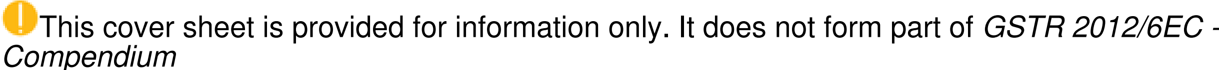
GSTR 2012/6EC - Compendium



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Ruling Compendium – GSTR 2012/6

This is a compendium of responses to the issues raised by external parties to the parts of draft Rulings GSTR 2011/D2 and GSTR 2012/D1 – *Goods and services tax: residential premises and commercial residential premises* that are applicable to matters in GSTR 2012/6.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft Ruling. Any legislative references are to *A New Tax System (Goods and Services tax) Act 1999* unless otherwise indicated. Paragraph or example references under 'issue raised' are to GSTR 2011/D2 or GSTR 2012/D1 as applicable. Paragraph or example references under 'ATO Response/Action taken' are to GSTR 2012/6 unless otherwise indicated.

Summary of issues raised and responses

GSTR 2011/D2

Issue No.	Issue raised	ATO Response/Action taken
D2 1.1	**Physical characteristics & paragraphs (a) & (f) of the definition** The submission raised concerns over statements made in the draft Ruling that were perceived to be inconsistent concerning the relevance of physical characteristics (paragraph 166) and the list of characteristics common to hotels, motels, hostels and boarding houses (paragraph 50). It was submitted that the paragraphs addressing commercial residential premises need to be reconsidered. The definition of commercial residential premises is an exclusive one. Only premises falling within paragraphs (a) - (f) of the definition have the identity or character of commercial residential premises. It was noted that Example 9 did not define what the physical characteristics of a motel are and that the Ruling should be defined or determined at least partially by reference to its physical design or construction. This also applied to the other forms of premises set out in paragraph (a) of the definition. It was also noted that the physical characteristics of premises is not one of the eight characteristics listed in paragraph 176. It was submitted that the eight characteristics are best employed to define	The Ruling sets out that the physical characteristics of premises is an objective factor to be considered in determining whether the premises are, or are similar to, a hotel, motel, inn, hostel or boarding house. See paragraphs 10, 86 - 94, 142 and 189 - 192 of the Ruling. However, where premises are being operated, it is relevant to consider all objective factors including how those premises are being operated and the premises' physical characteristics when determining whether premises are commercial residential premises. The Ruling sets out more detailed characteristics of a hotel, motel, and hostel consistent with the decision in *ECC Southbank Pty Ltd as trustee for Nest Southbank Unit Trust & Anor v. Commissioner of Taxation* [2012] FCA 795 (*ECC Southbank*).

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	what premises are similar to those set out in paragraphs (a) to (e) of the definition for the purposes of paragraph (f) rather than to define what is in paragraphs (a) to (e) themselves. The current structure of the draft Ruling referring to physical characteristics, dictionary meanings, and the eight characteristics may result in it being no easier, and may even be more difficult, than was previously the case in determining when premises are commercial residential premises. The submission raised the issue as to whether the sale of a vacant retirement village could be compared to the sale of a vacant motel based on physical characteristics. It submitted that the ruling should discuss whether the sale of a vacant retirement village would be the supply of commercial residential premises. It was queried why Example 10 (paragraph 62) considered the manner in which the premises was operated once the example established that the premises have physical characteristics that allow the premises to be used in a manner similar to a hotel.	The Ruling however does not provide a definitive checklist of physical characteristics or design features for premises referred to in paragraph (a) of the definition of commercial residential premises. It is necessary to consider the specific facts in each case. Paragraph 87 considers types of evidence that may be relevant where the premises have been newly constructed and not yet operated. It makes reference, by way of example, to premises that have been constructed to be used as a retirement village. Example 14 (formerly Example 10) has been modified. However, the way the premises are operated is relevant to characterising the supplies made by the operator of the premises.
D2 1.2	I agree physical characteristics trump, as it is supposed to. You then necessarily move on to discuss the 8 characteristics that might make it commercial residential premises, but without (in my view) adequately explaining the anomaly. It would be good to explain why you would use 'actions' and 'other indicators' to determine the character of the building. I know it is awkward, and you have no choice, but to a reader, it needs a bit more so that it is understood that they only go to determining the characteristics rather than setting out a new range of non-physical attributes that implicitly (albeit not correctly) override the physical (or that's how it will look to some). Hence, I agree with the ruling but would be better to explain why you're looking at non-physical to determine the physical.	See the response to comment D2 1.1. For premises that are operating, it is relevant to consider how those premises are being operated and the premises' physical characteristics when determining whether premises are commercial residential premises. We do not consider that it is only necessary to consider the physical characteristics of the premises. See also paragraph 190 of the Ruling.

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D2 1.3	**Commercial residential premises are defined by their use and not physical characteristics** Commercial residential premises are essentially defined by their function: commercial residential premises (as defined) are not only structures capable of human occupation but they must also function in an enterprise to provide human occupation. Only by examining their functioning on supply can it be determined if they are in fact commercial residential premises or merely residential premises. Commercial residential premises are defined by their use as the definition in the Act emphasises: a hotel operator who sells the real estate component of her enterprise while retaining the hotel function makes a supply of residential premises and not commercial residential premises. If she sells the hotel along with the real estate she is supplying commercial residential premises. If she sells the hotel business with a lease in place for the real estate she is supplying commercial residential premises.	See response to comment D2 1.1 above.
	The Submission also disagreed with paragraph 167 of the draft Ruling for similar reasons.	We consider that premises can still be commercial residential premises when not operating as such – see paragraphs 86 to 90 and 189 to 192.
	In respect to paragraph 47 (Example 9), it was submitted that the supply of the premises by Jo is not commercial residential premises as none of the eight characteristics are present. The premises are residential premises. The submission referred to *Aurora Developments Pty Ltd v. FC of T* [2011] FCA 232 (*Aurora*) and *Toyama Pty Ltd v. Landmark Building Developments Pty Ltd* [2006] NSWSC 83 (*Toyama*) to support the submission that the premises was not a motel.	See response to comment D2 1.1 above. We note that the *Aurora* and *Toyama* decisions did not consider the definition of commercial residential premises.

