. The arrangement between the parties will reveal whether there is an agent-principal relationship.

25. When determining whether premises are, or are similar to, a hotel, motel or inn, it is necessary to consider the premises in its entirety. It is not sufficient to only consider the features of part of the premises, such as an individual room, in which accommodation is provided.

Features of hostels

26. The term 'hostel' includes premises that can be described as a hostel, a hotel or inn. The features of hotels and inns identified at paragraphs 13 to 25 of this Ruling are relevant to these types of premises.

27. The term 'hostel' also includes a supervised place of accommodation usually supplying board and lodging provided at a comparatively low cost.

28. The physical characteristics of a hostel, or premises similar to a hostel, reflect that the premises are designed to supply accommodation at a comparatively low cost to the occupants. Physical characteristics may include a commercial kitchen where meals are prepared, a communal area suitable for a dining area for occupants, and a communal laundry.

29. Hostels are typically centrally managed by an on-site manager who manages the accommodation and arranges or provides services. The feature that a hostel, or premises similar to a hostel, be a supervised place of accommodation can be evident where occupants can raise queries and concerns pertaining to the management of the premises with an on-site manager.

30. Hostels provide accommodation for a commercial purpose. Non-profit entities can also operate commercial residential premises. For example, various non-profit organisations operate hostels in a business-like manner.

31. Hostels have the capacity to supply accommodation for multiple occupancies.

32. Accommodation in hostels may be provided either in a dormitory environment or in separate bedrooms.

33. Accommodation may be supplied within a hostel to occupants as the occupant's principal place of residence. It is not necessary for accommodation in the premises to be limited to guests who need or desire accommodation while away for business or pleasure.

34. The operator of the hostel supplies the accommodation in its own right and not in the capacity of agent for a third party. The arrangement between the parties will reveal whether there is an agent-principal relationship.

35. Occupants of a hostel may be provided meals by the operator of the premises. However, the provision of meals is not an essential feature of a hostel.

Features of boarding houses

36. A boarding house is a dwelling at which board and lodging are provided to guests or residents.

37. A boarding house provides accommodation for a commercial purpose. Non-profit entities can also operate commercial residential premises. For example, various non-profit organisations operate boarding houses in a business-like manner.

38. A boarding house has the capacity to supply accommodation for multiple occupancies.

39. While the term 'boarding house' indicates that the premises ordinarily consist of a single dwelling, premises are not precluded from being a boarding house where the premises consists of a building with an additional stand alone structure in which board (meals), or lodging, or both, is provided. However, premises are not a boarding house where the premises consist of a central building used as a communal dining/meeting area with a number of independent living units.

40. A boarding house may provide accommodation to occupants as the occupant's principal place of residence. It is not necessary for accommodation in the premises to be limited to guests who need or desire accommodation while away for business or pleasure.

Features that indicate premises that are not a hotel, motel, inn, hostel, boarding house or similar premises

41. Ultimately, whether premises are commercial residential premises is a matter of overall impression involving the weighing up of all relevant factors. While not an exhaustive list, factors that may indicate that premises are not a hotel, motel, inn, hostel, boarding house or similar premises include:

(a) the operator and occupant agree for accommodation to be supplied for a periodic term (which may be for a period of months or years at a time), such as in a residential lease;

(b) the operator and occupant document the condition of the premises under a written contract before the accommodation is initially supplied and when the occupant ceases to occupy premises;

(c) the operator has the right to impose a cleaning fee on the occupant when the occupant ceases to occupy the premises;

(d) the occupant is permitted, subject to the terms of the lease or licence, to alter the part of the premises occupied by the occupant, such as by attaching hanging devices on a wall;

(e) the occupant is permitted, subject to the terms of the lease or licence, to keep pets in the premises;

(f) the occupant must separately arrange and pay for the connection of a telephone, electricity, or gas service;

(g) the occupant is responsible for the cleaning and minor maintenance of the premises, such as changing light bulbs in their room;

(h) the premises are unfurnished; and

(i) the right to occupy the residential premises is supplied to the occupant in exchange for the occupant loaning an amount to the operator together with other fees. See Example 1 at paragraph 43 of this Ruling.

42. The absence of the features set out in paragraph 41 of this Ruling does not, of itself, mean that premises are, or are similar to, a hotel, motel, inn, hostel, or boarding house. Similarly, the presence of some of these factors does not necessarily mean that the premises are not commercial residential premises. As stated at paragraph 11 of this Ruling, determining whether premises fall within either paragraph (a) or (f) of the definition involves matters of impression and degree.

Example 1 – retirement village – not commercial residential premises

43. *Retreats Pty Ltd operates the Sparkling Bay retirement village. Each resident makes a loan to Retreats Pty Ltd of up to $500,000, and enters a 99 year lease agreement which sets out the various fees and charges that the resident pays periodically and on exit from the village.*

44. *Villas at Sparkling Bay are supplied unfurnished, and the residents are responsible for connecting telephone and internet services, cleaning and minor maintenance. With the agreement of the village manager, residents may make minor changes to their villa, such as by hanging pictures, or installing additional safety rails. Residents may also obtain permission to alter their private gardens, install services such as a satellite dish, or keep a small pet in their villa.*

45. *When a resident leaves the village, their villa is assessed, and Retreats Pty Ltd has the right under the lease to charge a cleaning fee or a renovation fee if the villa is showing signs of damage or excessive wear and tear.*

46. *Residents at Sparkling Bay have free access to village facilities, including communal gardens and leisure areas, a swimming pool and a gym. The village also has a restaurant serving meals and coffee every day, from which the residents can order evening meals to be delivered to their villas, all for additional charges. Residents can access other services, such as hairdressing and massage for an additional charge.*

47. *There is management on site at Sparkling Bay, and facilities for emergency nursing staff who are on call 24 hours a day.*

48. *Although Sparkling Bay has some characteristics in common with a hostel or boarding house, it also has several factors that weigh against its being sufficiently similar to these for it to be considered to be commercial residential premises. These include the lease itself, and the rights and responsibilities of the parties to the lease. The overall impression of Sparkling Bay is that it is not commercial residential premises. Retreats Pty Ltd's supplies of villas to residents are input taxed under paragraph 40-35(1)(a).*

Example 2 – bed and breakfast accommodation

49. *Bob operates a bed and breakfast accommodation business from his premises. The premises contain three bedrooms, communal dining and lounge areas and sealed car parking spaces for guests. The premises contain a room used as an office/reception as well as a kitchen that is suitable to prepare meals for guests. Bob lives on site. He advertises the accommodation in a tourist magazine. The rooms are not self-contained and are cleaned daily during stays and after each stay. The daily cleaning includes replacing towels and making beds. Breakfast is provided in the dining room.*

50. *Bob operates the premises which are aimed at providing accommodation to travellers (guests). The premises provide accommodation on a multiple occupancy basis. The guests do not have overall control over their rooms. Bob provides central management and services. The accommodation is supplied by Bob in his own right. Bob's bed and breakfast accommodation has the characteristics of commercial residential premises. The premises have sufficient features to be characterised as being similar to a hotel, motel, or inn. Alternatively, the premises may be characterised as sufficiently similar to a boarding house. Bob's supplies of accommodation are taxable supplies of accommodation in commercial residential premises.*

Example 3 – rooms in a house available for accommodation

51. *Harrison lives in a house that has the physical character of residential premises to be used predominantly for residential accommodation. The house contains two furnished bedrooms which Harrison advertises as being available for accommodation. Harrison provides linen but does not supply meals or other services to occupants.*

52. *The accommodation does not display sufficient features of a hotel, motel, inn, hostel or boarding house to be characterised as accommodation in commercial residential premises. In particular, Harrison's activities are not of a sufficiently commercial nature when considered in the context of supplying accommodation in two rooms within the house to be characterised as being similar to a hotel, motel, inn, hostel or boarding house. Harrison's supply of accommodation in his house is an input taxed supply of residential premises to be used predominantly for residential accommodation under paragraph 40-35(1)(a).*

Example 4 – farm stays

53. *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.*

54. *Accommodation is offered as bed and breakfast, 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.*

55. *The premises are being operated so as to provide accommodation on a commercial basis to travellers (guests) who are temporarily away from their usual homes. The premises provide accommodation to multiple occupants. The guests do not have an exclusive right to occupy any particular part of the premises during their stay. The on-site manager provides central management and services to guests. The accommodation is supplied by Delta Farm Holidays in its own right. Delta Farm Holidays' premises are sufficiently similar to a hotel, inn or boarding house to be characterised as commercial residential premises. The supplies of the farm stays are taxable supplies of accommodation in commercial residential premises.*

Example 5 – supply of the entire accommodation within a resort complex

56. *Resorts 'R' Us Pty Ltd operates an exclusive resort complex consisting of eight guest rooms, a restaurant and bar, a large function room, pool, gym and sauna. The resort caters for corporate and private functions. It is a condition for hiring the complex that the occupant hires all rooms within the complex. Guest rooms are cleaned daily. Staff are available on-site to manage and operate the resort complex.*

57. *The resort complex is being operated so as to provide accommodation on a commercial basis to travellers (guests) who are temporarily away from their usual homes. The guests do not have overall control of any part of the premises during their stay. The on-site staff manage the complex and provide services to guests. Even though all of the accommodation in the resort complex is supplied under a single supply, the premises are sufficiently similar to a hotel to be characterised as commercial residential premises. The supply of accommodation is a taxable supply of accommodation in commercial residential premises.*

