

GST EXEMPT SUPPLY: SUPPLY OF ACCOMMODATION IN A DWELLING

Please quote reference IS0049.

This interpretation statement is broadly consistent with previous, similar, statements made by the Commissioner in respect of the supply of accommodation in a dwelling or in a commercial dwelling. However, all previous statements issued by the Commissioner relating to the matters covered should now be read subject to this interpretation statement.

This interpretation statement concludes that, in general, a homestay will not usually be a commercial dwelling and the supply of accommodation will be an exempt supply. This conclusion modifies the applicability of the previous policy statement “Homestays—GST Treatment”, published in *Tax Information Bulletin*, Vol. 7, No. 13 (May 1996), that proceeds on the basis that taxpayers supplying accommodation in a homestay are making taxable supplies. Accordingly, the policy statement will apply only where it is established that a homestay is a commercial dwelling in accordance with this interpretation statement.

The Commissioner’s statements in *Public Information Bulletin* 158 (November 1986, question 60), *Public Information Bulletin* 160 (March 1987, question 116) and *Tax Information Bulletin* Vol. 6, No. 3 (September 1994), being a Question We’ve Been Asked concerning GST and homestay businesses, are considered consistent with this interpretation statement.

However, the Commissioner’s statement concerning the GST treatment of time-share apartments, in *Public Information Bulletin* 179 (May 1989), is potentially inconsistent with the conclusions reached in this interpretation statement in that it states that where a person “buys a time-share to rent out, that person is renting out a commercial dwelling which is similar in all respects to a motel”. It is recommended that any person relying on that statement in *Public Information Bulletin* 179 review their tax position in light of this interpretation statement.

INTRODUCTION

[1] All legislative references are to the Goods and Services Tax Act 1985 (“GST Act”) unless otherwise stated.

[2] Supplies of accommodation in any dwelling by way of hire, service occupancy agreement, or licence to occupy are exempt from GST under section 14(1)(c). Commercial dwellings are excluded from the definition of dwelling and thus supplies of accommodation in commercial dwellings are taxable, although there is a concessionary rate for certain supplies of accommodation exceeding 4 weeks.

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[3] This interpretation statement considers the application of the exemption from GST of the supply of accommodation in a dwelling. Some uncertainty exists as to the scope of both the definition of “dwelling” and the exclusion from that term of “commercial dwellings”.

[4] First, the definition of “dwelling” is considered in some detail and the characteristics of a “dwelling” are identified. Secondly, the exclusion from the definition of “dwelling” of a “commercial dwelling” is considered. The definition of “commercial dwelling” is also considered in some detail and characteristics common to commercial dwellings are identified. In particular, factors relevant in determining whether an establishment is similar to any of the listed kinds of commercial dwelling are considered. Finally, this statement considers the impact of the conclusions reached on a number of common supplies of accommodation: holiday homes, homestays and farmstays, and serviced apartments.

SUMMARY

[5] The supply of accommodation in a dwelling by way of hire, service occupancy agreement, or licence to occupy is an exempt supply under section 14(1)(c). The focus of the exemption is on the supply of accommodation in a “dwelling”.

Characteristics of dwellings

[6] The key characteristics of a dwelling are as follows.

- A dwelling is defined broadly and with increasing degrees of generality: buildings, premises, structure, or other part thereof.
- The definition is concerned with the functional aspects of the structure. Is the structure being predominantly used as a place for the supply of accommodation?
- A dwelling is not limited to someone’s home. Rather, a dwelling need only be a building, premises, structure, or other place for humans to live or abide in. Typically (but not exclusively) a house is such a place.
- The main function of the structure will be as a place of residence or abode.
- The words “of any individual” in the definition do not imply that a particular individual must be housed in the premises. Use by any individual will suffice.
- There is no requirement for any degree of permanency of occupation in order for particular premises to be held to be a residence or an abode.
- The concern is with the function of the building, premises, structure, or place rather than with any person who may occupy it. The issue is whether the

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main purpose or function of the structure in which accommodation is supplied is a place of residence or abode.

- Actual use may have ceased or may not have commenced. Further, a break in the use or period of inactivity will not prevent premises from being a dwelling.
- A commercial dwelling is excluded from the definition of “dwelling” so that the exemption in section 14(1)(c) does not apply to commercial dwellings.

Characteristics of commercial dwellings

[7] The definition of “commercial dwelling” in section 2 provides that the following are included within that term:

- (a) any hotel, motel, inn, hostel, or boardinghouse; or
- (b) any camping ground; or
- (c) any convalescent home, nursing home, rest home, or hospice; or
- (d) any establishment similar to any of the kinds referred to in paragraphs (a) to (c) of this definition.

[8] The listed commercial dwellings bear their ordinary meaning. However, to determine whether any establishment is *similar* to any of the kinds referred to in paragraphs (a)–(c), and therefore falls within paragraph (d), the following questions should be asked.

- Does the establishment have any of the characteristics possessed by the commercial dwellings listed in paragraphs (a)–(c)?
- Does the establishment lack any characteristics which are fundamental to the nature of the relevant listed establishments?
- Are any differences such that the establishment is different in kind, or are they differences which are little more than differences in degree?

[9] Some common general characteristics of those types of “commercial dwelling” listed in paragraphs (a)–(c) are:

- they are operated on a commercial basis, possessing the characteristics expected of a business supplying accommodation to the public, although they may be operated by a non-profit body;
- they provide accommodation to a number of people simultaneously (i.e. multiple units, rooms, or beds are available);

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- accommodation is generally provided by way of a licence to occupy, not by a tenancy;
- a degree of control, is exercised by the owner/operator, generally varying with the level of service provided and the cost of the accommodation;
- servicing of the units, rooms, or common areas is usually provided as an aspect of the supply;
- the accommodation is furnished;
- there may be communal facilities available for the use of all guests;
- the guests are not part of the owner's, or owner's family's, household during the stay;
- the guests receive professional, formal, or commercial hospitality.

[10] Some of the general differences between the listed kinds of establishments are the:

- degree to which the accommodation is self-contained;
- quality of furnishings provided;
- extent of services provided; and
- average duration of stays by guests.

[11] These general characteristics are a useful starting point, but determining whether an establishment is similar to any of the listed kinds will be a question of fact and degree in any particular case.

LEGISLATION

[12] Section 8 charges GST on the supply (excluding exempt supplies) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity.

Subject to this Act, a tax, to be known as goods and services tax, shall be charged in accordance with the provisions of this Act at the rate of 12.5 percent on the supply (but not including an exempt supply) in New Zealand of goods and services, on or after the 1st day of October 1986, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.

[13] To be a taxable activity, the essential requirements of section 6 include that an activity is carried on continuously or regularly, involving the supply of goods or services for a consideration (excluding making exempt supplies). Section 6(1)(a) and (3)(d) states:

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- (a) Any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:
- ...
- (3) Notwithstanding anything in subsections (1) and (2) of this section, for the purposes of this Act the term “taxable activity” shall not include, in relation to any person,—
- ...
- (d) Any activity to the extent to which the activity involves the making of exempt supplies.

[14] Supplies of accommodation in any dwelling by way of hire, service occupancy agreement or licence to occupy are exempt from GST under section 14(1)(c):

- (1) The following supplies of goods and services shall be exempt from tax:
- ...
- (c) The supply of accommodation in any dwelling by way of—
- (i) Hire; or
 - (ii) A service occupancy agreement; or
 - (iii) A licence to occupy:

[15] Section 2(1) provides:

In this Act, ... unless the context otherwise requires,—

...

Dwelling means any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling:

...

Hire, in relation to goods, includes a letting on any terms, including a lease:

...

Licence to occupy means the right to exclusive personal occupancy:

...

Service occupancy agreement means a licence whereby a person occupies a dwelling for no consideration:

[16] Commercial dwellings are excluded from the definition of dwelling, and so supplies of accommodation in commercial dwellings are taxable. Section 2(1) provides:

In this Act, ... unless the context otherwise requires, -

...

Commercial dwelling means—

- (a) Any hotel, motel, inn, hostel, or boardinghouse; or
- (b) Any camping ground; or
- (c) Any convalescent home, nursing home, rest home, or hospice; or
- (d) Any establishment similar to any of the kinds referred to in paragraphs (a) to (c) of this definition;—

but does not include—

- (e) A hospital except to the extent that that hospital is a residential establishment:
- (f) A dwelling situated within a retirement village or within a rest home, where the consideration paid or payable for the supply of accommodation in that dwelling is for the right to occupy that dwelling:

...

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Residential establishment means any commercial dwelling in which not less than 70 percent of the individuals to whom domestic goods and services are supplied reside, or are expected to reside, for a period of, or in excess of, 4 weeks; and also includes any hospital to the extent that it is used to provide domestic goods and services in a way similar to any such residential establishment:

[17] There is a concessionary rate for supplies of accommodation in a commercial dwelling exceeding 4 weeks (section 10(6)):

Where and to the extent that any supply of goods and services consists of the supply, to any individual, of domestic goods and services in a commercial dwelling, the value attributable to that part of that supply of domestic goods and services that is for a period in excess of 4 weeks shall be deemed to be reduced to an amount equal to 60 percent of the amount that would, if that part of that supply were chargeable with tax at the rate of 7.5 percent, be the value of that part of that supply of domestic goods and services:

Provided that to the extent that any supply is a supply of domestic goods and services, and where that commercial dwelling is a residential establishment, and where the supplier and the recipient have agreed that that supply shall be for a period of or in excess of 4 weeks, or for a number of periods which in the aggregate will exceed 4 weeks, the value attributable to that supply of domestic goods and services shall, from the commencement of that supply, be deemed to be reduced to an amount equal to 60 percent of the amount that would, if that supply were chargeable with tax at the rate of 7.5 percent, be the value of that supply of domestic goods and services.

ACCOMMODATION IN A DWELLING

[18] Section 14(1)(c) provides that the supply of accommodation in any dwelling by way of:

- hire (which includes a letting on any terms including a lease); or
- a service occupancy agreement (which means a licence to occupy a dwelling for no consideration); or
- a licence to occupy (the right to exclusive personal occupancy);

shall be an exempt supply for GST purposes. As such, GST is not imposed on the supply pursuant to section 8, and input tax is unable to be claimed.

[19] Critical to the application of the exemption is the requirement that there must be a supply of “accommodation in any dwelling”.

[20] “Accommodation” is not defined in the GST Act but the *Concise Oxford English Dictionary* (9th ed.) provides the following definitions:

accommodation *n* 1 (in *sing.* or *US* in *pl.*) room for receiving people, esp. a place to live or lodgings.

accommodate *v.tr.* 1 provide lodging or room for (*the flat accommodates three people*).

[21] Thus “accommodation” has a broad meaning, simply requiring the provision of room, lodgings, or living premises for receiving people. However, the exemption in section 14(1)(c) requires that the supply of the accommodation is in a “dwelling”.

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[22] “Dwelling” is defined in section 2 as meaning:

any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling;

[23] The definition of “dwelling” can be broken into four parts:

- “any building, premises, structure, or other place, or any part thereof” describes the physical structure very broadly and includes a part thereof;
- “used predominantly as a place of residence or abode of any individual” prescribes the use of the premises;
- “together with any appurtenances belonging thereto and enjoyed with it” includes appurtenances;
- “but does not include a commercial dwelling” excludes commercial dwellings.

[24] Each part of the definition is considered below.

“Any building, premises, structure, or other place, or any part thereof”

[25] The definition begins by outlining the place in very broad terms. The definition extends the concept of a dwelling from a building to other structures and places and thereby allows for the possibility of almost any place constituting a “dwelling”, including a part thereof. For example, a part of a commercial office complex may comprise a dwelling.

“Used predominantly as a place of residence or abode of any individual”

[26] The wording of the second part of the definition of “dwelling”—“used predominantly as a place of residence or abode of any individual”—is critical to the meaning of the definition. It is these words which prescribe the type of place capable of being a “dwelling” and provide the crucial criteria for determining whether a place is a “dwelling”. It is also these words which may support an alternative argument that a “dwelling” is a place used mainly by an individual as their residence or home. In the Commissioner’s opinion, however, the alternative view places too narrow an interpretation on these words and accordingly the definition of “dwelling” is not restricted simply to individuals’ homes. The reasons for this are set out below.

[27] This part of the definition is made up of a variety of sub-phrases, each is considered in more detail below.

“Used predominantly as”

[28] This part of the definition commences by providing that the building or other place must be “used predominantly as” a place of residence or abode.

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[29] “Predominantly” is not defined in the GST Act. The *Concise Oxford English Dictionary* (9th ed.) defines “predominant” as “being the strongest or main element”. The word “predominant” has appeared often in judgments in income tax cases where a court has had to assess the purposes of a taxpayer—with the predominant purpose being held to be synonymous with the “main” or “principal” purpose: see, for example, *Case L77* (1989) 11 NZTC 1,443, *Case M131* (1990) 12 NZTC 2,850 and *Case S16* (1995) 17 NZTC 7,123.