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D2 2	**Applying the draft Ruling to other scenarios such as student accommodation, army barracks, nurses' quarters and convents** It was submitted that the inconsistency contained within the draft Ruling made it difficult to apply to other types of premises not discussed in the draft Ruling – for example student accommodation, army barracks, nurses' quarters and convents. While acknowledging that it would be difficult for the ATO to provide guidance on all the different kinds of premises occupied, it was suggested that the ruling contain an example on student accommodation. It was submitted that the physical characteristics of student accommodation would not differ substantially from many hotels or boarding houses and may be similar to camp style accommodation. Reference was made to ATO Interpretive Decision ATO ID 2010/194 *GST and supply by way of lease of a building designed to provide tertiary student accommodation* and the *ECC Southbank* litigation.	See the response to comment D2 1.1 Examples 6 and 7 at paragraphs 58 to 66 on student accommodation have been added. The principles from *ECC Southbank* have been incorporated into the Ruling. ATO ID 2010/194 was withdrawn on 11 October 2012 following the decision of the Federal Court in *ECC Southbank*.
D2 3	**Strata titled apartments supplied under an arrangement** It was submitted that the approach taken in Example 12 that supplies under a single arrangement made by multiple leases of premises can be characterised as a supply of commercial residential premises was not consistent with the *South Steyne* decision. The ruling should address this inconsistency and provide detail as to what the Commissioner considers to be an 'arrangement'.	The preliminary view originally expressed in the draft Ruling has been changed – see paragraph 98 and 200 - 201 of the Ruling. The view expressed in the Ruling is that a supply by way of sale or lease of real property consisting of part of a building cannot be characterised by reference to another supply. The reference to an 'arrangement' has been removed.
	It was observed that under the view set out in the draft Ruling, a tenant (that is, operator) of a serviced apartment complex could have GST on some apartments it acquires under a lease and not on others. This was a matter that needs to be escalated through Tax Issues Entry System (TIES).	We agree that the GST treatment of individual supplies of accommodation may differ depending upon how the arrangements are structured.

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	It was also observed that the outcome in paragraph 250 means that there will be an input taxed supply in the chain of transactions even though the ultimate supply to the consumer is taxable. It was submitted that this is not the correct outcome from a policy perspective and is something that should also be raised with Treasury.	Concerns expressed over whether these outcomes are consistent with desired policy fall outside the scope of this Ruling.
D2 4.1	**Relationship between residential premises and commercial residential premises** The submission referred to the term 'arrangement' which is used in the context of multiple leases in paragraphs 44, 71 and 164 of the draft Ruling. Similarly, paragraph 72 refers to 'single agreement' in an example on multiple leases. The Tax Office should include in the binding section of the draft Ruling an explanation as to what is an 'arrangement'. It was submitted that it should not necessarily be a written document or one that is legally binding between the parties with the exception of the leases themselves.	See response to comment D2 3.
	Other minor suggestions: Paragraph 43 Insert the word 'supplied' after the word 'premises' in the third line. That is: *… A supply of residential premises is only a supply of commercial residential premises under paragraphs (a) or (f) of the definition where the premises supplied include infrastructure or other features …*	Paragraph 43 has not been retained in the Ruling.

	Paragraphs 44 and 164 Insert the word 'two' between 'the' and 'parties' in the second line; and Change the word 'with' to 'within' in line four. That is: *An entity that enters into an arrangement with a single recipient –under which multiple leases are executed between the **two** parties over individually strata titled rooms and the infrastructure or other features located with **within** the premises, which collectively comprise commercial residential premises – supplies commercial residential premises to the recipient.* Paragraphs 44 and 164 Can the 'one-lease' scenario be referred to as well in these two paragraphs as being the supply of commercial residential premises? That is, where there is only one lease (rather than multiple leases) governing the supply of some or all of the apartments together with the infrastructure or other features located within the premises.	Paragraphs 44 and 164 have not been retained in the Ruling. Paragraph 97 of the Ruling sets out the view that a single supply by way of 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.
D2 4.2	**Relationship between residential premises and commercial residential premises** In respect to paragraph 156, it was submitted that all commercial residential premises can be viewed as being residential premises, but the residential premises that are not taxable on sale must have specific attributes, for example real property, used predominantly for residential accommodation, not defined as commercial residential premises, etcetera. Some things that look like commercial residential premises are excluded from the definition, for example residential schools and colleges.	We agree that in many cases, there is an overlap between premises that are residential premises and premises that are commercial residential premises. However, some things listed in the definition of commercial residential premises do not also come within the definition of residential premises (for example, ships referred to in paragraphs (c) and (d) of the definition).

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D2 5	**Occupants have the status of guests** It was submitted that the ruling should clarify the importance of 'status as a guest' as an indicator of when premises are commercial residential premises. It would also be useful for the ruling to set out exactly what features of a tenancy arrangement other than exclusive possession are determinative of the status of the occupant. The ATO was also asked to explain precisely what it means when it refers to 'similar rights akin to a tenant'. It was observed that the laws with respect to residential tenancies are State and Territory based, and therefore may differ resulting in different GST outcomes. It was suggested that this matter needs to be brought to the attention of Treasury.	The Ruling recognises that private hotels, hostels and boarding houses may be the principal place of residence for occupants. See paragraphs 19, 33, 40, 162, and 177-178 of the Ruling.
D2 6	**Accommodation is the main purpose** Paragraph 50 of the draft Ruling refers to the characteristic that the premises provide accommodation to a transient or floating, though not necessarily short-stay, class of occupants as their primary purpose. The draft Ruling does not make it clear what is meant by the term 'transient'. On the basis that the legislation deals with scenarios where 'long term accommodation' can be provided to an individual in commercial residential premises (see Division 87), it was submitted that the term 'transient' cannot be intended to relate to the term of occupation. Therefore, the draft Ruling should explain what is meant by this term. Is it intended to refer to persons who are away from their home?	The reference to 'transient' has been removed. When discussing the 'status of guests' characteristic, the Ruling refers to occupants being travellers who have their principal place of residence elsewhere. Guests do not usually enjoy an exclusive right to occupy any particular part of the premises in the same way as a tenant. See paragraphs 12 and 150 of the Ruling.