Example 6 – supply of whole premises to be used for student accommodation

58. *King Accommodation constructs premises that have been designed to provide low cost accommodation to students (occupants). The premises predominantly consist of shared accommodation rooms configured so that occupants share kitchenettes and living facilities. The premises also include studio apartments which include self-contained kitchenettes and living facilities. The premises have a reception desk. The premises contain facilities for a coin operated laundry, and recreational areas. The premises do not contain a kitchen, restaurant or dining room for the preparation or service of meals to occupants. The premises have been built on land that is zoned for student accommodation by the local planning authority.*

59. *King Accommodation leases the premises to King Operator. Under the terms of the lease, King Operator will operate the premises by supplying accommodation to students. In supplying accommodation to students, King Operator will have on-site management to centrally manage the premises through which occupants can raise queries and concerns pertaining to the management of the premises.*

60. *In characterising the supply made by way of lease of the premises made by King Accommodation to King Operator, it is relevant to consider the physical characteristics of the premises. These demonstrate that the premises were designed to provide low cost accommodation to students. Further, the contractual documentation and the local planning authority permissions objectively show that King Operator will operate the premises to supply low-cost accommodation to students.*

61. *The physical characteristics together with the contractual documentation and planning permissions show that the premises are, or are at least sufficiently similar to, a hostel. King Accommodation therefore makes a taxable supply of commercial residential premises to King Operator.*

Example 7 – student accommodation

62. *Following on from Example 6, King Operator uses the premises to carry on an enterprise of supplying relatively low cost accommodation to students. The premises will not be used to provide accommodation to students in connection with an education institution that is not a school for the purposes of the definition of commercial residential premises.*[4]

63. *King Operator, through the on-site management staff, provides various services to occupants. Supervised accommodation is provided to occupants in the sense that occupants are able to raise complaints and concerns about the management and operation of the premises with the reception staff.*

64. *King Operator and the occupants enter into agreements, which set out the following conditions:*

- *the occupant pays a bond, and*
- *the occupants have quiet enjoyment of their rooms and associated living areas.*

65. *The operation of the premises and the premises' physical characteristics show that the premises are, or are sufficiently similar to, a hostel. While the occupants obtain certain rights under the agreements entered into with King Operator, including the right to have quiet enjoyment of their rooms and associated living areas, these rights are not inconsistent with the premises being characterised as, or similar to, a hostel.*

[4] In this example, King Operator is not a charitable institution, a trustee of a charitable fund, a gift-deductible entity or a government school.

66. *The supply of accommodation by King Operator to an occupant is a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises. The supply of accommodation to the occupant is therefore not an input taxed supply for the purposes of paragraph 40-35(1)(a) and is a taxable supply.*[5]

Example 8 – boarding house

67. *Sandy operates premises that have the capacity to provide board and lodging to 25 occupants. She markets the accommodation as a boarding house. The average stay of a resident is six months. Under state law, a landlord is required to enter into a rooming agreement. The rooming agreement requires Sandy to ensure that residents are given quiet enjoyment of their rooms. Each resident is provided with daily meals.*

68. *Despite the rooming agreements providing the residents with the right to quiet enjoyment of their rooms, the premises are a boarding house. The supply of accommodation by Sandy is a taxable supply of accommodation in commercial residential premises by the entity that owns or controls the commercial residential premises.*[6] *The supply of meals made by Sandy to the residents is a taxable supply.*

Example 9 – house provided to an employee as a residence

69. *XYZ Mining Co owns houses which it either leases or provides under licence to employees. The employees are responsible for the costs of utilities and grounds maintenance, while XYZ Mining Co is responsible for repairs and other maintenance. The houses do not have the features of a hotel, motel, inn, hostel or boarding house and are, therefore, not commercial residential premises. The supplies of the houses by way of lease or licence are input taxed supplies of residential premises to be used predominantly for residential accommodation under paragraph 40-35(1)(a).*

Example 10 – 'camp-style' accommodation for employees and contractors

70. *XYZ Mining Co establishes 'camp-style' accommodation consisting of 130 single person quarters at a mine site to accommodate employees and contractors of the mine.*

71. *Employees and contractors are provided accommodation in single person quarters when the workers are on site. The single person quarters consist of a separately keyed room with a bed, small wardrobe and separate bathroom.*

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[5] A supplier of long-term accommodation may choose not apply Division 87 which results in the supply being an input taxed under paragraph 40-35(1)(b). The Commissioner's views on the operation of paragraph 40-35(1)(b) and Division 87 are set out in GSTR 2012/7.

[6] Division 87 applies to a supply of long-term accommodation in commercial residential premises. See GSTR 2012/7.

72. *XYZ Mining Co has a central office located at the site for the management of room allocation, maintenance and servicing. Cleaners are employed by XYZ Mining Co 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 DVD players, and bar facilities.*

73. *Employees and contractors do not have the right to restrict management's access to their rooms 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, and prohibit smoking and the keeping of pets.*

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

75. *To determine whether the accommodation is accommodation in commercial residential premises, it is necessary to weigh-up the extent to which the premises reflect the features of a hotel, motel, inn, hostel, or boarding house. The premises are being operated so as to provide accommodation on a commercial basis to employees and contractors who are away from their usual homes. The premises are also operated on a multiple occupancy basis similar to a hotel. Employees and contractors do not obtain rights to restrict management's access to their rooms similar to a hotel. The range of services offered is typical of the level of services often provided in some hotels. The restrictions concerning fixtures and fittings being added to the single person quarters, and the prohibition on smoking and the keeping of pets, are similar to what may be expected in hotels. The premises are centrally managed by XYZ Mining Co and it offers the accommodation in its own right. However, XYZ Mining Co 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. There is nothing to suggest that the accommodation is designed as low cost accommodation in comparison to other types of comparable accommodation.*

76. *On balance, and 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 and the premises fall within paragraph (f) of the definition of commercial residential premises.*

77. *Therefore, XYZ Mining Co's supply of accommodation in the single person quarters to employees and contractors is a taxable supply of accommodation in commercial residential premises.*[7]

Example 11 – accommodation supplied to employees and contractors by third parties

78. *TPM Accommodation (TPM) built, owns and operates an accommodation village close to a major construction development. TPM aims to service the accommodation requirements of employees and contractors engaged at the construction development. 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 en suite. 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 do not obtain rights to restrict management's access to their rooms and therefore do not have overall control over their rooms.*

79. *TPM may contract with the construction company to provide accommodation to their employees or contractors. Alternatively, TPM may contract directly with employees or contractors. Tourists travelling through the area may also stay at the accommodation village.*

80. *TPM operates its business on a commercial basis and offers accommodation on a multiple occupancy basis. The premises are being operated so as to provide accommodation on a commercial basis to travellers (guests) who are temporarily away from their usual homes. The occupants do not have overall control over their rooms. While the premises are marketed particularly at employees and contractors working at the construction development, 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 those provided in hotels, motels and inns. TPM centrally manages the accommodation and provides the accommodation in its own right.*

[7] The Commissioner considers that a supply of accommodation provided to employees and contractors on an offshore mobile drilling unit in similar circumstances to that set out in Example 10 is also a supply of accommodation in commercial residential premises to the extent that the premises consist of residential premises.

81. *In weighing up the extent to which TPM's premises exhibit the features of hotels, motels, and inns 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 of accommodation provided in commercial residential premises.*

Example 12 – individual holiday apartments

82. *Gus owns an apartment in a block of strata titled holiday apartments. Gus's apartment is let out for short-term stays during the year through an on-site manager (who acts as Gus's agent). The on-site manager, who acts as agent in respect to several apartments, provides keys to guests, and cleans the rooms between stays, refreshing items such as linen, towels and the tea and coffee making facilities. The body corporate maintains common areas but does not otherwise involve itself with occupants.*

83. *The premises are being operated so as to provide accommodation on a commercial basis to travellers (guests) who are temporarily away from their usual homes. The premises are managed by the on-site manager who also provides some services to guests. The manager does not supply the accommodation in their own right, but as agent for Gus.*

84. *While the accommodation provided through Gus's apartment does display some characteristics of commercial residential premises, the supply of the accommodation through the single apartment is not sufficiently similar to a hotel, motel, inn, hostel or boarding house to be characterised as accommodation provided in commercial residential premises. The fact that the manager acts as agent in respect to several apartments in the block and offers accommodation in that capacity to several parties at once is not sufficient to characterise the supply Gus makes to the guests through the manager as accommodation provided in commercial residential premises.*

85. *Gus's supply of his apartment by lease, hire or licence is an input taxed supply of residential premises to be used predominantly for residential accommodation under paragraph 40-35(1)(a).*

Characterising premises that are not operating

86. Premises may be characterised under paragraphs (a) or (f) of the definition of commercial residential premises when they are not operating. Premises that are not being operated at the time of supply may be classified by their overall physical character, considered with other objective characteristics.

87. Evidence that may objectively indicate whether premises are a hotel, motel, inn, hostel or boarding house includes:

- the premises' physical characteristics,
- architectural plans and drawings,
- contractual documentation that provides evidence of how the premises will be used in the future, or
- council or other government planning and zoning restrictions and approvals and permissions.

These types of evidence may be relevant where the premises have been newly constructed and not yet operated. Where these indicators reveal that the premises have been specifically constructed for a different purpose (for example, to be used as a retirement village), or not designed as a hotel, motel, inn, hostel, boarding house or similar premises, the non-operating premises are not commercial residential premises.

88. The supply of a vacant house that was not designed, built or modified as a boarding house is not a supply of commercial residential premises. Therefore, in the absence of contractual documentation and council or other government planning and zoning restrictions or approvals or permissions that objectively evidence that the premises are to be operated as a boarding house, the supply of a vacant house is not the supply of commercial residential premises.