[30] In the Commissioner’s opinion, in the current context the use of the word “predominantly” simply requires that the place, or part thereof, where the accommodation is supplied be used mainly or principally as a place of residence or abode.

[31] This raises the issue of exactly what is meant by the particular premises being “used ... as”. Does this require actual physical use or is the definition concerned with the function or purpose of the premises?

[32] Relevant definitions of “use” in the *Concise Oxford English Dictionary* (9th ed.) are:

use *v.tr.* **1** cause to act or serve for a purpose; bring into service; avail oneself of (*rarely uses the car; use your discretion*). **2** treat (a person) in a specified manner (*they used him shamefully*).

[33] Significant case law can be found debating the various meanings which may be ascribed to the word “used” in differing contexts; see, for example, *Ryde Municipal Council v Macquarie University* (1978) 139 CLR 633, *Ready Mixed Concrete (Vic) Pty Ltd v F C of T* (1969) 69 ATC 4,038, *Council of the City of Newcastle v Royal Newcastle Hospital* 96 CLR 493 and *Te Awamutu Dairy Cooperative Ltd v CIR* (1990) 12 NZTC 7,267. However, the majority of cases agree that the correct meaning of “used” will depend upon the particular context in which the word appears.

[34] In general terms the usual meaning of “used” requires actual physical use; that is, to read a book, to inhabit a house and to write with a pen is to use those things. Obviously a house which is being lived in as the family home is being used as a place of residence. However, physically employing a thing is not the only meaning which may be ascribed to “used”. “Used” may also refer to the function or purpose of a thing.

[35] In *Hawkins v Edwards* [1901] 2 KB 169 it was held that “used” in the phrase “used in standing or plying for hire” indicated the purpose for which a Hackney carriage was to be used rather than meaning “when being used”.

[36] In *Blackdown Properties v Ministry of Housing and Local Government* [1967] Ch 115 the issue was whether a disused part of a sewer that was sealed off was still a “sewer”. Stamp J stated (at page 122):

It may be said that the part of the sewer with which I am concerned is not now used for anything, and so not used for the drainage of buildings and yards appurtenant to buildings and not to be included in the description of a sewer. But it seems to me, and Mr. Seward hardly urged to the contrary, that the phrase “used for the drainage of buildings and yards appurtenant to buildings” is susceptible of more than one meaning. *The word “used” may mean “being used” or “in use”, which I think is perhaps the*

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more obvious meaning; or it may connote not the actual user but the purpose or function which the thing spoken of serves, and it will I think take its colour by reference to the phrase in which it is used. If in a statute the expression “scientific book” was defined to mean “a book used by scientists”, actual user would seem to be requisite to satisfy the definition. But if the definition of scientific book was “a book used for scientific study”, the expression “used for” might connote not actual user but the purpose or function of the book. If one goes further, and defines a “book” simpliciter as “a book used for scientific study”, it is apparent that the words “used for” are introduced to distinguish scientific books from all other books; the words “used for” merely in such a case describe the functions of the book. A mowing machine does not cease to be a machine used for mowing because it is in a museum. So here, in my judgment, the words “used for the drainage of buildings and yards” are really susceptible of a meaning which draws a distinction between sewers used for the drainage of buildings, and sewers used for the drainage of land or roads or other things, and so it is descriptive of the sewer’s function and not its actual use at any given time. [Emphasis added]

[37] *In Re 1-4, White Row Cottages, Bewerley* [1991] Ch 441 concerned whether four stone cottages that were built on a village green and were derelict and condemned in 1970 and vacant from 1972 were dwelling houses. If they were dwelling houses (which was not a defined term in the relevant Act), the registration of them and the land on which they stood as part of the village green could be rectified, and they could be sold and renovated. If they were not dwelling houses they were “rendered sterile”, would remain derelict, and might be occupied by squatters. Mummery J made the following comments:

After they were vacated the cottages did not cease to exist; they were not demolished; they were not converted to other uses, such as use as a shop or warehouse or office. The physical structure, character and nature of the cottages remained the same, save that they were empty and neglected and became tumbledown. I do not think that they ceased to be dwelling houses simply because they were not dwelt in. They became dilapidated dwelling houses, but were still dwelling houses, as distinct from other sorts of houses such as public houses or warehouses.

[38] In the Commissioner’s opinion the meaning of “used ... as” in the definition of “dwelling” should be read as a reference to the function or purpose of the premises. The context of the definition suggests that “used ... as” is equivalent to a building or place used *for* residing, rather than a building or place used *by* residents. The context in which the phrase appears (i.e. “used predominantly as a place of residence or abode of any individual”) focuses on the use of the premises *as* a particular type of place, not on the actual physical use of the premises *by* a particular person. Thus, provided the main or principal function or purpose of a building is to be a place of residence or abode of any individual, the second part of the definition of “dwelling” will be satisfied regardless of whether or not it is actually being so used. While in many cases actual physical use will coincide with the function or purpose of the premises, it is not essential. Thus, as it is the function or purpose of the premises which is important, rather than actual use, periods of vacancy of the premises are not significant. It is only where the function or purpose of the premises changes to something other than being a place of residence or abode that the premises will cease to be a dwelling.

“A place of residence or abode”

[39] This part of the definition focuses on the function of the physical premises. The main or principal function of the premises must be as a place of residence or abode.

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[40] “Residence” has two primary meanings, as seen in the *Concise Oxford English Dictionary* (9th ed.), which provides:

residence *n* **1** the act or an instance of residing. **2 a** the place where a person resides; an abode.

reside *v.intr.* **1** (often foll. by *at, in, abroad, etc.*) (of person) have one’s home, dwell permanently.

[41] The first meaning emphasises the individual and is typified by the inquiry into where a person has their residence. This may be important in relation to the person’s political rights (e.g. to vote or work in a country) or obligations (e.g. to pay tax).

[42] The second meaning of residence is more concerned with the nature of the premises rather than the individual (i.e. is it a residence or house; is it a residential as opposed to a business address).

[43] It is this second meaning of residence which is relevant here. This part of the definition of “dwelling” is concerned with the function of a particular physical structure or place, rather than determining the place of residence of a particular individual.

[44] “Abode” is defined as follows in the *Concise Oxford English Dictionary* (9th ed.):

abode *n* **1** habitual residence; a house or home.

[45] “Habitual”, “house” and “home” are defined in the *Concise Oxford English Dictionary* (9th ed.) as:

habitual *adj* **1** done constantly or as a habit. **2** regular, usual.

house *n* **1** a building for human habitation, a dwelling, a home. ...**5 gen** a place of abode or rest.

home *n* ...**2 a** the place where one lives permanently, esp. as a member of a family or household; a fixed place of residence. **d** a private house, a dwelling house.

[46] Thus the meaning of “abode” is simply that it is a regular or usual residence; a house or home.

[47] The definitions of both “residence” and “abode” use the other term in their definitions. This suggests that the relevant meanings of “residence” and “abode” are often used as synonyms. Indeed, in discussing some of the meanings of “place of abode” Northrop J in *FC of T v Applegate* 79 ATC 4,307 stated (at page 4,313):

The phrase “place of abode” may have many meanings, it can refer to the building or place where a person sleeps and it can refer to the building or place where he is usually found, for instance, “his place of business”, see *Price v. West London Investment Building Society* (1964) 2 All E.R. 318 per Danckwerts L.J. at p. 321. The phrase is often used as being synonymous with the word “residence”, see, for example, *Levene v I.R. Commrs.* (1928) A.C. 217 and *I.R. Commrs. v Lysaght* (1928) A.C. 234.

[48] However, in terms of a distinction to be drawn between a place of residence and a place of abode, the consideration of a place as a residence generally looks more

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to the connection that a person may have with a particular place (i.e. a place where one or more individuals reside, sleep, and carry on their lives from). On the other hand, “abode”, in its broadest sense, can simply be referring to a physical structure that is or can be used for humans to live or abide in irrespective of whether or not any people are actually living or abiding there. In a general sense, this is similar to the distinction which is sometimes drawn between a house and a home. The former is often used in a broad sense to simply mean a building for human habitation (i.e. similar to abode); whereas the latter is often seen as suggesting an emotional connection between an occupant and a particular house (i.e. similar to residence).

[49] In *R v Bundy* [1977] 2 All ER 382 Bundy was “living rough” in his car. He and two other men followed, in the car, a woman who was collecting money from public houses. When the police searched the car they found piping, a hammer, a pipe threader, and three pieces of stocking. Bundy was convicted of having with him articles for use in the course of or in connection with theft, when not at his place of abode. He appealed, stating that his car was his place of abode. Lawton LJ stated that the phrase “place of abode” had to be considered in the context of the particular legislation and continued:

The phrase “place of abode”, in our judgment, connotes, first of all, a site. That is the ordinary meaning of the word “place”. It is a site at which the occupier intends to abide. So there are two elements in the phrase “place of abode”, the element of site and the element of intention. When the appellant took the motor car to a site with the intention of abiding there, then his motor car could be said to be his “place of abode”, but when he took it from that site to move it to another site where he intended to abide, the motor car could not be said to be his “place of abode” during transit. When he was arrested by the police he was not intending to abide on the site where he was arrested. It follows that he was not then at his “place of abode”. He may have had a “place of abode” the previous night, but he was away from it at the time of his arrest.

[50] The tie to a particular person that is suggested more by “residence” contrasts with the broad term “abode” and its connotation of simply a place where anyone may live. “Abode” goes beyond “habitual residence” and includes any place of or for habitation (e.g. a bare house or, in the broad terms of the “dwelling” definition, any other building, premises, structure, or other place predominantly used for habitation).

[51] In addition, it is to be noted that the definition uses the indefinite article in the phrase “a place of residence or abode”. It does not say “used predominantly as *the* place of residence or abode of *an* individual”, as would most clearly fit with the interpretation that to be a dwelling it must be a home or residence of a particular person.

[52] At first glance much of the case law considering “residence” and “abode” seems to indicate that a degree of permanence is required to satisfy both these terms. However, the requirement of permanency invariably arises as a result of the particular legislation under consideration. The legislation uses words such as “permanent”, “principal”, or “usual” to colour the meaning of abode and residence. Cases considering these phrases are generally concerned with determining a person’s primary place of residence or abode in order to attach some privilege or obligation, e.g. the right to vote in an electorate or the requirement to pay tax. Where this legislative requirement for permanency is absent, there is nothing in the contextually relevant ordinary meaning of the words “residence” or “abode” which requires it. Indeed, the case law itself indicates that a temporary or transitory place of abode is

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still a place of abode, even if it may not satisfy the requirements for a person's permanent or usual place of abode. See, for example, the following extract from *Re Wairarapa Election Petition* [1988] 2 NZLR 74 (at page 81):

It is thus a question of physical occupation of living quarters in circumstances which render those quarters a place of abode for the time being. The question of whether that place of abode for the time being is of such a temporary or transitory nature as not to qualify as "usual" is a further question of fact to be determined by the regularity or frequency of occupation thereof.

[53] Thus, on the basis of the ordinary meaning of the words "residence or abode" there is no requirement for any specific degree of permanency of occupation. This is particularly the case in the current context, where section 14(1)(c) is concerned with exempting the supply of accommodation in a dwelling. The legislation is not considering the relationship of a particular individual with a particular dwelling (e.g. whether a particular place is a particular person's place of residence or place of abode). The exemption focuses on the supply of the accommodation and the definition of "dwelling" in this context is concerned solely with describing the premises in which the exempt supply may be made. There is no mention of the person to whom the supply is made. The "dwelling" definition emphasises the building and its use or function, rather than any particular person in it.

[54] While far from conclusive, it can also be noted that the existence of the exclusion for "commercial dwelling" from the definition of dwelling is supportive of the view that a broad meaning should be given to dwelling. If a narrow interpretation of "dwelling" was intended, such that it effectively only meant a specific person's usual home, then it is unlikely that those places listed in paragraphs (a)–(c) of the definition of "commercial dwelling" would be regarded as being a "dwelling", and therefore would not need to be excluded from the scope of the exemption in section 14(1)(c).

"Of any individual"

[55] The impact of the words "of any individual" following "a place of residence or abode" must also be considered. The view set out above is that the definition of dwelling is concerned with describing the premises in which the exempt supply may be made. The alternative view (i.e. that a dwelling requires that a particular person is resident in the premises) tends to focus on the words "residence ... of any individual".