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D2 7	**Multiple occupancy and Strata titled hotel rooms** In respect to paragraphs 242 – 244, it was submitted that on the basis of the discussion in the draft Ruling regarding multiple occupancy, the supply of more than one apartment together with the infrastructure of other features to support the operation of the premises commercially should be sufficient to treat the supply as commercial residential premises. Alternatively, how many apartments would be necessary to classify them as commercial residential premises provided the same entity supplies the infrastructure/other features as well?	Multiple occupancy is one factor that is considered in determining whether premises are, or are similar to, a hotel, motel, inn, hostel or boarding house. The test involves questions of fact involving matters of impression and degree (see paragraphs 11 and 147 of the Ruling). The Ruling is therefore not able to specify a minimum number of rooms or apartments necessary to classify premises as commercial residential premises.
D2 8.1	**Demountable home parks and caravan parks** Can the ATO provide additional guidance on the characteristics of home parks that make them similar to a caravan park? (Refer to paragraphs 54 and 227 of the draft Ruling).	The Commissioner, at the time of issue of this compendium, is developing his views on the treatment of supplies made in 'home parks'. The Ruling sets out transitional arrangements at paragraphs 131 – 132 which apply until the Commissioner publishes a final view on the subject.
D2 8.2	**Marinas and Caravan parks** In respect to paragraphs 53 and 54, if the residential premises function as marinas or caravan parks or camping grounds then they are commercial residential premises when sold regardless of the term of their occupation.	Paragraph 54 of GSTR 2011/D2, which referred to home parks, has not been retained in the Ruling. In respect of marinas, paragraph (da) of the definition of commercial residential premises sets out the requirement that one or more berths are occupied, or are to be occupied, by ships used as residences (see paragraph 108 of the Ruling).

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D2 9.1	**(i) Comparison with a retirement village** The draft Ruling sets out that separately titled adjacent cottages or villas that are combined and operated similar to a hotel, motel, inn, hostel or boarding house to provide accommodation can form commercial residential premises. If the test to be applied predominantly focuses on the physical characteristics of the premises, it was submitted that the scenario set out in paragraph 45 is similar to that of a retirement village. This example highlights the apparent inconsistency in the ATO's approach in determining whether a property is commercial residential premises.	See response to comment D2 1.1.
D2 9.2	**Retirement Villages** It was submitted that retirement villages could be considered commercial residential premises. Retirement villages usually meet seven of the ATO's eight factors for determining if premises are commercial residential premises (that is, the same number that mining employee accommodation meets). Purely on physical characteristics, some are practically the same as motels which are commercial residential premises. In this regard, it is very unclear when physical characteristics or operational characteristics or tenure will be determinative, except in the case of vacant premises. Potentially, that means the sale of vacant retirement villages could have a different treatment to the sale of leased retirement villages. It is important that the approach to retirement villages is simple and consistent. This is particularly critical given the natural progression between independent living and arrangements (typical aged care) where residents require more care within the one retirement village facility.	See response to comment D2 1.1. We do not consider that a retirement village falls within the definition of commercial residential premises – see paragraphs 41 – 47, and 242 – 245 of the Ruling. This position is supported by *Wynnum Holdings No. 1 Pty Ltd & Anor v. Commissioner of Taxation* [2012] AATA 616 (*Wynnum Holding*).

D2 9.3	In paragraph 43 the identification of commercial residential premises is more a matter of examining their functioning after the event and not before. It may be physical characteristics that determine what are residential premises but it is their functioning or how they are used that determines if they have been commercial residential premises. If a wholly residential building is used to provide short-term residential accommodation but is managed from the office of another motel on the other side of the road, and both the residential building and the motel are sold to a new operator, then the wholly residential building with its motel operation would be a sale of commercial residential premises notwithstanding the fact that there is no so-called physical infrastructure in the residential building.	Determining whether premises falls within either paragraph (a) or (f) of the definition of commercial residential premises involves questions of fact involving matters of impression and degree (see paragraphs 11 and 147 of the Ruling). Scenarios concerning separate buildings that are located on separate sites will need to be considered on a case by case basis.
D2 9.4	**(ii) Reference to the cottages being adjacent** In considering paragraph 45 of the draft Ruling, it was submitted that there may be scenarios where holiday cottages may be combined and operated similar to a hotel (if that is a relevant factor) but the cottages are not adjacent. If it is necessary to only consider the physical characteristics of a property, then the need to have cottages next to each other might be relevant (that is, similar to a hotel because of the location of rooms next to each other) but as it appears that further considerations such as the way a property is operated also need to be considered, it would seem that separately titled cottages can form commercial residential premises even in circumstances where they are not adjacent, for example a developer has retained a cottage within a complex for its own use. This issue can apply equally to the serviced apartment examples contained at Examples 11 and 12 where a developer sells 30 apartments on the top three levels of a building. Does the conclusion regarding the remaining apartments and the management lot depend on whether the apartments that form the commercial residential premises are all located on the same levels? Would the premises still be commercial residential premises if the 30 apartments that were sold	Scenarios concerning separate buildings that are located on separate sites will need to be considered on a case by case basis. Example 16 of the Ruling (at paragraphs 102 – 107) does not stipulate that the 90 strata titled rooms that form part of the commercial residential premises need to be segregated from the 30 strata titled rooms that do not form part of the commercial residential premises. The characterisation of the premises would not be altered if any of the 30 strata titled rooms were located on floors within the building that contained a number of the 90 strata titled rooms.

	were situated on the lower three floors (near the management lot) or disbursed throughout the building with the result that the apartments that potentially form the commercial residential premises are not next to each other?	
D2 10	**Apportionment** Retirement village verses serviced apartments The Submission considered that there was an inconsistency in approach between paragraphs 259 and 72. The draft Ruling requires that the 'commercial premises' of a retirement village should be apportioned when sold and treated as taxable. (Query whether this should be in the binding part of the draft Ruling). However, there is no requirement to separate the commercial areas of a serviced apartment complex which would necessarily result in a supply of commercial premises and probably (on the ATO's view) a supply of residential premises. Why is it necessary to apportion areas in a retirement village? Is it only where the areas in question can be considered to be a separate commercial area such as a shop, golf course or restaurant? If so, this should be stated. What features mean these areas should be given a separate GST treatment when supplied with other areas if they are on the same legal title? The inclusion in paragraph 259 of staff rooms and site offices is not consistent with the approach that separate commercial areas need to be apportioned. If such offices and staff rooms are required to be apportioned and are subject to GST, this would result in irrecoverable GST for a retirement village operator (on the basis that it uses these areas to make input taxed supplies).	The Ruling at paragraphs 242 to 245 discusses the characterisation of a retirement village and considers parts of a retirement village that can form residential premises to be used predominantly for residential accommodation and parts that can form commercial premises. This characterisation is relevant where the retirement village is supplied in order to determine the extent to which the supply is input taxed under section 40-35. Goods and Services Tax Ruling GSTR 2001/8 *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts* contains the Commissioner's views on when a supply is apportioned between taxable and non-taxable parts. As set out in paragraph 244, we consider that site offices and staff rooms do not form part of the residential premises to be used predominantly for residential accommodation. We do agree with the submission that these parts of the premises will be used, to some extent, by the operator of the premises to make input taxed supplies of residential premises to be used predominantly for residential accommodation.