Example 13 – sale of a vacant motel

89. *Mallards Motel was designed and built 25 years ago as a motel. The building comprising the motel includes a residential unit designed to be used as a residence for the manager of the motel. The manager of the motel is granted overall control over the residential unit including the right to restrict entry. The manager's residential unit has not been used to supply accommodation to guests. The owner is retiring and sells the land and buildings used in her motel business to Real Good Renos. The contract of sale requires that Mallards ceases trading as a motel prior to settlement and that all the furniture be removed from the premises. The owner has not made any modifications to the motel during her period of ownership. Real Good Renos has obtained development approval to re-develop the motel buildings into strata-titled residential apartments.*

90. *The physical characteristics of the premises show that the premises are a motel and are therefore commercial residential premises. The commercial residential premises include the manager's unit as the unit physically forms part of the motel. The sale of the motel to Real Good Renos is therefore a taxable supply of commercial residential premises.*

Example 14 – supply of a hotel

91. *SG Developer Pty Ltd (SG Developer) constructs a building complex that consists of 120 apartment rooms, and commercial infrastructure consisting of a large reception area, management offices, a bar and restaurant and conference facilities on the ground floor, and underground parking. The building is specifically designed to operate as a hotel.*

92. *SG Developer leases the whole complex to AK Accommodation Pty Ltd (AK Accommodation) under a single lease. AK Accommodation operates an accommodation business.*

93. *The supply by way of lease of the building complex by SG Developer to AK Accommodation is a supply of commercial residential premises. This characterisation would not change if each of the 120 apartment rooms and the commercial infrastructure were separately titled provided that SG Developer supplies the rooms and commercial infrastructure under a single lease to AK Accommodation.*

94. *When AK Accommodation supplies accommodation in the apartments to guests, it is a taxable supply of accommodation in commercial residential premises provided to an individual by the entity that controls the commercial residential premises.*

Separately titled rooms, apartments, cottages or villas

95. In addition to living accommodation areas,[8] premises that are commercial residential premises include commercial infrastructure to support the commercial operation of the premises. This infrastructure may include (but is not limited to) reception areas, dining and bar areas, meeting/function areas, kitchens, laundry facilities, storage areas and car parks. This infrastructure is used to provide services to occupants. Premises described in paragraph (a) and similar premises under paragraph (f) of the definition contain some or all of these areas to some degree.

96. Separately titled rooms, apartments, or adjacent cottages or villas located on adjoining or abutting land can be combined with sufficient commercial infrastructure (as discussed in paragraph 95 of this Ruling) so that, as a whole, it can be operated similarly to a hotel, motel, inn, or hostel. Supplies of accommodation in premises operated in this way are supplies of accommodation in commercial residential premises.

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[8] 'Living accommodation' is discussed in GSTR 2012/5. Paragraph 14 of that Ruling states:

> Residential premises' are 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.

97. A single supply by sale or lease of premises consisting of rooms, apartments, cottages or villas as well as commercial infrastructure, regardless of whether they are separately titled, is a supply of commercial residential premises under paragraph (a) or (f) of the definition.

98. A supply by sale or lease of real property consisting of part of a building cannot be characterised by reference to another supply. For example, a hotel may be strata titled so that each hotel room and the commercial infrastructure are separate strata units. Where the strata units are individually supplied under multiple sale contracts or leases, each individual supply of a strata unit must be characterised without reference to other supplies of strata units. A supply by sale or lease of strata titled rooms, apartments, cottages or villas without sufficient commercial infrastructure referred to at paragraph 95 of this Ruling is an input taxed supply of residential premises to be used predominantly for residential accommodation regardless of whether the building complex, or any part of it, is being, or will be, operated as commercial residential premises.[9] This characterisation does not change where an entity makes multiple supplies of strata units by sale or lease to another entity that together constitute a hotel or other commercial residential premises.

Example 15 – apartments that are residential premises

99. *Nile Developers constructs a building consisting of 40 apartments and a reception area. The apartments are strata-titled. Nile Developers sell the 40 apartments to individuals. Each lot owner obtains an interest in the common property of the building including the reception area, lifts, corridors, access areas and grounds.*

100. *Under the body corporate by-laws, the body corporate engages a firm to provide the services of a security person in the reception area.*

101. *Nile Developers' sales of the 40 apartments are not supplies of commercial residential premises but are taxable supplies of new residential premises.*

Example 16 – supplies of residential premises and commercial residential premises

102. *Nile Developers also constructs a building complex that consists of 120 apartment rooms, and commercial infrastructure consisting of a large reception area, management offices, a bar and restaurant and conference facilities on the ground floor, and underground parking. The building is specifically designed to operate as a hotel. Upon completion Nile Developers strata titles the building.*

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

103. *Nile Developers enters into individual leases over 90 strata titled rooms and the commercial infrastructure with Cloud Pty Ltd (Cloud). Cloud combines the 90 rooms and commercial infrastructure to supply accommodation in commercial residential premises.*

104. *Nile Developers sells the remaining 30 rooms to individuals.*

105. *Supplies by way of lease of each of the 90 strata titled rooms by Nile Developers to Cloud are input taxed supplies of residential premises under subsection 40-35(1). The supply by way of lease of the commercial infrastructure is a taxable supply under section 9-5.*

106. *The sales of the 30 rooms by Nile Developers to the individuals are taxable supplies of new residential premises under section 9-5.*[10] *If an individual subsequently leases their room to Cloud, the supply by way of lease is an input taxed supply of residential premises to be used predominantly for residential accommodation.*

107. *Supplies of accommodation made by Cloud to guests are taxable supplies of accommodation provided to individuals by the operator of commercial residential premises under section 9-5.*

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

108. For the purposes of paragraph (da) of the definition, it is necessary to establish that one or more berths of a marina are occupied, or are to be occupied, by ships used as residences. 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 – paragraph (e) of the definition

109. The terms 'caravan park' and 'camping ground' are not defined in the GST Act and take their ordinary meanings in context.

110. Occupants of a caravan park or camping ground may stay in a caravan, a moveable home,[11] a permanent cabin or villa, or a tent provided by the operator on 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. Sites may be powered or un-powered. Accommodation in a caravan park or camping ground is held out to the public as accommodation for travellers although long-term accommodation may also be provided to occupants. Caravan parks and camping grounds are operated on a commercial basis or in a business-like manner.

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[10] The Commissioner's views on when a supply is a supply of new residential premises are set out 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?*

[11] In this Ruling, the term 'moveable home' means a structure designed to be used as a residence that can be relocated from site to site.

110A. 'Home parks' in which sites for moveable 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.

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

111. Under paragraph 40-35(1)(a), 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. The supply of accommodation is therefore a taxable supply where the requirements of section 9-5 are satisfied.

112. Paragraph 40-35(1)(a) refers to accommodation in commercial residential premises being provided to an individual as opposed to being supplied to the individual. Accordingly, the supply of accommodation in commercial residential premises 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 employee of a company, even though the supply of accommodation is made to the company itself.

113. A supply of a right to accommodation 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.

Example 17 – accommodation provided by the entity that owns or controls the commercial residential premises (tour package)

114. *Greater Hotels Pty Ltd (Greater Hotels) operates a hotel in Australia and sells rights to accommodation in its hotel to a tour provider, Cruisey Trips Pty Ltd (Cruisey Trips).*

115. *Cruisey Trips supplies the accommodation rights to Australian tourists as part of a holiday package. Greater Hotels subsequently provides the accommodation to the tourists.*

116. *The supply made by Greater Hotels to Cruisey 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, Greater Hotels).*

117. *The supply made by Cruisey 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, Greater Hotels).

118. In applying paragraph 40-35(1)(a), it is necessary to identify the premises that forms the commercial residential premises. Premises that are a hotel, motel, inn, hostel or boarding house, or similar premises, may include a unit or apartment that is occupied by a manager or caretaker. Where the unit or apartment physically forms part of the building that comprises the hotel, motel, inn, hostel, boarding house or similar premises, the unit or apartment forms part of the commercial residential premises. Accommodation provided to the manager or caretaker, being an individual, by the entity that owns or controls the commercial residential premises, is a taxable supply.

119. Where residential premises (being a unit or apartment) supplied by way of lease or licence to a manager or caretaker are physically separate to the buildings comprising the commercial residential premises, the supply of the unit or apartment is an input taxed supply under subsection 40-35(1).

Example 18 – accommodation supplied to a manager of a motel

120. *Stephanie is employed by Good Rest Pty Ltd to manage the Good Rest Motel. The Good Rest Motel consists of an office, a kitchen, a dining room, 15 motel rooms and a manager's apartment. The manager's apartment, which is physically connected to the building comprising the motel, contains two bedrooms, kitchen, bathroom and living area.*

121. *Good Rest Pty Ltd leases the manager's apartment to Stephanie.*

122. *The supply of accommodation made by Good Rest Pty Ltd to Stephanie is accommodation that is provided in commercial residential premises to an individual by the entity that owns or operates the commercial residential premises. It is therefore a taxable supply.*

Date of effect

123. This Ruling applies both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10). If, prior to the issue of the final Ruling, you relied on Goods and Services Tax Ruling GSTR 2000/20 *Goods and services tax: commercial residential premises*, you will be protected in respect of what you have done up to the date of issue of the final Ruling and the withdrawal of GSTR 2000/20.

Transitional arrangements

Employee accommodation

124. Paragraph 37 of Goods and Services Tax Ruling GSTR 2000/20 sets out the former view that accommodation provided by an employer in premises controlled by them or their associate is usually residential premises. However, paragraph 39 of GSTR 2000/20 modified this general position in providing that short-term accommodation provided by an employer in specific circumstances was not a supply of residential premises, nor accommodation provided in commercial residential premises. A supply of this type of accommodation was considered to be subject to the basic rules. This view is not replicated in this Ruling. Under the views set out in this Ruling, a supply of accommodation made to an employee or contractor may be an input taxed supply by way of lease, hire or licence of residential premises to be used predominantly for residential accommodation or a taxable supply of accommodation in commercial residential premises depending upon the circumstances.