[56] In general terms, "any" means one, no matter which, of several or some, no matter how much or many or of what sort. Where the subject is singular, e.g. "any individual", it would usually mean any individual, no matter which one. "Individual" as seen in the *Concise Oxford English Dictionary* (9th ed.) may be defined as "a single member of a class or a single human being as distinct from a family or group" or, more colloquially, as "a person". While the words "of any individual" may have the sense of "of any single (or particular) person", in most cases there would be no connotation that a specific individual is to be considered.

[57] In the definition of "dwelling", if "of any individual" is given the limited meaning of one person then the definition would only be satisfied if a single person resided at the relevant premises. This would lead to the absurd conclusion that only single-occupier residences would be dwellings. It is notable that the definition does

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not say “of any single individual” or “of one individual” or even “of an individual”. In addition, it can be noted that section 33 of the Interpretation Act 1999 provides that “Words in the singular include the plural and words in the plural include the singular”. Therefore, it is arguably acceptable to interpret the words “of any individual” as also including “any individuals”.

[58] Therefore, a building will not be excluded from being a “dwelling” because more than one individual may use it as a place of residence or abode at the same time. The better view is that “of any individual” should be taken to mean “of at least one person” or “of any person or people”.

[59] Use of the word “individual” rather than “person” in the definition reflects the fact that “person” is a statutorily defined term. Within the GST Act, “person” is a fundamental term or concept as the consequences or implications of the GST Act largely arise on the registration of a person. “Person” is defined in the GST Act to include a company, an unincorporated body of persons, a public authority, and a local authority. The target of the exemption in section 14(1)(c) is ordinary residential accommodation which is not of a commercial nature. In these circumstances “person” (with its inclusion of non-natural persons) is not an appropriate term. Thus “individual” is used to signify natural persons and not to emphasise singularity. The words “of any individual” emphasise the residential flavour of “dwelling” and make it clear that business uses do not come within “dwelling”.

[60] The definition of “dwelling” is concerned with the use of premises and the words “of any individual” do not require that a particular individual be housed in the premises. In addition, as stated above, the definition uses the indefinite article in “a place of residence or abode”. It does not say “used predominantly as *the* place of residence of *an* individual”, as would most clearly fit with the interpretation that to be a dwelling it must be a home or residence of a particular person.

“Together with any appurtenances belonging thereto and enjoyed with it”

[61] As stated above, this part of the definition includes appurtenances. Appurtenances to a property are those rights, interests, or privileges which are also transferred when the title to the property is transferred. What is meant by the words “together with any appurtenances belonging thereto and enjoyed with it” has been considered by the courts. In *Norfolk Apartments Ltd v CIR* (1995) 17 NZTC 12,212, the Court of Appeal held that the common areas, and facilities upon them, within a retirement village complex and available for the use and enjoyment of the residents, were appurtenances to the individual dwellings within the complex. The whole of the land surrounding the apartments was laid out in driveway, paths, gardens, and landscaped grounds for the use and enjoyment of residents. All of the land was integral to and within the curtilage of the apartments.

[62] It will be a question of fact in any particular case to determine what constitutes the appurtenances integral to and enjoyed in conjunction with a particular dwelling.

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“But does not include a commercial dwelling”

[63] The definition of “dwelling” excludes a “commercial dwelling”. A “commercial dwelling” is defined extensively in section 2 and requires separate detailed consideration. For present purposes, it is sufficient to note that a commercial dwelling is excluded from the exemption in section 14(1)(c), by virtue of being excluded from the definition of dwelling.

Summary—characteristics of dwellings

[64] The characteristics of a dwelling can be summarised as follows.

- A dwelling is defined broadly and with increasing degrees of generality: buildings, premises, structure, or other part thereof.
- The definition is concerned with the functional aspects of the structure. Is the structure being predominantly used as a place for the supply of accommodation?
- A dwelling is not limited to someone’s home. Rather, a dwelling need only be a building, premises, structure, or other place for humans to live or abide in. Typically (but not exclusively) a house is such a place.
- The main function of the structure will be as a place of residence or abode.
- The words “of any individual” in the definition do not imply that a particular individual must be housed in the premises. Use by any individual will suffice.
- There is no requirement for any degree of permanency of occupation in order for particular premises to be held to be a residence or an abode.
- The concern is with the function of the building, premises, structure, or place rather than with any individual who may occupy it. The issue is whether the main purpose or function of the structure in which accommodation is supplied is a place of residence or abode.
- Actual use may have ceased or may not have commenced. Further, a break in the use or period of inactivity will not prevent premises from being a dwelling.
- A commercial dwelling is excluded from the definition of “dwelling” so that the exemption in section 14(1)(c) does not apply to commercial dwellings.

COMMERCIAL DWELLING

Introduction

[65] The definition of “dwelling” in the GST Act excludes a “commercial dwelling”. “Commercial dwelling” is defined in section 2 and, like the definition of “dwelling”, its scope and extent is not clear. This part of this statement considers the meaning, and scope, of “commercial dwelling”, and establishes a checklist to assist in determining whether or not any given premises are a commercial dwelling.

[66] “Commercial dwelling” is defined in section 2 as follows:

Commercial dwelling means—

- (a) Any hotel, motel, inn, hostel, or boardinghouse; or
- (b) Any camping ground; or
- (c) Any convalescent home, nursing home, rest home, or hospice; or
- (d) Any establishment similar to any of the kinds referred to in paragraphs (a) to (c) of this definition;—

but does not include—

- (e) A hospital except to the extent that that hospital is a residential establishment;
- (f) A dwelling situated within a retirement village or within a rest home, where the consideration paid or payable for the supply of accommodation in that dwelling is for the right to occupy that dwelling;

[67] This definition can also be broken down into three parts.

- Paragraphs (a)–(c) list specific dwellings that are commercial dwellings, namely any hotel, motel, inn, hostel, boardinghouse, camping ground, convalescent home, nursing home, rest home, or hospice;
- Paragraph (d) provides that “any establishment similar to any of the kinds referred to in paragraphs (a)–(c)” is also a commercial dwelling;
- But paragraphs (e) and (f) provide that the term “does not include ... [a] hospital except to the extent that that hospital is a residential establishment: ... [a] dwelling situated within a retirement village or within a rest home, where the consideration paid or payable for the supply of accommodation in that dwelling is for the right to occupy that dwelling”.

[68] It is considered that most uncertainty concerns paragraph (d) (i.e. determining whether an establishment is similar to those listed in paragraphs (a)–(c)). Each part of the definition is considered in detail below.

Paragraphs (a)–(c)—any hotel, motel, inn, hostel, boardinghouse, camping ground, convalescent home, nursing home, rest home, or hospice

[69] Paragraphs (a)–(c) of the definition list specific dwellings (or establishments) which fall within the definition of “commercial dwelling”. It is considered that what is meant by each of these named types of commercial dwellings is generally understood. However, as paragraph (d) of the definition includes as “commercial dwellings” any establishments *similar* to those named types, it is important to clarify the nature of each listed commercial dwelling.

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[70] It can be noted that none of these terms is defined in the GST Act.

Paragraph (a)—any hotel, motel, inn, hostel, or boardinghouse

[71] Hotels, motels, inns, hostels, and boardinghouses are typically run as businesses providing varying degrees of serviced accommodation, for varying lengths of time, in permanent structures. The reason for staying at any of these establishments varies. It could be business, holiday, or, particularly in the case of boardinghouses and some types of hostels, for longer term residential accommodation. Usually there will be a number of beds, rooms or units available, and some additional services, particularly cleaning, will be provided. Each of these types of establishment is considered in turn.

Hotel

[72] The relevant definition of “hotel” in the *Concise Oxford English Dictionary* (9th ed.) is:

hotel *n* 1 an establishment providing accommodation and meals for payment.

[73] Lord Thankerton in *Railway Assessment Authority v Great Western Railway* [1948] LJR 244 described a hotel as premises available to the public for accommodation and refreshment:

A hotel ... connotes a building in which a hotel business is carried on, to which the public are entitled to resort for accommodation and refreshment ... A hotel, so defined, is often contrasted with a lodging-house, sometimes dubbed a guest-house or a private hotel, in which control may be retained over the choice of lodgers to be admitted, and in which there is no obligation to the public generally.

[74] A hotel typically comprises furnished rooms within a building, where those rooms usually fall short of being self-contained (i.e. no or minimal kitchen facilities are provided, and no laundry facilities are provided). Rooms are usually let on a short-term or temporary basis (although it may be longer) to members of the public. Hotels also provide some level of service (such as the provision of meals, linen supplies, and cleaning), although the degree to which this is done may vary. Access to hotel rooms will usually be via a central reception area within the building, rather than there being independent access direct to the street.

Motel

[75] The *Concise Oxford English Dictionary* (9th ed) defines “motel” as:

motel *n* a roadside hotel providing accommodation for motorists and parking for their vehicles.

[76] A motel is generally understood to comprise units for self-contained accommodation (i.e. with their own kitchen to some degree) and bathroom facilities. Units are generally let on a short-term casual basis to members of the public (especially travellers). Parking facilities are also normally available. In addition, each unit typically has independent access.

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Inn

[77] “Inn” is defined in the *Concise Oxford English Dictionary* (9th ed) as:

inn *n* **1** a public house providing alcoholic liquor for consumption on the premises, and sometimes accommodation etc. **2** *hist.* a house providing accommodation, esp. for travellers.

[78] Some old English cases discuss the meaning of “inn” at a time and place where the term was widely used and understood. For example, *Thompson v Lacy* (1820) 3 B & Ald 283 concerned “a house of public entertainment, called the Globe Tavern and Coffee House” in London, in which the owner provided lodging and entertainment for travellers and others. A guest argued it was not an inn and therefore the rule allowing innkeepers a lien over travellers’ goods for payment of the bill would not apply. His arguments were rejected, and the comments of the judges included:

Now this house was used for the purpose of giving accommodation to travellers, who, in London, reside either in lodgings or inns. The defendant ... provided lodgings, and that in the way they are provided at inns: for the charge was at so much per night ... And I take the true definition of an inn to be, a house where the traveller is furnished with every thing which he has occasion for whilst upon his way.

And:

An inn is a house, the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a situation in which they are fit to be received. In this case, the defendant does not charge as a mere lodging-house keeper, by the week or month, but for the number of nights. A lodging-house keeper, on the other hand, makes a contract with every man that comes; whereas an innkeeper is bound, without making any special contract, to provide lodging and entertainment for all, at a reasonable price.

[79] Thus the old cases suggest that an inn is a house in which lodging, and often meals, is provided on a casual basis for a nightly charge. On that basis all hotels would be inns, most motels would be, and hostels and boardinghouses that charge for accommodation on a nightly basis (or to the extent that they charge on a nightly basis) rather than at a weekly or monthly rate, would be inns.

[80] However, since the old English cases, the modes of accommodation available have broadened and changed. The meaning of the term “inn” has changed along with its decline in use.

[81] In New Zealand the term “inn” is rarely used. For example, the Automobile Association lists the range of accommodation available in New Zealand as:

- hotels, boutique hotels, luxury lodges, motor lodges and motor inns with restaurant and bar facilities;
- motels, motor lodges, apartments and self-catering accommodation;
- hosted accommodation, exclusive lodges, bed and breakfast establishments (“B&Bs”), guest houses, homestays and farmstays;

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- holiday accommodation parks, camping grounds, hostels and backpacker lodges.

[82] In the New Zealand accommodation market, the term “inn” is used more for marketing purposes than in any technical or legal sense. For example, some accommodation providers use the term “inn” in their promotional material, such as Heritage and Character Inns, and Superior Inns. However, the range of accommodation provided may be anything from a select hotel to a B&B.

[83] An inn has features similar to that of a hotel in that rooms in a building are let to the public on a casual basis.

[84] It is notable that the establishments that “inn” is grouped with in paragraph (a) of the definition of “commercial dwelling” are all potentially, or usually, capable of accommodating a reasonably significant number of people. In the Commissioner’s opinion an inn is also a reasonably sized establishment and able to accommodate a number of people simultaneously.

Hostel

[85] The word “hostel” is defined in the *Concise Oxford English Dictionary* (9th ed) as:

hostel *n* **1** a house of residence or lodging for students, nurses, etc. **2** = YOUTH HOSTEL. **3** *archaic* an inn.

[86] “Youth hostel” is defined as:

youth hostel *n* a place where (esp. young) holidaymakers can put up cheaply for the night.

[87] While the dictionary definition acknowledges the archaic meaning of “hostel” as “an inn”, in ordinary parlance a hostel is now almost exclusively thought of in terms of either a form of hotel offering budget accommodation for holidaymakers, or longer term accommodation for a particular group of people (e.g. students or nurses).

[88] Longer-term stays by occupants are envisaged for some types of hostels, such as nurses and students hostels, while others, like backpackers and youth hostels, will usually be shorter. In all of them, there maybe some element of shared facilities or common areas, and typically they accommodate a large number of people. Hostels may also, for example, offer shared accommodation, such as bunkrooms or dormitories.