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D2 11.1	**Specific scenarios** **Employee accommodation** It was submitted that from a policy perspective, it was agreed with the outcome that mining accommodation is taxable. However, the submission did not agree with the reasoning contained in the draft Ruling to reach the conclusion that this type of accommodation is commercial residential premises. In particular, it was submitted that in Example 19, the Commissioner dispensed with the requirement that the premises needs to be offered to the public. This criterion is significant and is considered to be of importance by the ATO in GSTR 2000/20. It is implicit, after all, in the very words of 'commercial residential premises' and all of the premises described in paragraphs (a) to (e) of that definition that residential premises constitute commercial residential premises when they are marketed to the public. Also, if the Commissioner is applying tests involving physical characteristics and how premises are operated, it would seem critical that for something to be similar to a hotel, it needs to be held out to the public. The importance placed on the mode of operation (usage) in these examples was noted. There is an inconsistency between the conclusions in Examples 19 and 20 in the draft Ruling. Example 19 concludes that the supply of accommodation is a supply of accommodation in commercial residential premises. By contrast, Example 20 concludes that the supply of accommodation is a taxable supply. For consistency, Example 19 should also conclude that the supply of the accommodation would be a taxable supply. It would be worth considering an example where accommodation at a remote location is constructed solely for mine employees and contractors. The submission suspected that the ATO will not treat the accommodation as commercial residential premises where the occupants additionally have rights akin to a tenant. If the ATO is to provide practical guidance to taxpayers, the ATO might also consider	As set out in Example 10 (paragraphs 70 – 77) of the Ruling, we consider that 'camp style' accommodation can be commercial residential premises. Paragraph 76 states that: '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…' As noted at paragraph 11 of the Ruling, determining whether premises have a sufficient likeness or resemblance to the premises listed in paragraph (a) of the definition of commercial residential premises necessarily raises questions of fact involving matters of impression and degree. Agreed. Example 10 (formerly Example 19) has been amended – see paragraph 77 of the Ruling. Alternative scenarios will need to be considered on a case by case approach. While the availability of input tax credits is outside of the scope of the Ruling, footnote 86 to paragraph 239 of the Ruling refers to paragraph 123 of 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*, which states that acquisitions made in constructing or maintaining residential premises that are supplied by way of an input taxed supply of a lease or licence relate to making that supply and consequently are not for a creditable purpose. The Commissioner's view on this issue is set out at paragraph 123 of GSTR 2008/1. Acquisitions that relate to the entity making input taxed supplies are not acquired for a creditable purpose. Agreed – paragraph 71 of the Ruling was updated for this

	adding an explanation as to the issue of input tax credits for construction and running costs of such premises which is the critical issue. It was submitted that the apparent use of such premises to make input taxed rental supplies is best rationalised as involving taxable supplies by reference to the usage of the premises and general characterisation of supply tests, namely, their use as residential accommodation being ancillary to the prevailing commercial use of the premises by the mining company to ensure staff are available to work in the mine. In respect to paragraph 89, it was suggested that the word 'quarter' be replaced with 'quarters'.	change.
D2 11.2	**Employee Accommodation** In respect to paragraphs 88 to 95: The premises fail half of the tests listed in your paragraph 50 - there is no commercial intent, accommodation is provided only to secure workers, there is single accommodation only, and there is no holding out to the public that casual accommodation is available for travellers.	See response to comment D2 11.1.

D2 12	**Offshore mobile drilling unit** The submission queried the position taken in footnote 11 to paragraph 95 of the draft Ruling that accommodation provided to employees and contractors on an offshore mobile drilling unit in similar circumstances to that set out in Example 19 is also a supply of accommodation in commercial residential premises. It was noted that the definition of floating home as contained in section 195-1 of the GST Act means a structure that is composed of a floating platform and a building designed to be occupied as a residence. However, it was queried whether an offshore mobile drilling unit could ever be a 'building designed to be occupied…as a residence.' Presumably the accommodation forms part of the larger commercial structure and, therefore, would not meet the definition of floating home. If so, it is difficult to see how these structures can constitute residential premises as under the definition of residential premises in section 195-1 of the GST Act, it is necessary to be land or a building. The ATO is referred to the definition of "land" in section 22(1) (c) of the *Acts Interpretation Act 1901*. Itnoted that the definition of 'building' in *The Macquarie Dictionary* is 'a substantial structure with a roof and walls, as a shed, house, department, store, etc.' It is difficult to see how a mobile drilling unit can be described as either residential premises or commercial residential premises (it is plainly not a hotel etcetera). Rather, it would be more practical to view any residential accommodation that takes place on such a unit as ancillary and incidental to the commercial use of the unit.	Characterising the sections of an offshore mobile drilling unit in which accommodation is supplied will be dependent upon the physical characteristics of the structure. It is arguable that these particular sections may be considered a building for the purposes of the definition of residential premises. Footnote 7 of the Ruling has been changed to say that the supply of accommodation is a supply of accommodation in commercial residential premises to the extent that the premises consist of residential premises.