125. The Commissioner has previously administered section 40-35 to treat a supply of accommodation made to an employee in circumstances other than those set out in paragraph 39 of GSTR 2000/20 as an input taxed supply of residential premises. Consistent with this treatment, a taxpayer may have entered into contractual commitments to supply the accommodation to an employee or contractor on the basis that it does not have a GST liability for the supply. The taxpayer may therefore be financially disadvantaged where the supply of accommodation is a taxable supply of accommodation in commercial residential premises consistent with the views now expressed in this Ruling. In recognition of this position, a taxpayer can treat a supply of accommodation made to an employee or contractor as an input taxed supply where:

- the taxpayer became contractually committed to make the supply of accommodation before the date of issue of this Ruling; and
- if the supply had been made or commenced before the date of issue of this Ruling, the taxpayer treated the supply as an input taxed supply based on the administrative practice prior to the date of issue of this Ruling; and
- the taxpayer does not attribute input tax credits for acquisitions, to the extent that the acquisitions relate to the supply, that would otherwise be attributable to periods during which the supplies are treated as input taxed under this paragraph; and
- the taxpayer has not had an opportunity under the terms of the contract to review the price of the supply to take account of the GST liability on the supply.

126. Further, a taxpayer may have entered into contractual commitments to make acquisitions for the development and construction of an accommodation site on the basis that the acquisitions are creditable acquisitions for the purposes of section 11-5 because the taxpayer intended to supply accommodation to an employee or contractor in circumstances outlined in paragraph 39 of GSTR 2000/20. However, where the supply of accommodation is an input taxed supply of residential premises to be used predominantly for residential accommodation and not a taxable supply of accommodation provided in commercial residential premises consistent with the views now expressed in this Ruling, the acquisitions are not creditable acquisitions. In recognition of this position, a taxpayer can treat acquisitions made for the development and construction of premises used to provide accommodation to employees or contractors as having been acquired for a creditable purpose under paragraph 11-5(a) where:

- the taxpayer became contractually committed to make the acquisitions before 22 June 2011 (being the issue date of Draft Goods and Services Tax Ruling GSTR 2011/D2 *Goods and services tax: residential premises and commercial residential premises*); and
- the acquisitions relate to the taxpayer making a supply of accommodation that would fall within the circumstances outlined in paragraph 39 of GSTR 2000/20.

Boarding houses and rooming houses

127. The Commissioner has previously issued advice to some members of the boarding house and rooming house industry that supplies of accommodation to residents that do not have the status of guests are input taxed supplies of residential premises under subsection 40-35(1). The Commissioner accepts that this has created a general administrative practice for the purposes of PS LA 2011/27.[12] Following the decision of *ECC Southbank Pty Ltd as trustee for Nest Southbank Unit Trust v. Commissioner of Taxation* (*ECC Southbank*),[13] the view expressed in this Ruling represents a change to the previous position.

[12] Law Administration Practice Statement PS LA 2011/27 *Matters the Commissioner considers when determining whether the Australian Taxation Office (ATO) view of the law should only be applied prospectively*
[13] [2012] FCA 795.

128. In recognition that an operator of a boarding house or rooming house may need time to change their systems to correctly account for GST as a result of the change in this position,[14] an operator of a boarding house or rooming house can choose under this transitional arrangement to treat a supply of accommodation made to an occupant as an input taxed supply where:

- the taxpayer became contractually committed to make the supply of accommodation before 1 April 2013; and
- if the supply had been made or commenced before the date of issue of this Ruling, the taxpayer had treated the supply as an input taxed supply based on the administrative practice prior to the date of issue of this Ruling; and
- the taxpayer does not attribute input tax credits for acquisitions, to the extent that the acquisitions relate to the supply, that would otherwise be attributable to periods during which the supplies are treated as input taxed under this paragraph.

Supplies of accommodation to managers and caretakers of commercial residential premises

129. The Commissioner accepts a general administrative practice for the purposes of PS LA 2011/27 has been created with respect to certain supplies of accommodation made by an operator of commercial residential premises to a manager or caretaker. Previously, a supply of accommodation made to a manager or caretaker of commercial residential premises provided in a unit or apartment that forms part of the physical building which contains the commercial residential premises was treated by the ATO as an input taxed supply by way of lease or licence of residential premises to be used predominantly for residential accommodation. Consistent with the approach taken by the Federal Court in *ECC Southbank,*[15] the views expressed at paragraphs 118 to 119 of this Ruling represent a change to this position.

[14] Taxpayers that supply long-term accommodation provided in commercial residential premises to individuals for the purposes of Division 87 may be able to choose to treat the supplies as input taxed supplies under paragraph 40-35(1)(b). The Commissioner's views on the operation of paragraph 40-35(1)(b), subsection 40-35(1A) and Division 87 are set out in GSTR 2012/7.

[15] [2012] FCA 795.

130. In recognition that an operator of commercial residential premises may need time to change their systems to correctly account for GST as a result of the change in this position,[16] a taxpayer can choose to treat a supply of accommodation made to a manager or caretaker in a unit or apartment that forms part of the physical building which contains the commercial residential premises as an input taxed supply where:

- the taxpayer became contractually committed to make the supply of accommodation before 1 April 2013; and
- if the supply had been made or commenced before the date of issue of this Ruling, the taxpayer had treated the supply as an input taxed supply based on the administrative practice prior to the date of issue of this Ruling; and
- the taxpayer does not attribute input tax credits for acquisitions, to the extent that the acquisitions relate to the supply, that would otherwise be attributable to periods during which the supplies are treated as input taxed under this paragraph; and
- the taxpayer has not had an opportunity under the terms of the contract to review the price of the supply to take account of the GST liability on the supply .

131. [Omitted.]

132. [Omitted.]

Other

133. Having regard to the wide range of issues considered within this Ruling, if taxpayers consider that they would suffer financial disadvantage from other unanticipated scenarios that arise as a result of the changes in view, they are invited to contact the Australian Taxation Office.

Commissioner of Taxation
19 December 2012

[16] Taxpayers that supply long-term accommodation provided in commercial residential premises to individuals for the purposes of Division 87 may be able to choose to treat the supplies as input taxed supplies under either paragraph 40-35(1)(b) or subsection 40-35(1A). The Commissioner's views on the operation of paragraph 40-35(1)(b), subsection 40-35(1A) and Division 87 are set out in GSTR 2012/7.

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.

134. The following explanation is divided into three parts:

- Part A provides relevant legislative context;
- Part B explains the meaning of 'commercial residential premises'; and
- Part C applies the principles to some common types of supplies.

Part A: Background

Legislative context

135. GST is payable on taxable supplies.[17] 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.

136. 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.

137. '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;

(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 a camping ground; or

[17] Subsection 7-1(1).

(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.

138. Supplies of commercial residential premises are subject to GST under the basic rules. The value of a supply of long-term accommodation in commercial residential premises is altered by the operation of Division 87.

139. The definition of commercial residential premises in section 195-1 has three functions 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 accommodation may be applied.

Part B: Commercial residential premises

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

Ordinary meanings

140. The terms in paragraph (a) of the definition are not defined within the GST Act and therefore take their ordinary meanings in context.

141. The following meanings sourced from the Macquarie Dictionary 5th Edition (Macquarie), the Oxford English Dictionary 2nd and 3rd editions (OED) and the Shorter Oxford English Dictionary 5th Edition (SOED) are relevant in interpreting paragraph (a) of the definition:[18]

Hotel

- a building in which accommodation and food, and alcoholic drinks are available. (Macquarie)
- building or establishment where travellers or tourists are provided with overnight accommodation, meals and other services. (OED)
- an establishment, esp. of a comfortable or luxurious kind, where paying visitors are provided with accommodation, meals and other services. (SOED)

[18] *ECC Southbank Pty Ltd as trustee for Nest Southbank Unit Trust & Anor v. Commissioner of Taxation* [2012] FCA 795 at [48].

Motel

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

Inn

- a small hotel that provides lodging, food, etc., for travellers and others. (Macquarie)
- 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. (SOED)

Hostel

- a supervised place of accommodation, usually supplying board and lodging, provided at a comparatively low cost, as one for students, nurses, etc. (Macquarie)
- a public house of lodging and entertainment for strangers and travellers; an inn, a hotel. (OED)
- a house of residence for students at a university or on a course, esp. at a non-residential college, or for some other special class of people. (SOED)

Boarding House

- a dwelling in which lodging is provided to paying residents who share common facilities such as a kitchen, laundry, living room, etc. (Macquarie)
- a dwelling, usually a private house, in which board and lodging are provided for payment. (Macquarie)
- a house offering board and lodging for paying guests. (SOED)

142. Objective factors that are relevant to characterising premises as falling within either paragraph (a) or (f) of the definition include the overall physical character of the premises, and how the premises are operated. Where these objective factors do not give a clear characterisation, the following may also be considered:

- contractual documentation that provides evidence of current use or future use, and
- government zoning and planning approvals and permissions.

Extended definition under paragraph (f) of the definition

143. 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 that have some or all of the characteristics of both residential premises and one of the classes of premises listed in paragraphs (a) to (e) of the definition.[19]

144. In this 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.

145. Premises that fall within paragraph (f) may be described as something other than those premises listed in paragraphs (a) to (e), for example, a 'resort' or 'serviced apartments'.[20] These premises are commercial residential premises if they are used in a particular way.