[89] It is considered that in many cases an establishment may describe itself as a hostel for marketing or market differentiation purposes. It is noted, however, that the style of accommodation offered by many establishments that style themselves as “hostels” is also akin to that offered by a hotel.

Boardinghouse

[90] The *Concise Oxford English Dictionary* (9th ed) defines “boardinghouse” as:

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boardinghouse *n* an establishment providing board and lodging, esp. *Brit* to holidaymakers.

[91] The relevant definitions of “board” and “lodging” include:

board *n* ... **2** the provision of regular meals, usu. with accommodation, for payment.

lodging *n* **1** temporary accommodation (*a lodging for the night*). **2** (*in pl*) a room or rooms (other than in a hotel) rented for lodging in. **3** a dwelling place.

[92] There have been two Taxation Review Authority (TRA) decisions which have considered the meaning of “boardinghouse” in the current context.

[93] *Case L75* (1989) 11 NZTC 1,435 concerned a company that purchased a 13-bedroom house and let each of the rooms out individually. Ten rooms shared communal kitchen, toilets, showers, lounge, and laundry. There is no mention of meals being provided. Three rooms were self-contained. There was also a swimming pool and garden for occupants’ use. All occupants had keys to their rooms. There was a shared entrance, and the three ground floor units also had their own outside doors. Although no supervisor lived on the premises, the taxpayer’s employees visited the premises at least three times a week to carry out cleaning and maintenance and collect rent. Occupants usually stayed at the premises for 2 or 3 months. A significant number stayed for longer periods of up to a year. The taxpayer contended that the building was a commercial dwelling by virtue of being a boardinghouse or an establishment similar to a boardinghouse. The Commissioner argued that it was neither, rather that each separate room was a dwelling and that the taxpayer made exempt supplies under, what was then, section 14(c).

[94] Keane DJ began by comparing the premises with what the taxpayer claimed was their closest parallel, a boardinghouse, taking account of what that term commonly connotes at common law. He stated that board appeared to be a frequent feature of a boardinghouse and lodging an invariable feature.

[95] Keane DJ noted the distinction between people lodging in a boardinghouse and people being tenants in a house or flat. He referred to the following words of Lord Goddard CJ in *Honig v Redfern* [1949] 2 All ER 15 (at page 17):

The general test, which has been laid down for many years, is that if the owner of a house who allows other people to live in it lives on the premises and manages the premises himself, or if the owner has a servant resident on the premises to manage them on his behalf, the other people living in the house are lodgers, whereas if he does not live in the house but lets the whole house out to various people it is a letting out of the house in tenements and the persons occupying the tenements are not lodgers but tenants.

[96] Keane DJ also referred to the decision in *Thompson v Ward* LR 6 CP 360, where it was noted that it was not necessary for a landlord in a boardinghouse arrangement to actually reside in the premises, provided the landlord retained sufficient control over the house such that the house was in the possession of the landlord and that the control was exercised with some system and constancy. This may be contrasted with a tenancy situation where a tenant possesses undisturbed rights to the premises.

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[97] Keane DJ confirmed the view that:

tenants are autonomous because they do not share possession of the property with the landlord and are entitled to quiet enjoyment. A lodger, in contrast, is one permitted to share premises actually occupied by or on behalf of the owner; is subject, potentially at least, to close oversight; and depends on the owner's good will.

[98] Keane DJ concluded that the premises in that case comprised a commercial dwelling on the basis that it was an establishment similar to the other listed kinds of establishment. This aspect of the decision is discussed below.

[99] In *Case Q46* (1993) 15 NZTC 5,227 there was no dispute that the property in question was a boardinghouse: Barber DJ recorded that the villa, as a boardinghouse, came within the section 2 definition of "commercial dwelling" and was therefore excluded from the definition of "dwelling" (at page 5,231). However, the TRA did make some observations regarding the characteristics of the premises (at pages 5,229-5,230):

For some years prior to the sale, the vendor had been operating a boardinghouse or guesthouse business at the property. Boarders or tenants rented a room and basic facilities for varying periods. Sometimes for days, but mainly for weeks or months on a weekly rental. There seemed to be 10 bedrooms providing accommodation for a maximum of 22 guests. ...

... the building on the front of the property was being operated by the vendor as a guesthouse with tenants renting rooms of the owner for a weekly rental. The vendor did not appear to be supplying any other services to those tenants. ...

There is no dispute that at the time of sale there were 10 bedrooms in the property and that many of them were in use by guests paying a weekly or overnight rental for their room. I accept that the vendor did not provide any guarantee to the purchaser as to the continued occupation of the various guests. Most furniture and effects in the rooms belonged to the guests. It appears that, in particular, they owned any bed linen, towels, and cooking utensils, and that only a relatively small amount of furniture belonged to the vendor.

[100] In that case, therefore, only lodging, with no board, was supplied and it was accepted by all parties that the establishment was a boardinghouse.

[101] It is the Commissioner's view that the notion of what a boardinghouse is has evolved over time. In substance, a boardinghouse is a form of hotel (commonly referred to as a private hotel), but where the expectation is that the guests will stay or reside for a longer period than may usually be expected in a hotel. It is not considered necessary for a boardinghouse to now provide meals or "board".

[102] Size may be another relevant factor in determining whether an establishment is a boardinghouse.

[103] In *Case L75*, Keane DJ stated that the larger the number of occupants catered for the more likely it is that the premises are a commercial dwelling. In *Case L75* the premises had 13 bedrooms and in *Case Q46* the premises had 10 bedrooms providing accommodation for a maximum of 22 guests.

[104] Some form of communal facilities is generally considered usual in a boardinghouse. Some examples of this are shared living, dining, or service facilities.

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Such communal facilities are available exclusively, or essentially exclusively, to the guests staying at the premises (although they are generally not precluded from inviting visitors). The public are generally not able to access these communal facilities. This may be contrasted with the public's ability to access the common facilities of a large hotel (e.g. a restaurant or gym).

[105] The communal occupation in a boardinghouse is generally communal only amongst the guests—the owner or manager will usually have separate facilities. Boarders in a boardinghouse all have equal rights with each other to be in and use the communal facilities.

[106] Thus, while the dictionary definition of the term “boardinghouse” potentially ranges from the classic large house accommodating lots of boarders, through B&Bs which may have only one spare room, to a flat which the owner occupies with his or her lodgers, or the situation where a homeowner takes a lodger in to live with the owner's family, in the context of the definition of “commercial dwelling” and on the basis of the TRA decisions, in the Commissioner's opinion an operation of some size is contemplated.

[107] In order to be a boardinghouse, the premises must be capable of accommodating a number of guests simultaneously. In addition, any occupancy agreements must be between the owner (or owner's agent) and each of the occupants individually. The owner (or owner's agent) must reside in, or at least exercise control over, the premises. The predominant purpose of the premises must be to provide lodging, and in many cases board, for payment. Communal facilities must be shared by the guests, but not be accessible, generally, to the public. Residents would tend to stay for longer periods rather than simply overnight. Small B&B owner-occupied flats, and home lodger situations will not be boardinghouses within the terms of the “commercial dwelling” definition.

Paragraph (b)—any camping ground

[108] The term “camping ground” is not defined in the *Concise Oxford Dictionary* (9th ed.), but the terms “camp” and “campsite” are defined as:

Camp n. a place with temporary accommodation used by soldiers, refugees, or travelling people. – a complex of buildings for holiday accommodation.

campsite n. a place used for camping, especially one equipped for holiday makers.

[109] In New Zealand, the meaning of a camping ground is widely understood, and can encompass a simple designated area through to a “holiday park”. The services provided range from the provision of tent or caravan sites (without or without the provision of electricity) to cabins, self-contained motel units and backpacker lodges. Some camping grounds may have long-term or even permanent residents. Service areas are usually provided for cooking, laundry, ablutions and entertainment. Camping grounds are subject to a degree of onsite management, usually consistent with the level of service provided.

[110] In some areas there are more basic camping grounds where there may be only tent sites and limited facilities. Where there are no facilities or extremely basic

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facilities, like a single long-drop toilet, this is unlikely to constitute a camping ground, but will usually be regarded as merely a “camp site”. The level of control in these circumstances is likely to be less than that for a camping ground, and may consist of only periodic visits by the owner or Department of Conservation personnel to collect fees, remove rubbish and carry out some service of the facilities (if any).

[111] Where the supply being made is only of a tent or caravan site (i.e. in substance a supply of a right to use an area of land for the purpose of camping), whether in a camping ground or a camp site, there will not be a supply of accommodation in a dwelling. As such, the supply will not be subject to the exemption in section 14(1)(c).

[112] However, as noted a camping ground may make a supply of accommodation in a “dwelling” where it supplies the use of cabins, motels, or the like.

Paragraph (c)—any convalescent home, nursing home, rest home, or hospice

[113] Convalescent homes, nursing homes, rest homes, and hospices are generally for the care of the elderly, sick, or incapacitated. A high level of service and high standard of accommodation is generally provided. The accommodation provided in paragraph (c) establishments is usually in beds or rooms within a closely organised, supervised, and serviced complex. Paragraph (f) of the “commercial dwelling” definition excludes hospitals, except to the extent the hospital is a residential establishment, and dwellings in retirement villages or rest homes.

Paragraph (d)—any establishment similar to any of the kinds referred to in paragraphs (a) to (c) of this definition

[114] Paragraph (d) includes in the definition of “commercial dwelling” establishments which are similar to those listed in paragraphs (a)–(c). This part of this statement considers what is meant by “any establishment similar to any of” the listed kinds. Both the physical characteristics of the premises and the nature of the operations carried on will be important in considering what is a similar establishment.

General characteristics of the listed types of commercial dwellings

[115] Some of the common general characteristics of those types of establishments listed in paragraphs (a)–(c), and which have been identified in the discussion above, are:

- they are operated on a commercial basis, possessing the characteristics expected of a business supplying accommodation to the public, although they may be operated by a non-profit body;
- they provide accommodation to a number of, potentially unrelated, people simultaneously (i.e. multiple units, rooms, or beds are available);
- accommodation is generally provided by way of a licence to occupy, not by a tenancy;

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- a degree of on-site control, generally varying with the level of service provided and the cost of the accommodation, is exercised by the operator;
- some servicing of the units, rooms, or common areas is provided by the operator during the term of the occupation;
- the accommodation provides at least basic furnishing;
- there are often facilities available for the communal use of all guests;
- the guests are not part of the operator’s household during the stay;
- professional, formal, or commercial hospitality is provided.

[116] Some of the general differences between the listed kinds of establishments are the:

- degree to which the units or rooms are self-contained;
- quality of furnishings provided;
- extent of services provided; and
- average duration of stays by guests.

[117] When determining whether an establishment is similar to the listed kinds, these general characteristics, common to the listed kinds of establishment, are useful as a starting point. However, these characteristics do not provide the final answer. It is necessary to consider the application of paragraph (d) in more detail.

Establishment

[118] Paragraph (d) includes in the definition of “commercial dwelling” any establishment similar to any of those listed in paragraphs (a)–(c).

[119] The *Concise Oxford English Dictionary* (9th ed.) defines “establishment” as:

establishment *n* ... **2 a** a business organisation or public institution. **b** a place of business. **c** a residence. **3 a** the staff or equipment of an organisation. **b** a household.

[120] These definitions indicate that an “establishment” may involve a place of business, the actual business itself, and may also have a domestic residential connotation. In the context of the definition of “commercial dwelling” and relating as paragraph (d) does to the establishments specified in paragraphs (a)–(c), the most appropriate meaning of the term is one that has a business, rather than residential, flavour.

[121] Under paragraph (d), therefore, in order to determine whether particular premises are an establishment similar to the listed kinds of establishment, the physical

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characteristics of the premises as well as the nature of the business activity carried on will be important.

Similar

[122] “Similar” is a word in common usage and is not defined in the GST Act. The *Concise Oxford English Dictionary* (9th ed) definition includes:

similar *adj* ...1 (often foll. by *to*) like, alike; of the same kind, nature, or amount; having a resemblance.

[123] It is readily understood as meaning something which resembles another thing, but is not quite the same. It is a matter of degree and the context in which the comparison is being made as to whether the resemblance is close enough that the things in question may properly be said to be similar. It is a matter of opinion, judgement and often fine distinctions. Use of this comparative term in paragraph (d) means that a decision must be made on the facts of each case as to whether the particular establishment in question is similar to any of those listed.

[124] The definition provides that an establishment need only be similar to *any* of the kinds of commercial dwellings listed; it does not have to be similar to all of them. Keane DJ in *Case L75* said (at page 1,437):

Premises do not have to come within one of the primary examples in order to be a commercial dwelling. They need only be similar to one or more of those examples.