D2 13.1	**Farmland – Example 7** Applying the views expressed in Examples 19 and 20, if the property also contained shearers' quarters how would this be treated? The shearers are not charged to live in the quarters but the building may exhibit the physical characteristics similar to other examples contained in the draft Ruling such as camp-style accommodation or even a bed and breakfast. When vacant, should these areas also be apportioned as part of the sale of the farmland? Would these be commercial residential premises and require apportionment? What about manager's quarters (for example a two bedroom house where two employees stay while they are working)? If the manager's quarters have been used in a way similar to a bed and breakfast, applying the draft Ruling, if this was supplied vacant, would this be commercial residential premises and also need to be apportioned?	This example has not been retained in the Ruling. It is necessary to consider the facts and circumstances of each case to determine whether the premises are commercial residential premises. If the premises are not being operated at the time of supply, it is necessary to consider whether there is objective evidence to characterise the premises as commercial residential premises – see paragraphs 86 – 88 of the Ruling. The Commissioner's views on mixed supplies are set out in Goods and Services Tax Ruling GSTR 2001/8 *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.*
D2 13.2	**Examples** The submission welcomed the use of examples and in particular welcomed the inclusion of all the examples within the binding section of the draft Ruling. However, there are inherent difficulties in applying examples rather than statements of principle. In paragraph 251 of the draft Ruling, it states that the supply of accommodation in bed and breakfasts, farm stays and home stays will be 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 (query whether this statement should be contained in the binding part of the ruling). However, in Examples 15 and 17 a bed and breakfast and a farm stay are respectively considered to be commercial residential premises and it is not clearly stated why. These examples appear to be inconsistent with the statement in paragraph 251. Example 17, in particular, does not clearly state that it is operated like a hotel. In Example 17, the determining factors appear to be that the accommodation is being operated on a commercial basis aimed at transient guests who are temporarily away from their usual homes.	Examples 2, 3 and 4 have been amended to provide further reasoning for the conclusions drawn. The Ruling has been restructured to reflect the *ECC Southbank* and *Wynnum Holdings* decisions as well as discussing the common characteristics of an operating hotel, motel, inn, hostel, or boarding house.

	However, these factors are also present in Example 16 which the draft Ruling states is not commercial residential premises. Further, the distinguishing features of Example 15 and 16 of the draft Ruling are not addressed. One can glean that the key distinguishing feature is the multiple occupancy point, but this is not stated. If Harrison in Example 16 had two rooms available in his house would the outcome be different? It seems an odd outcome if this was the case. Paragraph 194 indicates that accommodation provided to one person or a small group living or travelling together do not demonstrate the characteristic of multiple occupancy. The ATO is asked to consider whether this is a statement of principle that should be included in the binding part of the draft Ruling. An explanation as to the ATO's view on the key differences between the two examples is needed. It was further noted that arguably Example 15 is not similar to a hotel in that the accommodation is only available on the weekends. It was considered that the premises contained in Examples 15 and 16 are likely to be physically the same. Therefore, again, the test that is being applied must be more than just the physical characteristics but this is not clearly stated. The draft Ruling should explain more clearly why in Examples 15 and 17 the premises are operated in a similar manner to a hotel and in Example 16 the premises are not operated in a similar manner to a hotel.	
D2 13.3	**Further worked examples** (a) Paragraph 62 (Example 10) The word 'large' in 'large reception area' is unclear. What is 'large' and is this adjective really necessary?	(a) We do not consider that a change to Example 14 of the Ruling is required to explain the meaning of a ‘large reception area’.

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	(b) Paragraph 66 (Example 10) Delete the only sentence in this paragraph and replace with: *The fact that the building may be strata titled or supplied in its entirety by Developer to Sky via separate strata-titled leases will not alter the conclusion in this example.*	(b) We have amended Example 14 of the Ruling to state at paragraph 93 that the characterisation of the supply of commercial residential premises will not change if the rooms and commercial infrastructure are strata titled, provided that the supply is made under a single lease.
	(c) Example 11 This example should also include a similar conclusion as in paragraph 66 (as amended above). That is: *The conclusion in this example will not alter if Developer supplies the living areas and infrastructure to Sky via individual strata-titled leases.*	(c) Example 11 of the draft Ruling has been incorporated into Example 16 of the Ruling. The facts of the Example state that the building is strata titled.
	(d) Example 12 Paragraph 71 refers to *Developer and Sky under one arrangement entered into 90 leases and a lease for the management lot* and in paragraph 72 refers to the *single agreement entered into*. It was submitted that there is uncertainty as to the meaning of the terms 'under one arrangement' and 'single agreement' given that separate leases over all of the lots have been executed. As a suggestion paragraphs 71 and 72 could be re-worded as follows: 71. On completion, Developer sold all of the 30 apartments on the top floors to individual investors who may choose to live in these apartments. Developer and Sky entered into 90 leases for the remaining apartments, a lease for the management lot which includes the reception area, management offices, the restaurant and conference facilities; and a further lease for the parking lot. 72. Developer's sale of the 30 apartments are taxable supplies of new residential premises. As Developer is supplying multiple apartments and the infrastructure or other features that give all of the supplies the physical character of commercial residential premises each lease is the supply of commercial residential premises.	(d) Example 12 of the draft Ruling has not been retained in the Ruling. See response to comment D2 3.

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(e) Example 13
This example is confusing as it initially draws on some of the facts from Example 10 but it is not made clear in this latest example:

who Developer is leasing the 80 apartments to; and
who is leasing (or not leasing) the reception area, management offices, restaurant and conference facilities.

Currently, Examples 10 and 11 consider the one-line lease of the entire premises required by the accommodation provider (Sky). Example 12 considers the alternative where the entire premises required by Sky are supplied by Developer by way of strata lease.
In order to clearly highlight the conclusions reached in paragraphs 43 and 44 of the draft Ruling, a better Example 13 to cover the situation where Developer supplies only part of the premises required by Sky, would be as follows:
73. Using the facts provided in paragraphs 62 and 63 of this draft Ruling, however, the entire premises are strata titled. Developer and Sky entered into 120 leases for the apartments, a lease for the management lot which includes the reception area, management offices, the restaurant and conference facilities; and a further lease for the parking lot.
74. Developer sells 40 apartments to investors subject to the lease with Sky. Developer continues to lease the remaining 80 apartments, management and parking lots to Sky.
75. Developer’s sales of the 40 apartments are taxable supplies of new residential premises. Developer’s supply by way of leases of the 80 apartments, management and parking lots to Sky are taxable supplies of commercial residential premises.
You may also want to expand on new paragraph 75 above by indicating:

that if Developer sells the management lot then its remaining supply of the 80 apartments by way of lease to Sky will become an input taxed supply of residential premises; and

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<td>
(e) Example 15 of the Ruling has been amended so that it no longer draws on the facts from the previous example. It no longer discusses a situation where apartments within the building are separately sold and leased.
See the response to comment D2 3
</td>
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</table>