146. A supply by way of sale or lease of premises that display sufficient features to be characterised as commercial residential premises is a taxable supply where the requirements of section 9-5 are satisfied.

Characteristics of operating hotels, motels, inns, hostels, boarding houses or similar premises

147. In determining whether premises satisfied either paragraph (a) or (f) of the definition of commercial residential premises, Nicholas J stated in *ECC Southbank*:

> The test to be applied for the purpose of determining whether the Urbanest premises are commercial residential premises involves asking whether the Urbanest premises is a hotel, motel, inn, hostel or boarding house or whether it is similar to – in the sense that it has a likeness or resemblance to – any of those types of establishment. The application of this test necessarily raises questions of fact involving matters of impression and degree.[21]

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[19] *Marana Holdings Pty Ltd v. Commissioner of Taxation* (*Marana*) (2004) 141 FCR 299 at 311; 2004 ATC 5068 at 5078; (2004) 57 ATR 521 at 532-3.

[20] A reference to a 'serviced apartment' in this Ruling is to an apartment in a building complex in which all apartments provide 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.

[21] [2012] FCA 795 at [50]. See also comments made by the Tribunal in *Wynnum Holdings No 1 Pty Ltd & Anor v. Commissioner of Taxation* [2012] AATA 616; 2012 ATC 10-274 at [82].

148. 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 Horizon Shores Pty Ltd v. FC of T* (*Meridien Marinas*)[22] 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…

149. In the context of amendments made to section 40-35 and the definition of the term 'residential premises', paragraph 15.12 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006 discusses the GST treatment of accommodation in hotels, motels, inns, hostels and boarding houses, and similar premises that which exhibit similar characteristics. The paragraphs lists the following characteristics that may be exhibited by these premises:

- being run with a commercial intention;
- having multiple occupancy;
- holding out to the public;
- being used for the main purpose of accommodation;
- having central management;
- being offered by management in its own right;
- providing services; and
- where individuals have the status of guests.

150. These characteristics are displayed where:

- Commercial intention;

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

- Multiple occupancy

  The premises have the capacity to provide accommodation to multiple, unrelated guests or residents at once in separate rooms, or in a dormitory.

- Holding out to the public

  The premises offer accommodation to the public or a segment of the public.

[22] *Meridien Marinas Horizon Shores Pty Limited v. FC of T* [2009] FCA 1594 at [74].

- Accommodation is the main purpose

  Providing accommodation is the main purpose of the premises.[23]

- Central management

  The premises have central management to accept reservations, allocate rooms, receive payments and perform or arrange services. This can be provided through facilities on-site or off-site.

- Management offers accommodation in its own right

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

- Provision of, or arrangement for, services

  Management provides guests and residents with some services and facilities, or arranges for third parties to provide them.

- Occupants have status as guests

  Predominantly, occupants are travellers who have their principal place of residence elsewhere. The occupants do not usually enjoy an exclusive right to occupy any particular part of the premises in the same way as a tenant.

151. Nicholas J observed in *ECC Southbank* at [69] that it is useful to compare the attributes of premises to the characteristics specified in paragraph 15.12 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006 when characterising premises as falling within paragraph (a) or (f) of the definition of commercial residential premises. However, these characteristics do not provide a definitive list of factors to be considered when determining whether premises are commercial residential premises. This was noted by the Administrative Appeals Tribunal (Tribunal) in *Wynnum Holdings No 1 Pty Ltd & Anor v. Commissioner of Taxation* (*Wynnum Holdings*) where it was observed that the right outcome would not be achieved if it was concluded that the premises under consideration was commercial residential premises on the basis that it displayed seven of the eight listed characteristics.[24] The Tribunal made the further observation:

> …Perhaps what that demonstrates is how difficult it is to prescribe the factors that are relevant to the enquiry, when the enquiry is, as Nicholas J said in ECC Southbank, a question of 'impression' and 'degree'.

[23] The main purpose of a hotel may include serving food and beverages as well as providing accommodation.
[24] *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [81] to [82].

Features of hotels, motels and inns

152. A motel is a particular type of hotel that primarily caters to the needs of motorists seeking roadside accommodation.[25] In *Wynnum Holdings*, the Tribunal observed that the premises in question would not fall within any reasonable description of a motel where it had 10 car parking spaces for 40 accommodation units.[26]

153. An inn is a small hotel at which board (meals) and lodging are provided to travellers.[27]

154. Subject to the qualifications referred to in paragraphs 152 to 153 of this Ruling, the following features of hotels are equally relevant to features of motels and inns.

155. Hotels provide accommodation for a commercial purpose. Non-profit entities can also operate commercial residential premises. For example, various non-profit organisations operate hotels in a business-like manner.

156. Hotels have the capacity to supply accommodation for multiple occupancies. In *South Steyne Hotel Pty Ltd v. Federal Commissioner of Taxation (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.[28]

157. On appeal to the Full Federal Court, Emmett J noted in *South Steyne Hotel Pty Ltd v. Federal Commissioner of Taxation* (*South Steyne FFC*):[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.

[25] *ECC Southbank* at [2012] FCA 795 at [58].
[26] [2012] AATA 616; 2012 ATC 10-274 at [70].
[27] *ECC Southbank* at [2012] FCA 795 at 68 and *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [70].
[28] *South Steyne* [2009] FCA 13 at [44].
[29] *South Steyne Hotel Pty Ltd* v. *Federal Commissioner of Taxation* [2009] FCAFC 155.

158. Edmonds J also indicated agreement with Stone J's conclusion on the relevant issue 'generally for the reasons she has given'.[30] 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'.

159. Hotels usually offer meals to guests. They will usually have a kitchen where meals are prepared for guests. The premises will usually include a restaurant or dining room for guests.[31] A motel does not necessarily have a dining room. However, guests of the motel may still be provided meals.

160. The guest rooms in a hotel are invariably furnished, and always include a bed and some living space and usually an adjoining bathroom.[32] The rooms may also contain a television and kitchenette.[33]

161. Linen and towels are usually supplied. The rooms are usually cleaned and serviced by staff on a daily basis, with the costs of such services being included in the tariff.[34]

162. Predominantly, guests of hotels are travellers who have their principal place of residence elsewhere, and who need or desire accommodation while away for business or pleasure. However, this feature is not evident in hotels, sometimes referred to as private hotels, that provide accommodation to long-term residents for whom the premises is a permanent place of residence.[35]

163. Guests of hotels do not usually enjoy an exclusive right to occupy any particular part of the premises in the same way as does a tenant to whom a house or apartment is let. Nor does a guest of a hotel usually let a room for a term. The guest is usually charged for a room at a daily rate multiplied by the number of days of occupancy. However, it is not essential that all guests in a hotel stay for a short period; there are hotels that provide accommodation to long-term residents.[36]

164. Hotels usually have a reception desk to handle the requirements of both management and guests, particularly when guests check in or check out of the establishment. They may also offer concierge services either at the reception desk or at a separate concierge's desk.[37]

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[30] *South Steyne Hotel Pty Ltd* v. *Federal Commissioner of Taxation* [2009] FCAFC 155 at [85].
[31] *ECC Southbank* at [2012] FCA 795 at [52].
[32] *ECC Southbank* at [2012] FCA 795 at [53].
[33] *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [69].
[34] *ECC Southbank* at [2012] FCA 795 at [53].
[35] *ECC Southbank* at [2012] FCA 795 at [54] and [56].
[36] *ECC Southbank* at [2012] FCA 795 at [55] and [56].
[37] *ECC Southbank* at [2012] FCA 795 at [57].

165. Hotels do not normally provide shared accommodation to guests in the sense of having a number of unrelated guests sharing a kitchen and living facilities.[38]

166. A hotel is centrally managed by the operator, typically having at least one person present, or off-site but readily accessible, to manage the accommodation and to arrange or provide services.

167. Accommodation in a hotel is supplied by the operator of the hotel in its own right and not in the capacity of agent for a third party. The arrangement between the parties will reveal whether there is an agent-principal relationship. 'Agency' is discussed at paragraphs 223 to 227 of this Ruling.

168. When determining whether premises are, or are similar to, a hotel, motel or inn, it is necessary to consider the premises in its entirety. It is not sufficient to only consider the features of an individual room in which accommodation is provided. In *Wynnum Holdings,*[39] the Tribunal accepted that the premises being considered could not be described as a hotel, motel or inn when considered in its entirety, despite the fact the accommodation units located within the premises beared a resemblance to rooms of a kind commonly available in motels or hotels.

Features of hostels

169. The OED definition set out at paragraph 141 of this Ruling describes a hostel as a hotel or inn. The Tribunal in *Wynnum Holdings* observed that youth hostels provide one example of premises that may be regarded as very similar to hotels.[40] The features of hotels and inns identified at paragraphs 13 to 25 and 152 to 168 of this Ruling are relevant to these types of premises.

170. The term 'hostel' also extends to a supervised place of accommodation usually supplying board and lodging provided at a comparatively low cost.[41]

171. The physical characteristics of a hostel, or premises similar to a hostel, reflect that the premises are designed to supply accommodation to be provided at a comparatively low cost to the occupants.[42] Physical characteristics may include a commercial kitchen where meals are prepared, a communal area suitable for a dining area for occupants, and a communal laundry.[43]

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[38] *ECC Southbank* at [2012] FCA 795 at [60].
[39] *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [69] to [70].
[40] *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [75].
[41] See paragraph 141 of this Ruling. See also *ECC Southbank* at [2012] FCA 795 at 65. This definition was also considered by the Tribunal in *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at 72 although the Tribunal did not specifically refer to the requirement that the accommodation be provided at comparatively low cost.
[42] *ECC Southbank* at [2012] FCA 795 at [66].
[43] *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [72].

