



COMMISSIONER'S PRACTICE FHOG 7.1

SUBSTANTIALLY RENOVATED HOMES

This Commissioner's practice details the factors the Commissioner will take into consideration when determining whether a home is a *substantially renovated home* for the purposes of the first home owner grant ('FHOG').

Background

Section 19(2B) of the *First Home Owner Grant Act 2000* ('FHOG Act') provides that, where the commencement date of an eligible transaction is on or after 25 September 2013, the amount of a first home owner grant is:

- (a) where the transaction is a contract for the purchase of an established home, the lesser of \$3,000 or the consideration for the transaction; or
- (b) for any other transaction, the lesser of \$10,000 or the consideration for the transaction.

Under section 14(5A) of the FHOG Act, a contract for the purchase of an established home is not an eligible transaction if it has a *commencement date* on or after 3 October 2015. The *commencement date* of a transaction is defined in section 14AA of the FHOG Act as:

- (a) in the case of a contract — the date when the contract is made; or
- (b) in the case of the building of a home by an owner builder —
 - (i) the date when laying the foundations for the home begins; or
 - (ii) another date (on or after 1 July 2000) the Commissioner considers appropriate in the circumstances of the case.

The \$10,000 FHOG will be granted to eligible first home buyers who enter into a contract to purchase a new home or build a new home, or who build a new home as an owner-builder.

Under section 4 of the FHOG Act, a *home* is defined as a building, affixed to land, that may lawfully be used as a place of residence and is, in the Commissioner's opinion, a suitable building for use as a place of residence.

Where a contract to purchase a substantially renovated home is entered into, an applicant may be eligible for the \$10,000 FHOG if:

- (a) the sale is subject to GST on the basis that it is a sale of *new residential premises*;
- (b) since the renovations, the home has not been occupied or sold as a residence; and
- (c) the applicant meets the eligibility criteria for the FHOG.

Section 3 of the FHOG Act defines the term *substantially renovated home* to mean a renovated home that is the subject of a contract for purchase where:

- (a) the sale of the home under that contract is, under the *A New Tax System (Goods and Services Tax) Act 1999* (Cwth) ('GST Act'), a taxable supply as a sale of new residential premises;¹ and
- (b) the home, as so renovated, has not been previously occupied or sold as a place of residence.

Goods and Services Tax Ruling GSTR 2003/3² states that the sale of new residential premises by a registered entity (for example, a builder or developer) in the course or furtherance of an enterprise it carries on, is a taxable supply. The sale of a person's private residential premises will not be subject to GST, even if the premises are new residential premises, unless the sale is in the course or furtherance of that person's enterprise and that person is registered or required to be registered for GST.

The GST Act defines *substantial renovations*³ of a building as renovations in which all, or substantially all, of a building is removed or replaced. However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.

The term *substantial* is given its ordinary meaning as "of real worth and importance [and] belonging to substance" where *substance* is the "material or essential part of a thing".⁴ The term *renovate* means "to make new or as if new again; to reinvigorate, refresh, revive".⁵

Under subsection 40.75(1) of the GST Act, residential premises are new residential premises where:

- (a) they have not previously been sold as residential premises (other than commercial residential premises) and have not previously been the subject of a long-term lease; or
- (b) they have been created through substantial renovations of a building; or
- (c) they have been built, or contain a building that has been built, to replace demolished premises on the same land.

Commissioner's Practice

1. When making a determination regarding the nature and extent of renovations, the Commissioner will consider each case on the basis of all of the relevant facts and circumstances.

¹ *New residential premises* is defined in section 40.75 of the GST Act.

² GSTR 2003/3 is accessible on the ATO website at <http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20033/NAT/ATO/00001&PIT=99991231235958>.

³ *Substantial renovations* is defined in section 195.1 of the GST Act.

⁴ Black's Law Dictionary [6th ed] (1990) West Publishing Co: St Paul, Minnesota.

⁵ Macquarie Dictionary [5th ed] (2009) Macquarie Dictionary Publishers Pty Ltd: Sydney, Australia.