	• that each investor's supply of the apartment by way of lease to Sky is an input taxed supply of residential premises.	
	(f) In Example 21 (paragraphs 100 – 102) Would your conclusion differ if most or all of the other apartments in the complex are also made available to guests by the on-site manager as agent for each apartment owner?	(f) Example 12 (paragraphs 82 – 85) of the Ruling was amended to clarify that 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 as accommodation provided in commercial residential premises.
D2 13.4	**Further worked examples** In respect to paragraph 69, the lease of empty residential premises is not a taxable supply. The lease of non-residential premises is a taxable supply. I believe that Developer makes a fully-taxable mixed supply here as there is no operating hotel in the sale and therefore no commercial residential premises. Prospective use is not relevant — refer to *Sunchen Pty Ltd v. FC of T* [2010] FCAFC 138 (*Sunchen*).	See the response to comment D2 1.1. We consider that the supply of premises that are not operating at the time of supply can be a supply of commercial residential premises. Example 14 (previously example 10) at paragraphs 91 – 94 of the Ruling was amended so that the building is specifically designed as a hotel. The example concludes that the supply by SG Developer of the premises is a supply of commercial residential premises.
	In respect to paragraph 71 (Example 12), I think that here there is a mixed supply of residential and non-residential premises, and this example differs from both *South Steyne Hotel Pty Ltd v. FC of T* [2009] FCA 13 (*South Steyne*) and *FC of T v. Gloxinia Investments Limited as trustee for Gloxinia Unit Trust* [2010] FCAFC 46 (*Gloxinia*) in that the latter two had ongoing commercial residential enterprises at the time of supply whereas Developer does not have a hotel business to supply to anyone.	This example has been updated and added into Example 16 (paragraphs 102 – 107) of the Ruling. Paragraphs 86 to 94 and189 to 192 of the Ruling discusses the characterisation of premises that are not operating at the time of the supply.
	In respect to paragraphs 73, 74 and 75, the submission queried how the example factually differed from Example 10 with regard to the management offices, restaurant, conference facilities, and the remaining 80 apartments.	Example 15 (previously example 13) at paragraphs 99 – 101 of the Ruling has been amended so as not to refer to an earlier example.

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	In respect to paragraph 76 to 79 (Example 14), the sale of rights to accommodation or anything else would normally be a taxable supply, just like management rights to holiday apartments, or a suburban real estate business. Being 'rights to accommodation in commercial residential premises provided to an individual etc' has nothing to do with governing their being a taxable supply. You could elaborate here on subsection 9-30(4) of the Act, and even relate it to long-term accommodation in commercial residential premises.	Paragraph 113 of the Ruling focuses upon the application of paragraph 40-35(1)(a). A discussion on the application of subsection 9-30(4) is outside the scope of this Ruling.
	In respect to paragraphs 80 to 86 (Examples 15 to 17), these paragraphs contain multiple examples of how the ongoing functioning of residential premises rather than the structures determines whether or not the residential premises are commercial residential premises. The function cannot take place without the structure but the structure does not dictate the function. If Bob closed his bed-and-breakfast business and sold the house would you say that he is making a supply of commercial residential premises? If Delta ceased operating farm stays and sold the farm would they be selling commercial residential premises? Would Harrison's meals be a potentially taxable supply?	See the response to comment D2 1.1. Paragraphs 86 to 94 and 189 to 192 of the Ruling have been inserted and set out the Commissioner's view on characterising premises that are not being operated as commercial residential premises at the time of the relevant supply.
	In respect to paragraph 101, it was submitted that Gus' apartment does not differ from all the other apartments — they are all residential premises. It is not the physical characteristics but the functioning along the lines of the eight points that might make a group of them into commercial residential premises — see your paragraph 178, for example if a dozen owners formed a partnership to promote holiday lettings.	It is agreed that the operation of the premises is a relevant consideration in determining whether the premises are commercial residential premises. However, as stated above and in the comment at D2 1.1, it is considered that the physical character of the premises is also a relevant consideration.

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<table>
<tr><td>D2 14</td><td>Change of character/owner
It was submitted that there are potentially complex issues regarding whether a change in the physical characteristics of premises and the change in ownership of premises gives rise to different GST outcomes. For example:
does a lease of vacant land become input taxed after residential premises are constructed on them?
does a sale of residential premises become taxable if they are demolished before settlement? and
is the supply by a purchaser of leased residential premises still a lease and therefore input taxed?
It was noted that these issues are not covered by the draft Ruling. They are critical questions and clear answers will head off potential disputes in the future. If it is not possible to incorporate them in the Ruling, it was recommended that a further separate ruling or determination be issued on these matters.</td><td>These issues fall outside the scope of this Ruling.</td></tr>
</table>

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Summary of issues raised and responses

GSTR 2012/D1

Issue No.	Issue raised	ATO Response/Action taken
D1 1	**Camp style accommodation** This comment raised the anomaly that different outcomes may arise for what is essentially the same supply where camp style accommodation and associated services are provided by the same entity compared to situations where the accommodation and services are provided by different entities.	Employee and contractor accommodation (camp style accommodation) is discussed at paragraph 240 of the Ruling and referred to in Example 10 at paragraphs 70 to 77 of the Ruling. It is not possible to classify all forms of 'camp style accommodation' as commercial residential premises, as the correct classification depends upon the specific facts and circumstances of the arrangement. Consistent with the Commissioner's views on commercial residential premises, we consider that a supply of accommodation without any services is unlikely to be a supply of accommodation in commercial residential premises.
	It was submitted that as the ATO's view has changed, transitional relief should be provided.	Given that the view in paragraph 39 of withdrawn ruling GSTR 2000/20 has not been maintained, the Ruling includes transitional arrangements concerning employee accommodation at paragraph 126.
D1 2	**Home parks** The submission stated that the ATO should maintain its view from GSTR 2000/20 that supplies made by operator in leasing/licensing a site within a home park is a supply of commercial residential premises or supplies of accommodation in commercial residential premises. It was submitted that if the ATO's view on this did change, then transitional relief should be provided.	The Commissioner is, at the time of publication, developing his views on the treatment of supplies made in 'home parks'. The Ruling sets out transitional arrangements at paragraphs 131 – 132 which apply until the Commissioner publishes a final view on the subject.