172. Hostels are typically centrally managed by an on-site manager who manages the accommodation and arranges or provides services. The feature that a hostel, or premises similar to a hostel, be a supervised place of accommodation can be evident where occupants can raise queries and concerns pertaining to the management of the premises with an on-site manager.[44]

173. While not ultimately finding, for the purposes of the definition, that the premises under consideration were, or were sufficiently similar to, a hostel, the Tribunal observed in *Wynnum Holdings* that a residential pensioner accommodation complex with an on-site manager could be regarded as a supervised place of accommodation.[45]

174. Hostels provide accommodation for a commercial purpose. Non-profit entities can also operate commercial residential premises. For example, various non-profit organisations operate hostels in a business-like manner.

175. Hostels have the capacity to supply accommodation for multiple occupancies.

176. Accommodation in hostels may be provided either in a dormitory environment or in separate bedrooms. In *ECC Southbank*, Nicholas J found that studio apartments providing accommodation that did not require the individual occupant to share living facilities formed part of the premises characterised as a hostel.[46]

177. Accommodation may be supplied within a hostel to occupants as the occupant's principal place of residence. It is not necessary for accommodation in the premises to be limited to guests who need or desire accommodation while away for business or pleasure. Nicholas J observed in *ECC Southbank*:

> …. However, it must also be recognised that the legislature has drawn a distinction between residential premises and commercial residential premises such that accommodation provided in commercial residential premises, even if of a long-term nature, is taxable if the entity that supplies the accommodation owns or controls the commercial residential premises in which such accommodation is provided. The fact that such accommodation (which might as in this case take the form of either a shared apartment or a self-contained apartment) is the principal place of residence of the individual concerned does not mean that the supply is not taxable. In such circumstances, however, the value of the supply may be substantially reduced for GST purposes: see Division 87.[47]

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[44] *ECC Southbank* at [2012] FCA 795 at [66].
[45] *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [72].
[46] *ECC Southbank* at [2012] FCA 795 at [66] to [67].
[47] *ECC Southbank* at [2012] FCA 795 at [71].

178. In *Wynnum Holdings,* the Tribunal also stated:

> …But it seems to me to be entirely unremarkable that hostels (and perhaps boarding houses) would be occupied by 'residents', at least to some extent.[48]

179. The operator of the hostel supplies the accommodation in its own right and not in the capacity as agent for a third party. The arrangement between the parties will reveal whether there is an agent-principal relationship.

180. Occupants of a hostel may be provided meals by the operator of the premises. However, the provision of meals is not an essential feature of a hostel.[49]

Features of boarding houses

181. A boarding house is a dwelling at which board (meals) and lodging are provided to guests or residents.[50]

182. A boarding house provides accommodation for a commercial purpose. Non-profit entities can also operate commercial residential premises. For example, various non-profit organisations operate boarding houses in a business-like manner.

183. A boarding house has the capacity to supply accommodation for multiple occupancies.

184. The meaning of the term 'boarding house' in the context of the definition of commercial residential premises was also considered in *Re Karmel & Co Pty Ltd (as trustee for Urbanski Property Trust) v. FC of T* ('*Karmel*').[51] 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. The Tribunal held that the garage premises were not a boarding house because the property owner was not required to provide meals to the occupants. The Tribunal cited with approval[52] the following passage from the judgment of Hope JA in *Roberts v. Waverley Municipal Council* (*Roberts*):

[48] *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [74].
[49] *ECC Southbank* [2012] FCA 795 at 67 and *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [72].
[50] *ECC Southbank* [2012] FCA 795 at [68] and *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [71].
[51] *Karmel* [2004] AATA 481.
[52] *Karmel* [2004] AATA 481 at [19].

> 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.[53]

185. While the term 'boarding house' indicates that the premises will ordinarily consist of a single dwelling, premises are not precluded from being a boarding house where the premises consists of a building with an additional stand alone structure in which board or lodging or both is provided. However, premises are not a boarding house where the premises consist of a central building used as a communal dining/meeting area with a number of independent living units. In considering a residential pensioner accommodation complex that comprised a number of buildings, the Tribunal stated in *Wynnum Holdings*:

> Nor would I regard the property as a 'boarding house' or as 'similar to' a boarding house. It cannot fairly be described as a 'dwelling', a concept from which it differs so significantly that it would not be apt to describe it as 'similar'.

186. Accommodation may be supplied within a boarding house to occupants as the occupant's principal place of residence. In discussing the meaning of the term 'boarding house', Nicholas J in *ECC Southbank* referred at [68] to board and lodging being provided to guests or residents. The reference to both guests and residents in this context supports the conclusion that a boarding house may be the occupant's principal place of residence. As set out in paragraph 178 of this Ruling, the Tribunal in *Wynnum Holdings* considered that it is possible for boarding houses to be occupied by residents.[54]

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[53] *Roberts* (1988) 14 NSWLR 423 at 430. *Karmel* and *Roberts* 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*. However, given the decision in *Wynnum Holdings*, 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.

[54] *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [74].

Features that indicate premises that are not a hotel, motel, inn, hostel, boarding house or similar premises

187. Ultimately, whether premises are commercial residential premises is a matter of overall impression involving the weighing up of all relevant factors. While not an exhaustive list, factors that may indicate that premises are not a hotel, motel, inn, hostel, boarding house or similar premises include:[55]

(a) the operator and occupant agree for accommodation to be supplied for periodic term (which may be for a period of months or years at a time), such as in a residential lease;

(b) the operator and occupant document the condition of the premises under a written contract before the accommodation is initially supplied and when the occupant ceases to occupy premises;

(c) the operator has the right to impose a cleaning fee on the occupant when the occupant ceases to occupy the premises;

(d) the occupant is permitted, subject to the terms of the lease or licence, to alter the part of the premises occupied by the occupant, such as by attaching hanging devices on a wall;

(e) the occupant is permitted, subject to the terms of the lease or licence, to keep pets in the premises;

(f) the occupant must separately arrange and pay for the connection of a telephone, electricity, or gas service;

(g) the occupant is responsible for the cleaning and minor maintenance of the premises, such as changing light bulbs in their room;

(h) the premises are unfurnished; and

(i) the right to occupy the residential premises is supplied to the occupant in exchange for the occupant loaning an amount to the operator together with other fees. See Example 1 at paragraph 43 of this Ruling.

188. The absence of the features set out in paragraph 187 of this Ruling does not, of itself, mean that premises are, or are similar to, a hotel, motel, inn, hostel, or boarding house. As stated at paragraph 11 of this Ruling, determining whether premises fall within either paragraph (a) or (f) of the definition involves matters of impression and degree.

[55] The features set out at paragraphs (a) to (f) were identified by the Tribunal in *Wynnum Holdings* [2012] AATA 616; 2012 ATC 10-274 at [76].

Characterising premises that are not operating

189. Premises may be characterised under paragraphs (a) or (f) of the definition of commercial residential premises even when they are not operating. Premises that are not being operated at the time of supply may be classified by their overall physical character, considered with other objective characteristics.

190. Evidence that may objectively indicate whether premises are a hotel, motel, inn, hostel or boarding house includes:

- the premises' physical characteristics,
- architectural plans and drawings,
- contractual documentation that provides evidence of how the premises will be used in the future, or
- council or other government planning and zoning restrictions and approvals and permissions.

These types of evidence may be relevant where the premises have been newly constructed and not yet operated. In *ECC Southbank*, for example, the premises were sub-leased by one entity to another entity that operated the premises as a hostel. In characterising the supply of the premises by way of sub-lease as a hostel, Nicholas J at [66] to [67] considered the manner in which the second entity operated the premises.[56]

191. Where indicators reveal that the premises have been specifically constructed for a different purpose (for example, to be used as a retirement village), or not specifically designed as a hotel, motel, inn, hostel, boarding house or similar premises, the non-operating premises are not commercial residential premises.

192. A supply of a vacant house that was not designed, built or modified as a boarding house is not a supply of commercial residential premises. Therefore, in the absence of contractual documentation and council or other government planning and zoning restrictions, approvals or permissions that objectively evidences that the premises are to be operated as a boarding house, the supply of a house is not a supply of commercial residential premises.

[56] *ECC Southbank* at [2012] FCA 795 at [66] to [67].

Separately titled rooms, apartments, cottages or villas

193. 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.[57] However, some things listed in the definition of commercial residential premises do not also fall within the definition of residential premises, such as ships referred to in paragraphs (c) and (d) of the definition.

194. The primary function of premises that fit within both definitions is to provide various types of living accommodation. In *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.[58]

195. As such, the living accommodation areas[59] of these commercial residential premises exhibit the fundamental characteristics of residential premises in providing shelter and basic living facilities.

196. In addition to living accommodation areas, premises that are commercial residential premises include commercial infrastructure to support the commercial operation of the premises. This infrastructure may include (but is not limited to) reception areas, dining and bar areas, meeting/function areas, kitchens, laundry facilities, storage areas and car parks. This infrastructure is used to provide services to occupants. Premises described in paragraph (a) and similar premises under paragraph (f) of the definition contain some or all of these areas to some degree.

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[57] *Marana* (2004) 141 FCR 299 at 310-311; 2004 ATC 5068 at 5077-5078; (2004) 57 ATR 521 at 532-533.
[58] *Meridien Marinas* [2009] FCA 1594 at [56].
[59] The reference to 'living accommodation' takes the same meaning as given by paragraphs 14 and 75 of GSTR 2012/5. Living accommodation does not require any degree of permanence of occupation. It includes lodging, sleeping or overnight accommodation.

197. This position is supported by the following observation made by Emmett J in the Full Federal Court decision of *South Steyne FFC*:[60]

> 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.