[125] *Case L75*, which has been discussed earlier, is the only New Zealand GST case which has dealt specifically with the issue of whether an establishment is similar to a hotel, a motel, an inn, a hostel or a boardinghouse.

[126] In *Case L75* the taxpayer contended that the building was a commercial dwelling by virtue of being a boardinghouse or an establishment similar to a boardinghouse. The Commissioner argued that it was neither: each separate room was a dwelling and the taxpayer made exempt supplies.

[127] Keane DJ felt the issue should be approached in a “broad and common sense way”. He stated (at page 1,437):

The supply of commercial accommodation, like that of any other commodity, turns on such issues as demand and cost. Yesterday’s patterns may not serve for today. Variations may prove worthwhile, or essential. The primary examples given in the definition may be well understood, and the place to start. The definition does not require that they be treated as exhaustive.

[128] The TRA began by considering the characteristics of a boardinghouse (see the discussion above in relation to boardinghouses). It considered several earlier cases and concluded that:

- general control and dominion of the whole house was the critical right;

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- this could be achieved whether or not the owner or a proxy lived on the premises; and
- the control must not merely be claimed, but must be exercised with some system and constancy.

[129] Although the owner did not live on the premises in this case, the TRA concluded (at page 1,440):

The level of management control exercised, and cleaning and maintenance undertaken for occupants seems broadly within the boundaries expected in commercial premises.

[130] Keane DJ emphasised the scale of the operation and the level of management control exercised. He stated (at page 1,440):

How then are the premises to be classified? There is no stated line of demarcation between a “commercial dwelling”, and a “dwelling” for hire. So the distinction must be achieved by the broadest comparison. It must depend partly on scale: the larger the number of occupants catered for the more likely it is that the premises are a “commercial dwelling”. It must also depend on the level of control exercised: the less the owner intervenes in the daily management of the premises, the more likely it is that even larger premises comprise a number of individual “dwellings”. The answer must turn on the facts of the case.

In this case, I think that the premises are more plausibly understood as a “commercial dwelling”. Their size suggests it: 13 rooms accommodating 17 people. They cannot then be equated exactly with any of the primary examples, but neither can those examples be equated with each other. They do share with the primary examples however, some significant defining features. The period occupants remain is similar to that prevailing in boardinghouses. The facilities offered in rooms, even the shared facilities, are also similar. The rooms could equally well be compared with those in hotels, especially older ones. The three rooms with more facilities, and independent access, are more similar to motels. The level of management control exercised, and cleaning and maintenance undertaken for occupants seems broadly within the boundaries expected in commercial premises. I have much greater difficulty thinking of the premises as a collection of small, independent dwellings.

On this view the entire premises comprise a commercial dwelling.

Summary

[131] Keane DJ acknowledged in *Case L75* that the answer in any particular case will depend upon the facts of that case. While noting that the premises in question “cannot be equated exactly with any of the primary examples”, they nevertheless share “some significant defining features”. Keane DJ then listed those features that the premises shared with the listed commercial dwellings. Those features included the:

- scale of the operations,
- number of occupants,
- level of control and management,
- period of occupancy,

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- facilities offered,
- access available, and
- cleaning and maintenance services provided.

[132] However, the point that can be taken from *Case L75* is that it was acknowledged that the premises in question were not “the same” as any of the listed examples, but that when considered overall they were more “similar” to a commercial dwelling. He noted that some aspects were similar to a motel, while others were similar to a hotel. Other features were similar to those found in a boardinghouse. Thus a broad consideration can be given to whether an establishment is similar.

United Kingdom Value Added Tax cases

[133] The United Kingdom (UK) Value Added Tax Act 1994 (VAT Act) provides that “the provision of accommodation in a hotel, inn, boardinghouse or similar establishment” is excluded from an exemption from Value Added Tax (VAT) if it comprises:

- (a) sleeping accommodation;
- (b) accommodation in rooms provided in conjunction therewith (i.e. a bathroom);
or
- (c) accommodation for the purposes of a supply of catering.

[134] The VAT Act then defines the term “similar establishment” as including:

- (a) premises used by visitors or travellers where sleeping accommodation is provided with or without board or facilities for preparing food; and
- (b) premises held out as being suitable for use by visitors or travellers where sleeping accommodation is provided with or without board or facilities for preparing food.

[135] Several UK cases concerning the VAT exemption have considered the requirements for a “similar establishment”.

Namecourt Ltd v The Commissioners (1984) VATTR 22

[136] Namecourt Ltd operated Princes Lodge to accommodate up to 260 people in its 199 rooms. Most occupants were suffering from some sort of social problem and had their lodgings paid for by the Department of Health and Social Security. Each occupant was provided a room with a bed, together with the use of bathrooms and toilets. They were provided with breakfast if they wished it, and cooking facilities were available. Occupants were given a key and could come and go as they pleased. They were responsible for laundering their linen and cleaning their rooms. A communal room and facilities were provided, and the company cleaned those.

[137] The Tribunal stated that “[i]t is in the end a pure question of fact” and noted that both parties agreed:

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that in considering whether on those facts the establishment fits into the statutory definition of ‘hotel, inn, boardinghouse or similar establishment’, we have got to give those words *their ordinary meaning* and we have got to look at the situation of the establishment in the light of the evidence we have heard *as a whole* rather than looking too closely at individual details. [Emphasis added]

[138] It was submitted for the Commissioners that Princes Lodge had most of the characteristics normally attributed to a hotel or boardinghouse: sleeping accommodation in individual rooms, normal bed and breakfast, some catering facilities, bed linen, and a common room. In addition, the company provided a licence to occupy, not a tenancy.

[139] The company argued that the accommodation was much closer to bed-sitting room accommodation in a multiple occupied home rather than accommodation in a boardinghouse. Overnight accommodation for the public was not provided and the stays were usually longer term (over 6 months). In addition, guests did not pay their own way, and the company screened guests to avoid arsonists and child molesters.

[140] The Tribunal did not consider these to be significant differences and stated:

It does seem to us to come quite near the borderline, but in the end we have come to the conclusion that, looking at the situation as a whole, Princes Lodge is in essence a similar establishment to a boardinghouse. It is, if we may say so, much easier to reach that conclusion than to say exactly how one has reached it, but it seems to us that this exception ... is really directed to the sort of establishment which provides accommodation for a transient or floating, though not necessarily short-stay, class of resident. It may be long-term or may be short-term, but it is accommodation which you go to with a view to moving on from in due course; and it will be accommodation which carries with it some element of service. Again the level of service which you would get in a small boardinghouse is very much less than the level of service you would get in a five star hotel, but some element of service would be involved. It seems to us that that is exactly what Princes Lodge provides.

The Lord Mayor and Citizens of the City of Westminster (1988) 3 BVC 847

[141] One of the four issues in this case was whether a lodge for homeless men was a similar establishment to a hotel, an inn, or a boardinghouse. If so, the accommodation supplied would be standard-rated.

[142] The case involved a council-run lodging house, Bruce House, which provided accommodation for as many as 600-700 homeless men. Each man had a cubicle containing a bed and a chair, and a door that could not be locked. Conditions were poor with too few washrooms, showers, and toilets. There were wooden chairs in a television room and a number of hot plates for cooking. The canteen had been removed by the time of the hearing. There were crude laundry facilities and bed linen, often left soiled, was provided. There was a staff consisting of a principal, three assistants, and 40 manual workers. Although a nominal accommodation charge was made (mostly paid by Social Services) Bruce House was not run as a profit-making institution, and it consistently showed a loss. Counsel for the parties agreed that the accommodation was supplied by way of licences to occupy the premises.

[143] The Tribunal looked at characteristics which distinguished hotels, inns, and boardinghouses from other establishments which provide accommodation. The Tribunal observed (at pages 851-852):

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The issue, therefore, that we have to decide on this point is – is Bruce House a ‘similar’ establishment to an hotel, inn or boardinghouse within the meaning of item 1(a)? To answer this question one must first be clear what is meant in this context by the word ‘similar’. We get some help on this from the judgment of *Lawton J. in C. & E. Commrs. v. Clark’s Cereal Products Ltd.* [1969] 1 Q.B. 755 at p.759. In that case he was concerned with the meaning of the word ‘similar’ in the expression ‘chocolates, sweets and similar confectionery’ and he said:

“The first problem I have to ask myself is what do the relevant words ... mean? It is clear that Parliament had in mind by use of the phrase ‘similar confectionery’ ... products which would not normally be regarded as chocolates or sweets but which had some of the characteristics of chocolates and sweets.”

Applying that explanation of the meaning of the word ‘similar’ to the problem with which we are faced it seems to us that we should ask ourselves this question: *‘is Bruce House, though it would not normally be regarded as an hotel, inn or boardinghouse, an establishment which has some of the characteristics of an hotel, inn or boardinghouse?’*

When posed in that way the answer to the first part of the question seems to us simple. No one would call Bruce House an hotel, nor would they call it an inn, we do not think they would call it a boardinghouse either.

So one must then go on to consider whether Bruce House has some of the characteristics possessed by hotels, inns and boardinghouses and this we think is more difficult. The characteristics for which one is looking must be, we consider, the characteristics which distinguish these three types of establishment all of which provide accommodation, from other establishments which also provide accommodation. One such characteristic is to be found in the purpose for which the accommodation is provided. Thus a school, or a prison provides accommodation, but we would not regard either as a similar establishment to an hotel or inn or boardinghouse because the accommodation they provide is for a purpose subsidiary to the main purpose of the establishment. An hotel, inn or boardinghouse on the other hand provides accommodation as its main purpose. The accommodation provided by Bruce House is likewise provided as its main purpose – it is not provided for a subsidiary purpose such as housing people while they are being educated or detained in the building.

Likewise hotels, inns and boardinghouses commonly provide food for those resorting to them. So does Bruce House, though in a fairly minimal way. A further characteristic of an hotel, inn or boardinghouse is that its accommodation is usually provided for people who are for varying periods away from their home, or who, for the time being, have no home.

So we conclude that Bruce House certainly has some of the significant characteristics that are shared by hotels, inns and boardinghouses. *Are there any characteristics that Bruce House lacks but which are fundamental to the nature of an hotel, inn or boardinghouse with the result that the lack of them in Bruce House so distinguishes it as to make one say that Bruce House is not similar?* The customers of hotels, inns and boardinghouses are normally provided with a bedroom that provides complete privacy and can usually be locked. In Bruce House the sleeping accommodation is only unlockable cubicles, affording little privacy. The standards of sanitation, laundry facilities and service at Bruce House are of a low order, probably lower than at the vast majority of even low grade hotels. Hotels, inns and boardinghouses are normally run with a view to making a profit but Bruce House has never been so run.

We ask ourselves whether these differences are such that we should regard Bruce House as an establishment that is so different as to be different in kind, or are they differences which are little more than differences of degree so that it would be right to say that Bruce House, though not the same as an hotel, inn or boardinghouse is, nevertheless, similar. This must be largely a matter of impression but we have come to the conclusion that the differences are not so great as to make us say that Bruce House is not similar to an hotel, inn or boardinghouse. In reaching this decision we take comfort from the decisions of this tribunal on *Namecourt Ltd.* (1984) 2 BVC 208,028; (1984) VATTR 22 where the facts had some similarity to those of this case and the tribunal reached the same conclusion. [Emphasis added]

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International Students House [1996] BVC 2975

[144] The appellant was a charity that provided accommodation for foreign students at four buildings located in central London. There were 295 beds for single students in single, double, and three-bedded rooms, and 44 furnished flats for married students. There was a programme of activities and counselling and welfare services, and 110 staff. Students paid a monthly rent inclusive of furniture and services. On leaving, 28 days' notice was required. The normal length of stay was one year; some stayed for 2 or 3 years. The aim of the charity was to contribute to better international relations by assisting foreign students to experience life in the UK.

[145] The supplies of accommodation would be exempt from VAT unless the buildings were a “similar establishment” to a hotel, an inn, or a boardinghouse.

[146] The Tribunal stated that it appeared common ground that one must look for the characteristics which distinguish the listed types of establishment from other types of establishment providing accommodation. Citing *The Lord Mayor and Citizens of the City of Westminster* the Tribunal noted two of the characteristics referred to in that case—the purpose for which the accommodation is provided and that the listed establishments usually provided accommodation for people away from their home or who had no home—and then stated (at page 2,985):

It appears to the tribunal that a further characteristic must be added, namely that an hotel, inn or boardinghouse is concerned with the business of providing accommodation. The tribunal concludes that on the facts before it International Students House is not an hotel, inn or boardinghouse.