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D1 3.1	**Physical characteristics of Commercial residential premises** The comment was made that it can be deduced by the removal of paragraphs 166-167 in the draft Ruling that the physical characteristics of premises are not relevant in determining whether operating premises are commercial residential premises. The submission supported such a conclusion and sought ATO confirmation of this view in the final ruling or compendium.	It is the Commissioner's view that the overall physical character of the premises and how the premises are operated are objective factors that are relevant to characterising premises as falling within either paragraph (a) or (f) of the definition of commercial residential premises. See paragraphs 10 and 142 of the Ruling.
D1 3.2	**Apportionment** Example 17 is a vacant motel example where no mention is made of the owner/manager's residence, which is present in virtually every motel. Is it to be assumed that the residence is ignored and the supply of the vacant motel is to be treated as a composite supply? This extremely common example should be addressed in the ruling. Also, some high rise office complexes have a caretaker's residence on the top floor or in the basement. Should these be apportioned or ignored?	The Ruling addresses this issue at paragraphs 118 – 122 and 221 – 222. See also the transitional arrangement set out at paragraphs 129 – 130.
D1 3.3	**Criteria that demonstrate whether premises are commercial residential premises** The comment submits that the ATO should accept all objective evidence to determine if premises are residential or commercial residential, rather than accepting some evidence but not others. When premises are not operating yet the 'physical characteristics' could be that of either residential or commercial residential premises, the ATO should expand the criteria that it will accept to include evidence existing in common commercial practice, such as minutes, business plans, offer to lease, agreement for lease and finance applications.	We consider that whilst minutes, business plans, and similar documents may evidence the subjective intentions of the parties, they are not informative as to whether, objectively, the premises fall within either paragraph (a) or (f) of the definition of commercial residential premises. The Ruling refers to contractual documentation that provides evidence of current or future use, and government zoning and planning permissions as relevant factors where the overall physical character of the premises and how the premises are operated do not give a clear characterisation. See paragraphs 10 and 142 of the Ruling.

D1 3.4	It was suggested that the last sentence of paragraph 51 be amended to include the words 'but are not limited to' so it now reads: *These additional objective factors include,* ***but are not limited to****, the overall physical character of the premises as well as government zoning and planning permissions.* A similar amendment should be considered in paragraphs 81-83, 184 and 224-226.	See response to D1 3.2.
D1 3.5	**Guests** The submission states that paragraphs 61, 68, 280 and 282 change the ATO's view of the essential test for determining whether premises are similar to the commercial residential premises found in paragraph (a) of the definition of that expression. Now the test appears to be whether the occupants have the status of 'guests'. That is determined by whether they are granted overall control over at least a part of the premises including the right to restrict the entry by management of that part of the premises. The submission was inclined to agree with the conclusion and suggested that the ATO's support for it, by way of overseas precedent or otherwise be included in the final ruling.	Whilst the 'status of a guest' is a relevant characteristic to be considered, the *ECC Southbank* and *Wynnum Holdings* decisions show that an occupant of a hostel, boarding house, and some hotels may not have the status of a guest. The Ruling has been updated to reflect these decisions. See paragraphs 19, 33, 40, 162, 177 – 178, and 186.

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<table>
<tr>
<td>D1 4</td>
<td>Versatile buildings – potential different uses
The submission raised the concern that inconsistencies in the ruling will create uncertainty.
It raises the question of how a block of residential apartments operating as commercial residential premises until shortly before sale with vacant possession would be treated in the light of the following sentences in the paragraphs indicated below:
“143 …. However, the actual use of such premises for a purpose other than residential accommodation does not prevent the premises from being residential premises to be used predominantly for residential accommodation.
…
and
225. A supply of premises that were previously operated as a hotel, motel, inn or hostel and have not been subject to any physical modifications that changed the character of the premises is a supply of commercial residential premises. ….</td>
<td>The position set out in GSTR 2012/D1 has been amended so that ‘prior use of the premises’ is not included as an objective factor when characterising premises as falling within paragraph (a) or (f) of the definition of commercial residential premises. See paragraphs 10 and 142 of the Ruling.
These paragraphs refer to 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.
Determining whether premises fall within either paragraph (a) or (f) of the definition of commercial residential premises raises questions of fact involving matters of impression and degree.</td>
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<td>The submission raised queries concerning the following examples:
a former hotel that is used as a business centre/serviced office complex;
a vacant building or building complex to be purchased by a residential property developer; and
a holiday hotel complex that ceases to be used as a hotel and may be operated as a retirement village.</td>
<td>It is not possible to provide definitive guidance on the scenarios raised in the submission as the possible outcomes are heavily fact dependent.</td>
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D1 5	**Not operating commercial residential premises** It was submitted that premises can be commercial residential premises only when operating, because premises that have ceased to operate do not have any of the characteristics of commercial residential premises and are, therefore residential premises. This point was made with particular reference to disused motel premises, and questions the draft Ruling's approach to classifying premises that have ceased to operate. It was submitted that when commercial residential premises cease being used as a motel, the building reverts to being residential premises. To be a motel an enterprise operating the motel must offer accommodation. If there is no offer of accommodation, residential premises cannot be a motel. If a motel has ceased to operate, and the building is empty, the building does not exhibit any of the characteristics of commercial residential premises.	The Commissioner's view as set out at paragraphs 86 and 189 of the Ruling is that premises may be characterised under paragraphs (a) or (f) of the definition of commercial residential premises even when they are not operating. Support for this view is drawn from the *ECC Southbank* decision (see paragraph 190 of the Ruling). Further, this position is consistent with Example 15.3 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No.3) Bill 2006.
	Physical characteristics at a point in time determine if premises are capable of use for human occupation at that time. The actual use of the premises at the time of supply determines if the premises are commercial residential premises at the time of supply. The owner of a large house could commence operating a boarding house or bed and breakfast business, and the house and business could be sold as commercial residential premises. The purchaser of that bed and breakfast business could cease operating the business and sell the premises without modification as residential premises – they would not have to be selling commercial residential premises. The submission provided that GST is payable (and reclaimable) on each sale of a motel business. On the last sale after ceasing the commercial residential business, when only the residential premises remain, GST is payable on the sale, but the buyer cannot claim the input tax credits. This parallels exactly the situation with a domestic residence as was apparently intended by the legislation – only the first sale of non-commercial residential premises is a taxable supply.	The Ruling sets out the view at paragraphs 88 and 192 that 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.