198. A sale or lease of premises that includes the living accommodation areas with the commercial infrastructure referred to in paragraphs 95 and 196 of this Ruling, regardless of whether they are separately titled, is a supply of commercial residential premises.

199. Separately titled rooms, apartments, or adjacent cottages or villas located on adjoining or abutting land (or living accommodation areas) can be combined with commercial infrastructure and operated similarly to a hotel, motel, inn, or hostel. Supplies of accommodation in premises operated in this way are supplies of accommodation in commercial residential premises.

200. A supply by sale or lease of real property consisting of part of a building cannot be characterised by reference to another supply. In considering the supply of 83 apartments under individual leases in the Full Federal Court decision of *South Steyne FFC*, Emmett J stated:[61]

> …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. It is not possible, as the appellants contend, to treat the supply of an individual apartment as aggregated with the supply of all of the other apartments.
>
> 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.

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[60] *South Steyne* [2009] FCAFC 155 at [26]. Finn J at paragraph 1 agreed with the reasoning of Emmett J.

[61] *South Steyne* [2009] FCAFC 155 at [24]. Finn J at paragraph 1 agreed with the reasoning of Emmett J. Edmonds J at {85} agreed with the reasoning of Stone J at first instance that the lease of each apartment was the subject of a separate supply made under an individual lease agreement and was not a supply of a hotel, motel, inn, hostel or boarding house. Nor was it a supply of anything similar to a hotel, motel, inn, hostel or boarding house. See also paragraph 15.16 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006.

201. A supply by sale or lease of real property consisting of part of a building cannot be characterised by reference to another supply. For example, a hotel may be strata titled so that each hotel room and the commercial infrastructure are separate strata units. Where the strata units are individually supplied under multiple sale contracts or leases, each individual supply of a strata unit must be characterised without reference to other supplies of strata units. A supply by sale or lease of strata titled rooms, apartments, cottages or villas without sufficient commercial infrastructure referred to at paragraphs 95 and 196 of this Ruling is an input taxed supply of residential premises to be used predominantly for residential accommodation regardless of whether the building complex, or any part of it, is being, or will be, operated as commercial residential premises.[62] This characterisation does not change where an entity makes multiple supplies of strata units by sale or lease to another entity that together constitute a hotel or other commercial residential premises.

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

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

203. This does not necessarily mean that supplies of accommodation to 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.

204. Other supplies of accommodation in boarding facilities that are 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.

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

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

205. 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.[63] 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.[64]

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

206. A supply of accommodation on board a ship that is mainly used for entertainment[65] or transport is a supply of accommodation in commercial residential premises. 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.[66]

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

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

208. A marina is a place that provides berths for ships to dock and other services. 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.

209. 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.[67] Vessels like a dinghy or a ski boat are not capable of use as a residence.

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[63] Section 195-1.
[64] The Commissioner's views on the application of Division 87 are set out in GSTR 2012/7.
[65] '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.
[66] The Commissioner's views on the application of Division 87 are set out in GSTR 2012/7.
[67] See the discussion of the meaning of 'residence' in *Marana* (2004) 141 FCR 299 at 304-5; 2004 ATC 5068 at 5072-5073, (2004) 57 ATR 521 at 526-527.

210. 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.

211. 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.[68]

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

212. The terms 'caravan park' and 'camping ground' are not defined in the GST Act and take their ordinary meanings in context. The *Macquarie Dictionary* (*Macquarie*), the *Shorter Oxford English Dictionary* (*Shorter Oxford*) and the *Oxford English Dictionary* (*OED*) provide the following relevant 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*)

213. Occupants of a caravan park or camping ground may stay in a caravan, a moveable home,[69] a permanent cabin or villa, or a tent provided by the operator on 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. Sites may be powered or un-powered. Accommodation in a caravan park or camping ground is held out to the public for travellers' accommodation although long-term accommodation may also be provided to occupants. Caravan parks and camping grounds are operated on a commercial basis or in a business-like manner.

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[68] The Commissioner's views on the application of Division 87 are set out in GSTR 2012/7.

[69] In this Ruling, the term 'moveable home' means a structure designed to be used as a residence that can be relocated between sites.

214. Supplies of sites within a caravan park or camping ground are taxable under the basic rules. However, supplies of long term accommodation may be taxed at a concessionary rate or input taxed.[70]

214A. 'Home parks' in which sites for moveable homes are rented and the homes themselves either rented or occupied by their owners are commercial residential premises under paragraph (f), as they are similar to caravan parks. Similarities include the leasing of sites to residents separately to any building located on the site, and the provision of communal facilities to residents. Supplies of long-term accommodation in a home park may be taxed at a concessionary rate or input taxed.[70A]

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

215. 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.[71] For example, where a university residential college is operated in such a manner that it falls within paragraph (a) or paragraph (f) of the definition of commercial residential premises, the accommodation is 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).

216. The exclusion may not apply to all supplies of accommodation that a residential college makes. For example, a college may 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 they are supplies of long-term accommodation under Division 87 and the operator chooses under subsection 87-25(1) not to apply Division 87 thereby making the supplies input taxed under paragraph 40-35(1)(b).[72]

217. For further information on this exclusion to the definition, see paragraphs 150 to 151 of Goods and Services Tax Ruling GSTR 2001/1 *Goods and services tax: supplies that are GST-free for tertiary education courses*.

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[70] The Commissioner's views on the application of Division 87 are set out in GSTR 2012/7.
[70A] The Commissioner's views on the application of Division 87 are set out in GSTR 2012/7.
[71] Refer to the definition of 'school' in section 195-1.
[72] The Commissioner's views on the application of Division 87 are set out in GSTR 2012/7.

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

218. Under paragraph 40-35(1)(a), 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.[73] The supply of accommodation is therefore a taxable supply where the requirements of section 9-5 are satisfied.

219. Paragraph 40-35(1)(a) refers to accommodation in commercial residential premises being provided to an individual as opposed to being supplied to the individual.[74] Accordingly, the supply of accommodation in commercial residential premises 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 company itself.[75]

220. A supply of a right to accommodation[76] 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 17 at paragraphs 114 to 117 of this Ruling.

221. In applying paragraph 40-35(1)(a), it is necessary to identify the premises that forms the commercial residential premises. Premises that are a hotel, motel, inn, hostel or boarding house, or similar premises, may include a unit or apartment that is occupied by a manager or caretaker. Where the unit or apartment physically forms part of the building that comprises the hotel, motel, inn, hostel, boarding house or similar premises, the unit or apartment forms part of the commercial residential premises. Accommodation provided to the manager or caretaker, being an individual, by the entity that owns or controls the commercial residential premises, is a taxable supply.

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[73] Nicholas J considered the operation of this provision in *ECC Southbank* [2012] FCA 795 at [72].

[74] 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* [2009] FCA 1594 at [88].

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

[76] *Saga Holidays Ltd v. FC of T* [2005] FCA 1892 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?*

222. Where residential premises (being a unit or apartment) supplied by way of lease or licence to a manager or caretaker are physically separate to the buildings comprising the commercial residential premises, the supply of the unit or apartment is an input taxed supply under subsection 40-35(1).

Supplies made by an agent or principal

223. The exception in paragraph 40-35(1)(a) applies to supplies of accommodation in commercial residential premises where the entity that owns or controls the commercial residential premises provides the accommodation to an individual. Different outcomes arise depending upon whether the entity making the supply of accommodation has a sufficient interest in the premises to be characterised as making a supply of accommodation in commercial residential premises.

224. For example, an owner of a single apartment in a building complex will not be able to supply accommodation in commercial residential premises. This characterisation does not change if the owner engages the services of an agent to make the supply of accommodation, regardless of whether the agent has entered into similar agreements with other owners of individual apartments within the apartment complex so as to operate as an on-site agent. However, an entity that leases apartments in a building complex together with commercial infrastructure will be able to operate the premises so as to supply accommodation in commercial residential premises. It is therefore necessary to establish whether an entity is acting in the capacity of an agent or principal to establish the correct treatment of the supply of accommodation.

225. An agent is a person who is authorised, either expressly or impliedly, by a principal to act for that principal to create or affect legal relations between the principal and third parties.[77] Whether an entity is an agent is determined by the agreement between the parties. A provision in an agreement that states that an agency relationship exists must be considered with all of the other terms of the agreement.[78] It is necessary to consider, within the context of the overall agreement, whether the entity is acting as an agent in respect to the supply of accommodation. While an entity may act as an agent for some purposes, it does not necessarily mean that the entity is an agent for all purposes.

226. An on-site agent or manager may contract with third parties to supply accommodation without disclosing that it is acting for a principal. In determining whether in so doing the agent is acting in its own capacity or on behalf of the principal, it is necessary to consider

[77] *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*.

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

the relationships between principal, agent and customer having regard to the whole of the arrangement.

227. The focus of the analysis is on whether the entity is a principal or is acting as an agent in making the supply of accommodation in commercial residential premises. The fact that an entity may be an agent for other aspects of the commercial operations is not determinative. For example, in *South Steyne FFC*, a majority of 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.[79] This conclusion was drawn despite the fact that the hotel operator was acting as agent for the lessee for some purposes.

Part C: Application of principles to some common types of supplies

228. 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

229. 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.

230. A single strata titled hotel room cannot, by itself, exhibit the characteristics of commercial residential premises. A supply by way of sale or lease of a number of hotel rooms, without the commercial infrastructure to support the operation of the premises as commercial residential premises, is an input taxed supply of residential premises.