[147] The Tribunal then considered whether it was a “similar establishment”. Having concluded that International Students House was not accommodation which was used by, or held out as being suitable for use by, visitors and travellers, the Tribunal continued (at pages 2,986- 2,987):

The Tribunal asks further whether International Students House comes within the definition “similar establishment” ... It considers that as did the tribunal in the appeal of *Namecourt Ltd* that this is a pure question of fact. Although all bodies which provide furnished accommodation have at least that degree of similarity, the tribunal proceeds on the same basis as did the tribunal in the appeal of *Allen Hall* to find that there are characteristics which make International Students House entirely dissimilar to a hotel, inn or boardinghouse. *Such places have as their predominant characteristic the offer of use of accommodation for gain, that being the purpose of their existence.* The purpose of the existence of International Students House is as a charity, having the aims and objectives earlier stated and having a particular form of selection and policy with regard to its residents. The tribunal in the appeal of *Allen Hall* found three elements to be important in establishing the dissimilarity, namely the selectivity exercised over the choice of residents, the high degree of control and the emphasis of a corporate existence while in residence. The tribunal in the present appeal follows the same reasoning, and finds that these elements exist in the case of the appellant. [Emphasis added]

[148] The Tribunal concluded that the predominant purpose of International Students House was not the provision of accommodation, but the fulfilment of its objectives. Providing accommodation was subsidiary to its main purpose of helping overseas students and improving international relations.

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Summary of United Kingdom Value Added Tax cases

[149] In summary, the UK VAT Tribunal has asked the following questions in order to determine whether an establishment is a ‘similar establishment’ to a hotel, an inn or a boardinghouse.

- Does the establishment have some of the characteristics possessed by hotels, inns, and boardinghouses?
- Does the establishment lack any characteristics which a hotel, an inn, or a boardinghouse possesses and which are fundamental to the nature of a hotel, an inn, or a boardinghouse?
- Are any differences such that the establishment is different in kind, or are they differences which are little more than differences in degree?

[150] When considering the first of these three questions, the Tribunal has focused on characteristics which distinguish the three types of listed establishments from other establishments which also provide accommodation. Some of the characteristics recognised were:

- the accommodation is provided as the main purpose of the listed establishments.
- food is commonly provided.
- the accommodation is usually provided for people who are for varying periods away from their home or who, for the time being, have no home.
- the accommodation is provided as part of the business of the listed establishments.

[151] When considering elements of dissimilarity, some of the factors which the Tribunal has considered are the:

- degree of privacy provided;
- nature of the room (e.g. furnishings provided);
- level of selectivity exercised over the choice of guests;
- degree of control exercised by management;
- level of service provided;
- standards of sanitation, laundry facilities and services provided; and
- degree of communal facilities provided.

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[152] The views of the VAT Tribunal are useful in considering the issue of a similar establishment under the New Zealand GST Act and in some cases these views reflect those expressed by Keane DJ in *Case L75*. However, there are several reasons why care must be taken with any application of the UK approach to the New Zealand situation.

[153] The VAT Tribunal takes the view that food is commonly provided in hotels, inns, and boardinghouses. In New Zealand, however, it is not unusual for a hotel or boardinghouse not to provide food. In addition, the New Zealand legislation considers similarity with a wider range of establishments—those listed in paragraphs (a)–(c) of the definition of “commercial dwelling”. In addition to hotels, inns, and boardinghouses, this includes motels, hostels, and camping grounds. While some of these may provide food, some clearly do not, and therefore the provision of food is unlikely to be considered a significant determinative characteristic in New Zealand.

[154] Under the UK VAT legislation, the relevant provision refers to “a hotel, inn, boardinghouse, or similar establishment” and this has been interpreted by the Tribunal as requiring that similarity be established with the genus as a whole. The New Zealand GST Act refers to “any establishment similar to *any* of the kinds referred to in paragraphs (a) to (c)”. In other words, when considering similarity under the New Zealand provision there is no requirement to establish similarity with a whole class of establishments; similarity with just one of the listed establishments is sufficient.

Australian position

[155] Under the Australian GST legislation “the right to occupy the whole or any part of commercial residential premises” is subject to GST. “Commercial residential premises” is defined as meaning:

- (a) a hotel, motel, inn, hostel or boardinghouse; or
- (b) premises used to provide accommodation in connection with a school; or
- (c) a ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire; or
- (d) a ship that is mainly used for entertainment or transport in the ordinary course of a business of providing ships for entertainment or transport; or
- (e) a caravan park or a camping ground; or
- (f) anything similar to residential premises described in paragraphs (a) to (e).

However it does not include premises to the extent that they are used to provide accommodation to students in connection with an educational institution that is not a school.

[156] Paragraph (a) is virtually the same as the New Zealand paragraph (a), while paragraphs (e) and (f) substantially correspond with paragraphs (b) and (d) of the New Zealand definition of “commercial dwelling”. There is no equivalent to the New Zealand paragraph (c).

[157] The Australian Taxation Office has released a public ruling (GSTR 2000/20) entitled *Goods and Services Tax: commercial residential premises*. The ruling includes the Commissioner’s view on the meaning of paragraphs (a), (e) and (f) of the definition of “commercial residential premises” and provides guidance on “residential premises”.

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[158] In relation to paragraph (f) the ruling adopts a similar approach to the UK VAT cases, but expands on the set of common characteristics divined in those UK cases. The ruling specifies that the characteristics are only those of a hotel, motel, inn, hostel, or boardinghouse (paragraph (a)) or similar premises (paragraph (f)). It does not relate to camping grounds or the types of establishment listed in paragraph (c) of the New Zealand definition.

[159] The ruling discusses the following main characteristics of hotels, motels, inns, hostels, and boardinghouses.

- Commercial intention—they are operated on a commercial basis (i.e. conducted in a business like manner, for reward).
- Multiple occupancy—they provide sleeping accommodation on a multiple occupancy basis.
- Holding out to the public—they hold themselves out as premises that will receive travellers who are willing and able to pay for accommodation and/or that they will accept reservations or contracts to let accommodation to guests or lodgers.
- Accommodation is the main purpose—the provision of accommodation is the establishment's primary purpose.
- Central management—those establishments have central management to accept reservations, allocate rooms, receive payments, and arrange the services provided throughout the premises. Establishments that operate in a similar manner to a hotel, a motel, or an inn usually have an owner or manager present or readily accessible, holding some control over the premises as a whole and managing them.
- Management offers accommodation in its own right—the management has control of the premises as a whole, whether or not it owns the property or any part of it and lets them in its own right, rather than as an agent.
- Services offered—services, such as cleaning, the provision of food, laundering services, telephone, and minor services (e.g. wake-up calls or taxi bookings) are provided to guests.
- Status of guests—those being provided with accommodation are guests, boarders, or lodgers. They can expect a reasonable amount of privacy from management, their staff, and other guests, but not to the same level expected by a tenant.

[160] In the Commissioner's opinion, in the absence of significant precedent in New Zealand, the approaches of the UK VAT Tribunal and the Australian Tax Office provide a useful background for considering the approach to be adopted in New Zealand. However, differences in the New Zealand legislation and in the approach taken in the only TRA decision on this issue must be taken into account in determining the New Zealand approach.

Conclusions on paragraph (d) similar establishments

[161] Whether an establishment is similar to one of the commercial dwellings listed in paragraphs (a)–(c) of the definition is a question of fact and degree. The phrase “similar to” is an imprecise term and requires an exercise of judgment. The requirement that an establishment be similar to *any of the kinds* listed in paragraphs (a)–(c) means that similarity is to be compared with one or more of the listed kinds of establishments. An establishment does not have to be similar to all of them, or all of those in any of each of paragraph (a), paragraph (b), or paragraph (c) as a group.

[162] As similarity may be compared with one or more of the listed kinds of establishment, general characteristics of all or most of the listed establishments are useful. Ultimately, though, the test requires that the establishment being compared shares sufficient characteristics with one or more of the listed kinds of establishment. Each kind may place an emphasis on different characteristics, and may have characteristics peculiar only to them. Comparison of the level of each of the characteristics in the subject premises with the usual level of those characteristics found in the particular kind of listed establishment will be necessary to test similarity.

[163] In the Commissioner’s opinion, in order to determine whether any particular premises are an “establishment similar to any of the kinds referred to in paragraphs (a) to (c) of [the commercial dwelling] definition” it is useful to begin by asking the following questions:

- Does the establishment have any of the characteristics possessed by hotels, motels, inns, hostels, boardinghouses, camping grounds, convalescent homes, nursing homes, rest homes, or hospices?
- Does the establishment lack any characteristics which are fundamental to the nature of the relevant listed establishments?
- Are any differences such that the establishment is different in kind, or are they differences which are little more than differences in degree?

[164] The answers to these questions will obviously depend upon the particular facts in any particular case. However, there are several common characteristics of commercial dwellings which will generally be relevant when determining whether an establishment is similar to the listed kinds of establishment. These characteristics are discussed below.

Commercial nature

[165] The most fundamental characteristic which is common to all commercial dwellings is the commercial nature of those establishments. Many of the other characteristics identified support this commercial or business aspect. In order to satisfy this characteristic the establishment must be operated on a commercial basis. It will be operated in a business-like fashion, with relevant factors being matters such as the nature of the activity, the scale of operations, the commitment of time, money and effort, the pattern of activity and the financial results. Generally the operation will be

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conducted with a view to making a profit, although in some circumstances it may be operated by a non-profit body. A distinction may be drawn with the carrying on of a hobby or defraying the costs of what is really a private or investment asset or activity.

[166] It may be that an activity could never realise a gain or profit in view of the costs of the operation, or that it is carried on for personal reasons or personal interest. Private use of the assets (e.g. holiday accommodation or use by family members or friends) may also indicate that there is no commercial intention, or insufficient commercial intention for the activity to be similar to the kinds of commercial dwelling specified in the definition.

[167] It should also be noted that a commercial approach to the supply of accommodation is not sufficient, by itself, to make a dwelling a commercial dwelling. For example, many domestic rental activities are carried on in a commercial, and “for profit”, manner.

Physical attributes of the premises

[168] The size of the premises or scale of the activity should be commensurate with the commercial basis of the operation. In general terms, however, the ability to provide accommodation to a number of unassociated guests at a time will indicate a commercial dwelling. There should be provision for “multiple occupancy” (i.e. it should be capable of taking a number of unrelated or unassociated individuals or groups of people at a time). However, it is recognised that it may still possible to have a commercial dwelling that accommodates only one group of guests at a time. The capacity for multiple occupancy is only one, indicative (albeit strongly indicative) factor to consider in conjunction with the other criteria.

[169] Some form of communal facilities, which may include kitchen, dining, bathroom, and laundry facilities to recreational and entertainment facilities, may be provided. However, the degree, standard, and nature of those facilities may vary considerably amongst the types of commercial dwelling and accommodation supplied. The absence of such communal facilities will not, however, mean that the premises are not a commercial dwelling.

[170] The level of privacy, and the extent of any furnishings provided, will also vary depending on the nature of the premises. For example, guests staying in a basic cabin at a camping ground may be required to provide their own linen and may share communal facilities. By contrast, establishments similar to those in paragraph (a) will generally provide most of the furnishings for guests. Those in paragraph (c) may allow for a combination of supplied, and personal, furnishings.

[171] Capacity for multiple occupancy will not be satisfied by an amalgamation of a number of individual units being managed by an agent on behalf of a number of different owners. Section 60(1) makes it clear that a supply made by an agent for a principal is made by the principal, not the agent. Where a manager lets premises on behalf of a number of owners, the accommodation is supplied by each principal (owner) rather than the agent (manager). Thus the supply of accommodation made by each owner will be in a single unit and such a supply will usually be the supply of accommodation in a dwelling. That single unit, or dwelling, will not usually satisfy

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the commercial dwelling requirements. This will be the case whether or not that single unit is part of a larger complex containing multiple units.

[172] As mentioned previously, one common characteristic of a commercial dwelling is the capacity for multiple occupancy (i.e. a number of concurrent unrelated guests). Accordingly, a taxable activity in a commercial dwelling is usually an activity carried on continuously and regularly where the accommodation supplier supplies a number of rooms to unrelated or unassociated individuals or groups of people at a time. It is the nature of such an activity that the supplier also usually exercises managerial control over the establishment. Further, occupancy in a commercial dwelling may involve an element of available communal or shared facilities. The shared or communal facilities combined with managerial control and oversight are not present where the supply made by an individual owner is a single unit. The proximity of other single units housed in a complex of multiple units does not, of itself, create the required level of shared facilities or managerial control.

[173] An alternative view is that, as a supply of accommodation is being made in a complex of multiple units, the supply is *in* a commercial dwelling. However, the Commissioner considers that such a view is inconsistent with the words of the definition as they apply in this context. Where a single unit, of itself, constitutes a dwelling then, in order for it to constitute a commercial dwelling, *that dwelling* must have sufficient characteristics to be an “establishment similar to any of the kinds referred to in paragraphs (a) to (c)” of the definition of commercial dwelling.