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<table>
<tr><td>D1 6.1 - 6.3</td><td>Separately Titled Rooms and Apartments
Submissions were received that commented on paragraphs 91-94, 228-236 and example 20 of the draft Ruling.
These submissions called attention to the draft Ruling’s use of the term ‘overarching agreement’ to describe the conditions where commercial residential premises are strata tilted and under an arrangement whereby one supplier individually supplies all the strata titled lots that together make up the commercial residential premises to a single recipient.
These submissions pointed out:
• the lack of precision in the term ‘over arching’ agreement,
• concerns that the approach taken is not consistent with the South Steyne decision and the Revised Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No.3) Bill 2006,
• the inconsistencies of treatment of substantially the same transaction and the uncertainties created when applying the principles in the paragraphs.
It was submitted that supply of strata titled apartments with the commercial infrastructure and other separately parts of the hotel complex should be considered for GST purposes to be a composite supply of commercial residential premises and therefore fully taxable.</td><td>The Ruling clarifies at paragraphs 97 and 198 that a single supply by sale or lease of premises consisting of residential rooms and commercial infrastructure can be a supply of commercial residential premises, regardless of whether they are separately titled.
The reference to ‘overarching agreement’ has been removed.</td></tr>
<tr><td>D1 7</td><td>Retirement Villages
The submission stated that the ATO’s policy for GST on retirement villages remains commercially unsustainable. The inability to obtain input tax credits on the massive construction spending required for a typical village renders village financing and viability as problematic. More than any other premises or establishment type, retirement villages do not fall neatly within the residential premises versus commercial residential premises divide. It was suggested that the ATO bear in mind the continuing difficulties in this area when next requested by Treasury to suggest legislative fixes required for GST.</td><td>As set out in Example 1 (paragraphs 43 - 47) and paragraphs 242 – 245, we do not consider that a retirement village displays sufficient physical, or operational, features 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. This position is consistent with the Wynnum Holdings decision.</td></tr>
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D1 8.1	**General comments** The submission suggested the following: **Paragraph 102** This paragraph highlights that the sale of rooms by Developer to investors are taxable supplies of new residential premises. **Suggested Change:** expand the paragraph to include: *If an individual leases their room to Cloud this lease will be an input taxed supply of residential premises.*	Agreed. See Example 16 at paragraph 106 of the Ruling.
D1 8.2	**General comments** It was submitted that the draft Ruling would be enhanced by: 1. including an explanation of the difference between binding and non-binding examples, as taxpayers do not understand why an example that is not binding on the ATO would appear in a public ruling; 2. include examples on student accommodation to reduce confusion in this sector; and 3. specifically deal with issues that arise from a change in character or owner of the premises.	1. The preamble to the Ruling explains the level of protection that is provided with respect to the publication. The preamble to Appendix 1 (Explanation) refers to the Appendix as providing information to help you understand how the Commissioner's view has been reached. 2. Agreed - examples on student accommodation have been included at Example 6 and Example 7 – see paragraphs 58 to 66 of the Ruling. 3. These issues fall outside of the scope of the Ruling.
D1 8.3	**General comments** It was submitted that, in paragraph 63 at Example 12, the supply by JKL to a corporate customer is a supply of commercial residential premises. The corporate customer on-supplies the accommodation, probably for free.	The supply referred to in Example 5 at paragraphs 56 to 57 of the Ruling is an example where all the accommodation in the commercial residential premises (the resort complex) is supplied to the recipient. We do not consider that the entity supplies the commercial residential premises to the recipient.

	The submission emphasised that the conclusion set out in paragraph 76 at Example 15 of the draft Ruling is based on the way that the premises is used and operated and not the physical characteristics of the premises.	The example is now Example 11 at paragraphs 78 to 81 of the Ruling. Whether premises are commercial residential premises is a matter of overall impression involving the weighing up of all relevant factors (see paragraph 41 of the Ruling). We note that the physical characteristics of a hotel and hostel were considered in the *ECC Southbank* decision (see paragraphs 160, 164 and 171 of the Ruling)
	The submission was made that in paragraph 93 it is not the physical infrastructure that is important, but the existence of personnel to provide the services expected in commercial residential premises. Gold Coast resorts operated by people with management rights have the physical infrastructure but the residential premises themselves are not commercial residential premises.	For the reasons set out above, we consider that the physical characteristics of premises are a relevant factor when determining whether premises are commercial residential premises.
D1 8.4	**General comments** The comment was made that the ruling is over 82 pages, it is complex and difficult to understand.	GSTR 2012/D1 has been broken up into four products: • GSTR 2012/5 *Goods and services tax: residential premises*; • GSTR 2012/6 *Goods and services tax: commercial residential premises*; • GSTR 2012/7 *Goods and services tax: long-term accommodation in commercial residential premises*; and • GSTD 2012/11 *Goods and services tax: have new residential premises been used for residential accommodation before 2 December 1998 for the purposes of paragraph 40-65(2)(b) of the A New Tax System (Goods and Services Tax) Act 1999 where the premises were only operated as commercial residential premises before that date?*

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D1 9.1	**Transitional arrangements / date of effect** It was submitted that there is a need for transitional arrangements, particularly relating to the prospective application of the views expressed in the ruling for various arrangements, particularly short term mining accommodation and for strata title hotel and apartment rooms.	Transitional arrangements have been included at paragraphs 124 to 133 of the Ruling, relating to: • employee accommodation, • boarding houses and rooming houses, • supplies of accommodation to managers and caretakers of commercial residential premises, and • home parks.
D1 9.2	**Transitional issues for strata-title accommodation** Detailed suggestions for transitional arrangements were submitted for circumstances where an entity grants a separate lease over each strata titled room and infrastructure to a single recipient that collectively forms commercial residential premises.	As set out in paragraph 71 of Practice Statement Law Administration PS LA 2008/3, a taxpayer who relies on a draft Ruling that is found to be incorrect, or misleading and makes a mistake as a result, will still be liable for any tax that would be otherwise payable under the law (unless a time limit imposed by the law precludes the liability). However, they are protected against false or misleading statement penalty and, if they have relied on the draft Ruling reasonably and in good faith, against interest charges. It is not considered appropriate to grant transitional relief to taxpayers who relied upon the preliminary view expressed in Draft GSTR 2011/D2 at paragraphs 44 and 164.