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

Agency agreements in strata titled premises

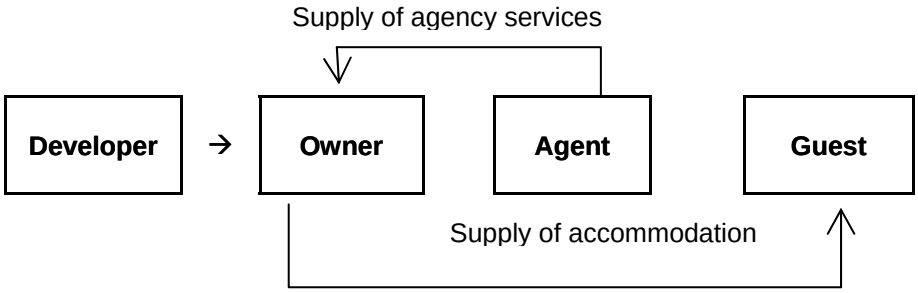
232. Strata titled premises are commonly let by agents who are either real estate agents, or on-site agents/managers.

233. 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

[79] *South Steyne FFC* [2009] FCFCA 155 at [4]. Refer also to Stone J in *South Steyne* [2009] FCA 13 at [89].

rooms as principal in its own right. Under these arrangements, the agent may supply the accommodation in the premises on the owner's behalf.

234. 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.[80] The investor enters into an agency agreement with a local real estate agent to rent the apartment for holiday letting.



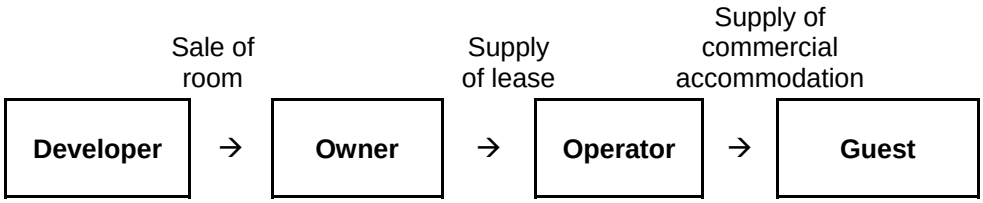
235. Where accommodation is supplied through an entity acting in the capacity of an agent, the treatment of each of the supplies in the arrangement (illustrated above) is as follows:

- The sale of the apartment 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 apartment as it relates to the Owner making input taxed supplies of residential premises (that is, the accommodation supplied by the Owner through the Owner's Agent to the guests).[81]
- 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 relate to the Owner 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.

[80] This scenario assumes that subsection 40-75(2) does not apply.
[81] See 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

236. 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.[82] The operator, which has also leased the commercial infrastructure of the hotel, then hires the room to guests:



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

- The sale of the hotel 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[83] 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 hotel room from the Developer as the hotel room relates to the Owner making an input taxed supply of residential premises (that is, the supply of the hotel room by way of lease to the Operator).[84]
- The supply of the hotel 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.

[82] This scenario assumes that subsection 40-75(2) does not apply.
[83] See section 40-65.
[84] See sections 11-5, 11-15 and 11-20. See GSTR 2008/1.

Bed and breakfast and similar accommodation

238. The term 'bed and breakfast accommodation' generally describes short-term holiday accommodation provided in a private home. 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.[85] In these circumstances, parts of the premises may be commercial residential premises under paragraph (f) of the definition because the premises are used to provide accommodation similar to that provided in a hotel, motel, inn, hostel or boarding house. See Examples 2 to 4 at paragraphs 49 to 55 of this Ruling.

Employee and contractor accommodation

239. Premises in which accommodation is provided to employees and contractors are residential premises where they 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. On their own, these houses and apartments do not display characteristics that 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.[86] See Example 9 at paragraph 69 of this Ruling.

240. Premises designed and operated to provide accommodation to employees and contractors may be commercial residential premises. It is a matter of weighing up the features of a hotel, motel, inn, hostel and boarding house discussed in paragraphs 9 to 42 and 140 to 188 of this Ruling to determine whether the overall character of the premises are similar to the classes of premises. Where they are similar to one of the classes, the premises are commercial residential premises under paragraph (f) 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'. 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. See Examples 10 and 11 at paragraphs 70 to 81 of this Ruling.

[85] See paragraphs 9 to 42 and 140 to 188 of this Ruling for the characteristics of these types of premises and premises that are similar to such premises.
[86] Refer to paragraph 123 of GSTR 2008/1.

Holiday houses, apartments and units

241. 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 features of a hotel, motel, inn, hostel and boarding house to determine whether the overall character of the premises is similar to the classes of premises. See Example 12 at paragraphs 82 to 85 of this Ruling.

Retirement village accommodation

242. Retirement villages provide living accommodation in 'communal or semi-communal' facilities.[87]

243. Retirement village 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.[88] This includes, for example, barbeque areas, gardens, car-parks and driveways.

244. 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 hairdressing salons, 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 their supply.

245. A retirement village does not display sufficient physical, nor operational, features referred to at paragraphs 9 to 42 and 140 to 188 of this Ruling to be characterised as a hotel, motel, inn, hostel or boarding house, nor is it sufficiently similar to these premises for the purposes of paragraph (f) of the definition of commercial residential premises. See Example 1 at paragraph 43 of this Ruling.

[87] See the *Macquarie Dictionary*, 5th edition.
[88] See paragraphs 46 and 91 of GSTR 2012/5.

Rooming houses

246. Legislation in a number of States and Territories deals with a class of premises often referred to as rooming houses or rooming accommodation. These premises mainly provide low-cost housing. Rooming houses usually provide single room, or small suite, accommodation with some shared facilities (such as a bathroom, laundry and kitchen). State and Territory legislation may confer, or allow for the individual to be granted, the right to restrict the management from entering individual rooms within the premises. Subject to some restrictions, the occupant may also have responsibility for and control over these rooms.

247. It is necessary to weigh up the features of a hostel as discussed in paragraphs 26 to 35 and 169 to 180 of this Ruling to determine whether the rooming house has sufficient features to be, or be similar to, a hostel. However, the presence of features set out at paragraphs 41 and 187 of this Ruling may indicate that the premises are not commercial residential premises.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	**1**
Ruling	**6**
Commercial residential premises	6
Hotel, motel, inn, hostel or boarding house or similar premises	9
Ordinary Meanings	9
Characteristics of operating hotels, motels, inns, hostels, boarding houses or similar premises	11
Features of hotels, motels and inns	13
Features of hostels	26
Features of boarding houses	36
Features that indicate premises that are not a hotel, motel, inn, hostel, boarding house or similar premises	41
Example 1 – retirement village – not commercial residential premises	43
Example 2 – bed and breakfast accommodation	49
Example 3 – rooms in a house available for accommodation	51
Example 4 – farm stays	53
Example 5 – supply of the entire accommodation within a resort complex	56
Example 6 – supply of whole premises to be used for student accommodation	58
Example 7 – student accommodation	62
Example 8 – boarding house	67
Example 9 – house provided to an employee as a residence	69
Example 10 – 'camp-style' accommodation for employees and contractors	70
Example 11 – accommodation supplied to employees and contractors by third parties	78
Example 12 – individual holiday apartments	82
Characterising premises that are not operating	86
Example 13 – sale of a vacant motel	89
Example 14 – supply of a hotel	91

Separately titled rooms, apartments, cottages or villas 95

Example 15 – apartments that are residential premises 99

Example 16 – supplies of residential premises and Commercial residential premises 102

A marina at which one or more of the berths are occupied, or are to be occupied by ships used as residences 108

A caravan park or camping ground – paragraph (e) of the definition 109

A supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises 111

Example 17 – accommodation provided by the entity that owns or controls the commercial residential premises (tour package) 114

Example 18 – accommodation supplied to a manager of a motel 120

Date of effect **123**

Transitional arrangements 124

Employee accommodation 124

Boarding houses and rooming houses 127

Supplies of accommodation to managers and caretakers of commercial residential premises 129

Other 133

Appendix 1 – Explanation **134**

Part A: Background 135

Legislative context 135

Part B: Commercial residential premises 140

Hotel, motel, inn, hostel or boarding house – paragraph (a) of the definition 140

Ordinary meanings 140

Extended definition under paragraph (f) of the definition 143

Characteristics of operating hotels, motels, inns, hostels, boarding houses or similar premises 147

Features of hotels, motels and inns 152

Features of hostels 169

Features of boarding houses 181

Features that indicate premises are not a hotel, motel, inn, hostel, boarding house or similar premises 187

Characterising premises that are not operating 189

Separately titled rooms, apartments, cottages or villas 193

Premises used to provide accommodation in connection with a school – paragraph (b) of the definition 202

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 205

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 206

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 207

A caravan park or camping ground – paragraph (e) of the definition 212

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 215

A supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises 218

Supplies made by an agent or principal 223

Part C: Application of principles to some common types of supplies 228

Strata titled hotel rooms 229

Agency agreements in strata titled premises 232

Strata titled premises operated as commercial residential premises 236

Bed and breakfast and similar accommodation 238

Employee and contractor accommodation 239

Holiday houses, apartments and units 241

Retirement village accommodation 242

Rooming houses 246

Appendix 2 – Detailed contents list **248**

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Previous draft:

Previously issued in
GSTR 2011/D2 and
GSTR 2012/D1

Related Rulings/Determinations:

GSTR 2000/37; GSTR 2001/1;
GSTR 2003/3; GSTR 2003/7;
GSTR 2006/9; GSTR 2008/1;
GSTR 2012/5; GSTR 2012/7;
GSTD 2004/3; 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 lease and real property
- GST long term accommodation
- GST marina berths
- GST real property
- GST residential premises
- GST residential rents
- GST retirement villages
- GST sale of real property
- GST sale of residential premises

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