[174] However, where individual unit owners have leased their units to a third party operator, the supply of accommodation to occupants will be made by the third party, not the individual unit owners, and section 60 will not apply. In those circumstances, the multiple occupancy requirement will be satisfied in relation to supplies made by the third party on its own behalf and the premises may be a commercial dwelling, subject to a consideration of the other characteristics of commercial dwellings. Further, as supply of a unit to a third party operator will not be a supply of *accommodation* in a dwelling, the section 14(1)(c) exemption will have no application.

Length of stay

[175] The typical length of stay will vary with the kind of establishment being compared. While some commercial dwellings will be exclusively or primarily for short-term or temporary stays (e.g. most hotels and motels), some may have occupants for an extended period (e.g. boardinghouse lodgers or rest home or hospice residents). The latter group, particularly some long-term boardinghouse lodgers, may regard their rooms as their home, although the majority of commercial dwelling occupiers will not.

[176] Even those guests who do consider their rooms in a commercial dwelling to be their home will occupy only as licensees—they will not be tenants. Their occupation will be by personal permission rather than the granting of a legal right of exclusive possession. The property owner will retain the legal right to exclusive possession of the property.

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Control

[177] Most commercial dwellings will have a management presence on the premises. Where management does not have a physical presence, general control will still be retained over the premises during the occupation.

[178] For many commercial dwellings there will be a reception and service area. Management will generally ensure the smooth running of the premises, and this will usually include periodic inspection (and cleaning and maintenance) of common areas.

[179] Some commercial dwellings may be selective over their choice of residents; (e.g. there may be some screening of guests in boardinghouses or targeting of particular groups for hostels). Some, like hotels or motels, will be generally available to the public.

[180] Management will almost invariably provide any (landline) telephone and power, with charges for them sometimes being included in, and sometimes added to, the tariff. It would be unusual for the occupant of any commercial dwelling to have an account with a utility provider.

Services

[181] Generally the services provided in a commercial dwelling will include cleaning, maintenance, rubbish removal, and the provision of consumables. They will often include the provision of linen, towels, and cleaning products.

[182] In some longer-term accommodation, such as boardinghouses and some hostels, occupants may be responsible for cleaning their own rooms. However, cleaning the common areas and facilities will usually be the responsibility of management. Food or meals may be provided or available.

[183] Service is typically provided during the occupant's stay, although particularly for very short stays this may not happen until the end of the stay.

Marketing

[184] Marketing of a commercial dwelling is usually undertaken in a commercial way; although the extent of this will vary amongst the groups of similar kinds of commercial establishment. For example, the nature of the advertising carried out by a paragraph (c) commercial dwelling (i.e. convalescent home, nursing home, rest home, or hospice) may be different in nature to that carried out by a hotel or boarding house. Camping grounds and some motels and hotels may advertise significantly and often seasonally.

[185] Most commercial dwellings will have obvious signage. Again this will vary with their advertising needs, and some types have standard, well understood signs; for example, motels tend to have "vacancy/no vacancy" signs outside.

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[186] Many commercial dwellings will have a listing in the *Yellow Pages*, advertise in newspapers, use business cards, advertise or list in industry-specific publications, or have an advertising presence on the internet.

HOLIDAY HOMES, HOMESTAYS AND FARMSTAYS, AND SERVICED APARTMENTS

[187] In this part of this statement, the impact of the conclusions reached in relation to dwellings and commercial dwellings will be considered in relation to three common types of holiday/short-term accommodation, namely holiday homes, homestays and farmstays, and serviced apartments. These will be considered in general terms. It is important to recognise that conclusions as to whether or not individual premises are a dwelling or commercial dwelling will always be dependent upon the particular facts concerned. The following is a general discussion indicating factors which may be more or less likely to indicate that a particular dwelling is a commercial dwelling.

Holiday homes

[188] Many people own holiday homes and let them out on a casual basis to friends and acquaintances. Some use them less for their personal pleasure and rent them out reasonably consistently, advertising by various means, to maximise the rental activity. Some may own a number of holiday homes which they use privately on a limited basis, or not at all, and rent them out as extensively as possible.

[189] The potential variety of holiday homes is wide, from a bach or crib to substantial residential premises. The overriding common feature, however, is they are usually additional to the owner's primary place of residence, but are intended (to a lesser or greater degree depending on the owner's circumstances) for use as a holiday home.

[190] Holiday homes are dwellings as their predominant function or purpose is to be a place of residence or abode. It does not matter that a holiday home is not a particular person's permanent or main residence.

[191] Owning a number of holiday homes that are rented out (whether in proximity to each other or not) will not affect the conclusion that each is a dwelling. Private use of a holiday home is also irrelevant. A holiday home which is used partly by the owner and partly let out will still be a dwelling.

[192] Holiday homes are generally not excluded from being dwellings, by virtue of being commercial dwellings, because they are not sufficiently similar to any of the listed kinds of commercial dwellings.

[193] The types of commercial dwelling with which a comparison can most readily be made are motels and hotels. However, it is the Commissioner's view that a single motel unit or hotel room is not a commercial dwelling—rather it is the whole hotel or motel complex that constitutes the commercial dwelling and any comparison must be made with that.

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[194] There are several factors which would generally indicate that holiday homes are dissimilar to hotels and motels, so do not constitute commercial dwellings, and these are discussed below. However, it is important to note that the question of whether a particular holiday home constitutes a commercial dwelling will depend upon the particular facts of that case. It may be that in some cases the various factors discussed below are present in differing degrees which may lead to a conclusion that a particular holiday home is a commercial dwelling.

Commercial nature

[195] The letting activity is usually not carried on in as commercial a manner as it is carried on in a hotel or motel complex. The letting is often undertaken simply to offset the cost of what is essentially a private asset. The provision of accommodation to others is generally of lesser importance than providing a holiday home for the owner. Often the private use of a holiday home will be significant, and it will be unavailable for rent at times when the owner is using it, which may be during some prime holiday rental periods.

[196] A person may purchase a holiday home for commercial reasons, much the same as a person may purchase a domestic rental property. There may be no intention to use the property for private purposes, or if so used it is subsidiary to the commercial letting (e.g. it will be used privately only if a commercial let is not possible). In such circumstances, marketing and advertising may be undertaken in a manner consistent with such a commercial undertaking.

Physical attributes of the premises

[197] The element of multiple occupancies generally found in hotels, motels and other commercial dwellings is unlikely to be present. Although several individuals may be accommodated, they will usually be part of the same group who are in the holiday house or apartment under the same booking. As the premises essentially accommodate only one group at a time, there is also no sharing of communal facilities by guests who are unacquainted.

Legal nature of the occupation

[198] Like the listed types of commercial dwellings, the occupation of holiday homes will generally be by licence rather than tenancy, although it is possible that any long-term occupation could be by tenancy, which would not be the case in relation to the listed commercial dwellings. Furthermore, it is also common practice for the owner of a holiday home to treat the occupier as having an exclusive occupancy during the licence period.

Management—level of control exercised and services provided

[199] The level of control exercised and the services provided are likely to be much less than that exercised or provided by an hotelier, a motelier, or a proprietor of another listed commercial dwelling. The owner of a holiday home will usually not have a physical presence at the property during the rental, and will not, usually, retain

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general control or inspect the premises during the occupation. Services such as cleaning, maintenance, rubbish removal, provision of consumables and linen are likely to occur only between periods of occupancy, or will otherwise remain the responsibility of the guest. This is not the case with most commercial dwellings.

Marketing

[200] This is likely to be less than that undertaken by hotels and motels, which tend to have at the very least *Yellow Pages* and Automobile Association accommodation guide (and other similar) listings and prominent signage.

Multiple homes

[201] Where a person owns a number of holiday homes, which they rent out, it is still unlikely that those premises would, as a group, constitute a commercial dwelling. While the commercial nature of the operation and marketing may increase, this is still likely to fall short of what is usual amongst moteliors or hoteliers. The level of management and services provided might also increase. However, the owner (or agent on behalf of the owner) is still unlikely to exercise any routine presence or control during the occupancies. People who rent holiday houses usually expect undisturbed enjoyment of the premises during their stay. Services, like cleaning, are still more likely to be provided between, rather than during, occupancy of each house.

[202] The multiple occupancy criterion is unlikely to be satisfied even where homes that are side by side are let by a person, as they will not have the same proximity and communality that a motel will have. In addition, where a single holiday home, of itself, constitutes a “dwelling” then, in order to be a commercial dwelling, *that home* must have sufficient characteristics to be a similar establishment. Motels are usually comprised of units joined in a row or a number of rows. Similar establishments to motels might be comprised of “chalets” set in a common ground, sharing some facilities. In contrast, holiday homes are likely to be on separate titles and physically distinct sections. In the Commissioner’s view, this is more likely to constitute a number of separate dwellings, none of which will amount to a commercial dwelling in its own right.

Conclusions

[203] Supplies of accommodation in holiday homes will be exempt as the supply of accommodation by way of hire in a dwelling or dwellings, unless they are commercial dwellings.

[204] It would be very unusual for a holiday home or a number of them jointly to be an establishment sufficiently similar to one of the types of commercial dwellings listed in the definition so that it would be a commercial dwelling.

Homestays and farmstays

[205] “Homestay” is, compared to the other types of accommodation discussed, a relatively new term and, along with related terms like “farmstay” and “B&B”, defies precise description. Essentially “homestay” or “farmstay” accommodation involves

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providing short term holiday accommodation in a private home for a charge. Typically, it involves providing accommodation to paying guests in a person's own home by making available a bedroom or bedrooms, and possibly other rooms, exclusively for guests, and sharing other parts of the home with guests. It may also involve preparing meals for guests.

[206] The essential criterion of a “homestay” is that paying guests stay with the owners in their home. “Homestay” strongly implies that in addition to accommodation and food, the guest will be welcomed into, and be part of, the home while staying. Homestay hosts will usually spend time with their guests, providing personal hospitality. “Farmstay” is a similar concept, but implies that in addition to being part of the home, there will be some element of experiencing farming or country atmosphere and life.

[207] Homestays and farmstays provide guests with their own bedroom and, in some cases, additional space which is exclusively available to the guests. The area of the house exclusively available to guests is likely to be significantly less than the area of the rest of the house. Home-cooked meals may be provided. Hosts may provide guests with their own bathroom facilities or sometimes guests share facilities with other guests or use the hosts' facilities. Guests are likely to have access to most of the owners' living and service areas, including access ways, the kitchen and indoor and outdoor living areas used by the owners. Sometimes there may be a guest lounge area. They will not usually have access to the owners' bedroom or bathroom and the owners may also reserve certain other areas of the home for their exclusive use.

[208] A house offering homestay or farmstay accommodation is unlikely to appear significantly different from neighbouring houses or farms. Advertising is often through a book of homestay and B&B accommodation, or on a website maintained by or for an association of owners.

[209] *Case S56* (1996) 17 NZTC 7,361 is a TRA decision concerning a farmstay. However, that case concerned a claim for input tax credits on the construction of a farmhouse and did not deal with the issue of the supply of accommodation in the farmhouse. The main focus of the case was on determining the principal purpose of the taxpayer in constructing the farmhouse and it was concluded that the business purpose outweighed the private residential purpose. It is interesting to note that in reaching his decision, the TRA was influenced by the fact that the house was built at double the size otherwise needed, and the design and layout were related to the farming and farmstay activity. Barber DJ indicated that when considering the issue an element of realism and pragmatism was required.

[210] The terms “homestay”, “farmstay” and “B&B” are often considered interchangeable. In general terms, a B&B may be larger than a homestay, and may be more akin to a small private hotel, having a greater number of available rooms than may be available in a homestay. Alternatively, an undertaking described as a B&B may be similar to a homestay as described above. As the name suggests, the availability of meals may be limited in a B&B to breakfast, but this may also be the case in a homestay. However, it is important to note that the label applied to any particular homestay, farmstay or B&B is not relevant for the purposes of determining whether it is a dwelling or a commercial dwelling.

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[211] In a B&B a private living area may be set aside for the owners. However, depending on the size of the B&B, the area exclusively available to guests is more likely to equal or exceed the area of the rest of the house. A B&B is also more likely to appear different from its neighbours; chiefly due to its size, the existence of signage and, in many cases, parking facilities for guests. Often the running of a B&B will constitute a full-time job for one of the owners. A property may be purchased specifically to be a B&B, but many are converted family homes. Where a property satisfies all these characteristics it may be more likely to be a commercial dwelling, regardless of whether it is in fact called a homestay, farmstay, or B&B.

[212] A homestay or farmstay will clearly be a dwelling as the main function or purpose of the premises is to be a place of residence or abode. In addition, the premises are obviously actually physically used as a place of residence or abode by the owners and the guests.

[213] To be a commercial dwelling, a homestay or farmstay must be an establishment similar to any one of the listed types of commercial dwelling. The type which is most similar is a boardinghouse. Another, less likely possibility, is that they are similar to an inn, being a smaller or private hotel.

[214] The various factors in relation to homestays and farmstays are considered next.

Commercial nature

[215] While an income of some significance is possible, the nature of the premises and the operation carried on are quite different to that of a boardinghouse or private hotel. It cannot be said that they are similar to a motel. The predominant use of homestay premises will ordinarily be to provide accommodation for the owner and family. The predominant use of a commercial dwelling, such as a boardinghouse, private hotel, or motel is not to house the owner and family, but to provide accommodation to paying guests and to make a profit.

[216] To be a commercial dwelling, a homestay operation would need to be run on a commercial basis (i.e. along business lines). Factors relevant to this would include the commitment of time and money, the planning and projections undertaken (particularly for a new venture), the prospect of making a “profit”, the research and marketing undertaken, and the suitability of the location.

[217] It is recognised that there is considerable variation in homestay accommodation. Many will be offering accommodation in spare bedrooms vacated by grown children, and in these more ordinary styles of homestay, it is highly unlikely that the homestay will constitute a commercial dwelling. However, there are also homestays which trade on their exclusivity and extremely high level of service. In these cases, it may be accepted that the exclusiveness or intimacy afforded by a small-scale operation is an integral part of the operation and an indicator of a commercial intent. Typically this will be reflected in the tariff.

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Physical attributes of the premises

[218] Whereas in a boardinghouse or private hotel the owner's or manager's quarters will be separate from, and subordinate to, the guests' quarters, in a homestay the guests are actually in the owners' living quarters. In addition, common areas in the listed kinds of commercial dwelling are truly common (i.e. each guest has an equal right to be there with all others using the area). In contrast, in a homestay or farmstay situation, the "common" areas are generally the owners' living and service areas, which the owners allow the guests access to. The very essence of a homestay is that the guests are allowed to stay *in the owners' home*. The guests do not have an equal right with the owners to be there—they are allowed there at the owners' pleasure. This is also consistent with guests' relatively brief and sporadic use of these areas, which the owners will use extensively, continuously, and indefinitely.

[219] In most cases in a homestay or farmstay the areas exclusively available to guests will be significantly less than the area of the rest of the house and the premises are unlikely to be a commercial dwelling. However, in circumstances where the area exclusively available to guests exceeds the area of the rest of the house, it is much more likely to be a commercial dwelling. As the size of the operation and/or the house increases, the premises become less the owners' home, and more a house which has the predominant purpose of supplying accommodation to paying guests. At that point, the house may become of such a size and the provision of accommodation may be of such a scale that the house will be similar to a boardinghouse.

[220] While the element of multiple occupancies is less likely to be present in a simple homestay or farmstay, a homestay may be able to accommodate more than one guest at a time. As Keane DJ noted in *Case L75*, scale is significant in determining whether the premises are a commercial dwelling, and the larger the premises the more likely it is one. A homestay with only one guest room is clearly dissimilar to a hotel, a motel, an inn, a hostel, or a boardinghouse in this respect and unlikely to be a commercial dwelling for that reason (although the exclusive homestays referred to above may be a valid exception to this). A homestay with five or more bedrooms for guests is reasonably easily seen as similar to a boardinghouse.

[221] Homestay premises are likely to look similar to neighbouring domestic residential properties and may not have signage visible to the public, unlike the listed types of commercial dwellings.

Nature of the occupation

[222] As in commercial dwellings, guests will be in homestay or farmstay premises by licence, and will usually be there for a short term.

[223] From a guest's point of view, a stay in a homestay or farmstay is distinct from staying in a dwelling of a commercial nature like a hotel because they are staying in someone's home, a private dwelling, enjoying home comforts and personal hospitality.

[224] As the size of the premises being considered increases, they may still be called a "homestay" but they will be more similar to a boardinghouse or private hotel,

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or B&B establishment. If it then meets the other criteria of commercial dwellings (such as commercial nature, scale and marketing) it is more likely to be a commercial dwelling.

Management—level of control exercised and services provided

[225] In a homestay this is typically at a very high level: the owners provide significant personal attention and care and provide a raft of services, e.g. fresh linen and towels, consumables, refreshments, breakfast and often other meals, and information. Although this might be considered to indicate a commercial nature in the same way as the service in a top hotel might be very attentive, it is also consistent with the guest being more of a personal rather than commercial guest. The high priced “boutique” homestays noted above could be an exception to this.

Marketing

[226] This is generally at a lower level than most other commercial dwellings, being commensurate with what is usually a lower turnover and with the less commercial nature of the operation.

Conclusions

[227] In general homestays and farmstays will not usually be commercial dwellings. The size of the operation and the non-commercial nature of it will generally preclude a homestay from being a commercial dwelling. Unlike the listed kinds of commercial dwelling, the supply of accommodation in a homestay is generally concerned with the provision of personal hospitality in the owners’ own home. In addition, the element of multiple occupancies is less likely to be present.

[228] As a general guideline it might be expected that premises will be more likely to be a commercial dwelling when the house provides for multiple occupancies and the area of the house that is exclusively reserved for guests’ use exceeds the area of the rest of the house. Nevertheless, some homestays, such as up market or “boutique” homestays, may have the necessary commercial element even when the guest capacity and/or area is small.

[229] To be a commercial dwelling, a homestay operation would need to be run on a commercial basis – along business lines. Factors relevant to this include the commitment of time and money, the planning and projections undertaken (particularly for a new venture), the prospect of making a “profit”, the research and marketing undertaken, and the suitability of the location.

Serviced apartments

[230] The word “apartment” connotes a self-contained unit with kitchen, bathroom, and laundry facilities, usually physically joined to its neighbouring property or properties. Units in a high-rise apartment building are usually thought of, but flats in a block and time-share units would also fall within the description.

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[231] There are two non-physical aspects of serviced apartments that differentiate them from the same sort of premises let on an ordinary monthly tenancy which are GST exempt.

- Service or services are provided.
- The rental period tends to be short and occupation sporadic.

[232] Serviced apartments will be furnished. Services which are either automatically provided or optional would typically involve some combination of cleaning, linen and laundry services, rubbish removal services, and the provision of food or meals. In a larger block, there may be a reception desk or an on-site office, dry cleaning services, telephones, fax machines, audiovisual equipment, computer and printing facilities, valet car-parking and servicing, arrangement of transportation, provision for foreign exchange transactions, recreational activities, and conference and business rooms. In a large complex, these facilities may be much the same as would be offered by a large hotel.

[233] A flat or house rented out on an ordinary monthly tenancy will not be a serviced apartment simply because the landlord arranges and pays for the provision of basic services (e.g. rubbish removal, lawn mowing, or weekly cleaning).

[234] The letting of serviced apartments may be long term, but is more often short to medium term. The occupant may be staying in that locality for a holiday, on a short business trip, or on a longer term business trip (e.g. a secondment to another centre where the occupation lasts for weeks or months).

[235] This statement considers the situations where a person, providing significant services in relation to each of the following premises, rents out the following.

- A single apartment or flat (which may or may not be attached to the owner's dwelling).
- Several apartments or flats (which may be in a high rise complex, adjoining, or on separate titles in close or distant locations). These may be owned and let directly by a person or company or their agent, or be leased to a third party which lets a number of the units or operates the whole block on its own behalf.
- A time share unit or a number of time share units.

[236] All these premises will be dwellings unless they are commercial dwellings. To be a commercial dwelling, the premises would need to be sufficiently similar to one or more of the listed kinds of commercial dwelling. The types of commercial dwelling with which comparisons can most readily be made are motels or hotels. Similarity is not with a room in a hotel or a motel unit but with the hotel or motel establishment itself. Although the apartment owner may reside on the same section of land (e.g. in the case of an attached flat), the self-containment of the unit(s) in the types of premises contemplated precludes similarity with a boardinghouse.

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[237] The following five factors are considered.

Commercial nature

[238] Several factors suggest that serviced apartments are run in a business-like or commercial manner. Shorter term stays in premises with services provided usually command a significantly higher rent than similar premises would on an ongoing monthly tenancy. Providing services during the occupancies (as opposed to services provided between occupancies as is usually the case in respect of holiday homes that are let out), as well as taking bookings, providing access, keys, etc. on a regular basis, requires a greater degree of organisation and involvement. Unlike an ordinary residential tenancy of an apartment, the occupation of a serviced apartment is usually by licence rather than tenancy and, obviously, services are provided.

[239] Although those factors give some indication that the activity is carried on in a commercial way, the scale of the activity is likely to be the prime indicator of a sufficiently commercial or non-commercial nature. For example, where there is significant use of the premises by other than paying guests (e.g. the owners or family or friends), this would indicate that the apartment is more akin to a holiday home and it is less likely to be a commercial dwelling.

Physical attributes of the premises

[240] A single apartment, even when let on a short-term basis to numerous people, will not satisfy the multiple occupancy criterion common to commercial dwellings. Commercial dwellings provide accommodation for a number of unassociated people simultaneously.

[241] Where an owner lets more than one apartment, this requirement could potentially be met. However, when compared with a hotel or motel operation, the letting of more than one apartment is still likely to be a much less commercial activity unless a significant number of apartments are involved.

[242] Motel owners or operators tend to reside on the same piece of land as the motel units, and operate a distinct office. An apartment owner may also live on the same land, for example, where two or more apartments are attached to the owner's house, or where the owner of a block of flats lives in one and lets the others. However, without, for example, the high turnover of guests inherent in a motel complex, it is likely that these scenarios would lack the other commercial hallmarks of a motel.

[243] In a larger complex, like a high-rise apartment building, a manager (or owner) may live on the premises and operate an office and provide or organise the provision of services. However, where there is a manager renting the units out on behalf of several individual owners this will still not satisfy the requirement for multiple units in relation to each owner. Section 60(1) makes it clear that a supply made by an agent for a principal is made by the principal, not the agent. Where a manager lets premises on behalf of a number of owners, the accommodation is supplied by each principal (owner) rather than the agent (manager). Thus the supply of accommodation made by each owner will be in a single unit. The supply of

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accommodation in a single unit is the supply of accommodation in a dwelling. A single unit, or dwelling, will generally not satisfy the commercial dwelling requirements.

[244] However, where individual unit owners have leased their units to a third party operator, the supply of accommodation to occupants will be made by the third party, not the unit owners, and section 60 will not apply. In those circumstances the multiple occupancy requirement will be satisfied in relation to the third party operator and the premises may be a commercial dwelling.

[245] The extent of the shared facilities provided is another factor to consider. However, the range of facilities provided may vary quite dramatically between one set of serviced apartments and another (as may also be the case with some motels).

Nature of the occupation

[246] All the listed types of commercial dwellings in the definition are occupied by licence rather than tenancy, even if occupied longer term. In contrast, while serviced apartments will typically be occupied by licence for shorter periods, where the occupation is for a longer term, it may be by tenancy.

Management—level of control exercised and services provided

[247] The level of control exercised and services provided varies a lot among serviced apartments. The degree to which any control is exercised and services provided will be relevant in determining whether any particular serviced apartments are a commercial dwelling.

[248] The services provided in a block of serviced apartments may be minimal or may be much the same as that provided in a hotel or motel with (e.g. daily cleaning and linen changes). Services such as cleaning, maintenance, rubbish removal, and the provision of consumables and linen may occur during or only between periods of occupancy. Timeshare units are usually cleaned only at the end of the week, while common facilities are cleaned continuously. The level and frequency of services provided may be more optional for the occupier in respect of some apartments. Owners or managers may or may not have a physical presence on the property, retain general control, or inspect the premises during the occupation.

Marketing

[249] Marketing may be undertaken on a similar level to that undertaken in motels or hotels in the case of larger complexes, but for smaller operations it is likely to be much less. A comparison with the usual sort of marketing undertaken for motels (e.g. listing in *Yellow Pages* and accommodation guides, signage, and advertising in the media) may help to discern how commercial the nature of the operation is. However, it should be noted that the extent of the marketing of an entire complex will be irrelevant where the apartments are individually owned and supplied, and each apartment does not constitute a commercial dwelling in its own right.

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Conclusions

[250] Serviced apartments are subject to a wide variation in scale, the services provided, the management control exercised, the marketing undertaken, and the level of commerciality generally. All are dwellings: their predominant function or purpose is as a place of residence or abode of one or more individuals.

[251] Single apartments are unlikely to be commercial dwellings. Apartment complexes of some scale (providing accommodation to a number of unassociated parties) with a high turnover and high level of service can more readily be seen as similar to hotels or motels.

[252] The letting of a number of apartments on behalf of each of the individual owners will not give rise to a supply of accommodation in a commercial dwelling. On the other hand, where a number of apartments are leased to a single entity which in turn supplies them on its own behalf, there may be the supply of accommodation in a commercial dwelling by that entity.

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