2. Where a home is purchased as part of a larger complex such as an apartment block or a strata-titled unit, an individual unit or apartment is a *building* and its structure is enclosed within the external walls of that building, rather than the entire complex.
3. When considering whether a home has been substantially renovated, the Commissioner must be satisfied that the renovations:
 - 3.1 affected the building as a whole or most rooms in the building; and
 - 3.2 resulted in the removal or replacement of all or substantially all of the building.
4. Building work can be considered *structural* or *non-structural* where:
 - 4.1 structural building work includes but is not limited to:
 - 4.1.1 altering, or replacing of, foundations;
 - 4.1.2 replacing, removing or altering of floors or supporting walls, or parts thereof (interior or exterior);
 - 4.1.3 lifting or modifying of roofs; and
 - 4.1.4 replacing existing windows and doors such that it is necessary to alter brickwork (for example, replacing a single door with a double sliding door); and
 - 4.2 non-structural building work includes but is not limited to:
 - 4.2.1 replacing electrical wiring;
 - 4.2.2 replacing, removing or altering non-supporting walls, or parts thereof (interior or exterior);
 - 4.2.3 plastering or rendering an entire wall or walls;
 - 4.2.4 plumbing (for example, replacing old metal pipes with copper or plastic pipes);
 - 4.2.5 removing or replacing fixtures such as kitchen cupboards, benches or bathroom cabinets; and
 - 4.2.6 removing or replacing air-conditioning or security systems.

Non-structural building work may contribute to substantial renovations when carried out in conjunction with structural building work.
5. The following work would not be considered as contributing to substantial renovations:
 - 5.1 work associated with the land around the building, such as landscaping;
 - 5.2 additions to a building where the building without the additions would not be considered substantially renovated;
 - 5.3 non-structural building work where structural building work has not also been carried out; or
 - 5.4 cosmetic work such as painting, sanding floors, removing and replacing worn or out-of-date fittings such as light fittings, or replacing curtains or carpets.

6. Where renovations were carried out by a previous owner (i.e. not the vendor), these will be disregarded in determining whether new residential premises have been created through substantial renovations.
7. In order for the Commissioner to assess whether a building is a taxable supply of new residential premises because substantial renovations have been carried out, the applicant must demonstrate the extent of the renovations by providing documentation that includes, but is not limited to:
 - 7.1 evidence that the vendor was registered for GST at the time that the contract for sale was entered into, and that the sale of the property was a sale as a taxable supply;
 - 7.2 floor plans or architectural drafts showing the design of the building before and after the renovations;
 - 7.3 contracts and correspondence from the vendor indicating the renovations that have been carried out;
 - 7.4 council approvals where these have been required; and
 - 7.5 a statement from the vendor confirming that, since the renovation was carried out –
 - 7.5.1 this is the first sale of the property; and
 - 7.5.2 the building has not been occupied as a residence.
8. An applicant who is ineligible for the \$10,000 FHOG may still be eligible for the \$3,000 FHOG on the grounds that they are purchasing an established home and the contract was entered into before 3 October 2015. An eligible applicant will be granted the \$3,000 FHOG without being required to submit a new FHOG application.
9. Provision of the \$3,000 FHOG (if eligible) does not preclude the applicant from making an objection in respect of the decision to not approve their application for the \$10,000 FHOG.

The following examples illustrate scenarios in which an applicant may or may not be eligible to receive the \$10,000 FHOG.

Examples

Example 1

John is registered for GST as a sole trader and carries on an enterprise of renovating old houses. He purchases a dilapidated three bedroom, one bathroom house with the intention to renovate for sale, and carries out the following renovations:

- an upstairs extension to create a new bedroom and a bathroom;
- replacement of the roof and all ground floor ceilings;
- rewiring of the ground floor and replacement of gyprock to repair cracked walls;
- cement rendering of exposed bricks in the combined family room and kitchen;
- stairs installed to the upstairs extension necessitating the removal of two walls and replacement of the floor in two of the ground floor rooms; and
- cosmetic work throughout the house including repainting, polishing floorboards, and replacing all the fittings in the kitchen and existing bathroom.

John then sells the house to Peter as a taxable supply. As all rooms in the house have been affected by the work which has included significant structural renovations, the work carried out by John constitutes substantial renovations. The cosmetic work has not been taken into consideration when determining the substantial renovations.

Subject to satisfying the eligibility requirements, and provided the house has not been occupied as a residence following the renovations, Peter may be entitled to the \$10,000 FHOG.

Example 2

Mary, who is not registered for GST, lives in a large two storey house and engages a builder to carry out a number of renovations. Mary moves out to enable the work to be done.

- The old kitchen is renovated with new cupboards and benchtops. The walls and ceiling are repainted and the floor covering is replaced. The outside entertaining area is redeveloped as an outdoor kitchen with an external wall replaced by french doors to connect the two kitchen areas. A wall is removed to create an open space kitchen.
- The walls between the dining and lounge rooms are removed to create one combined living area. A new toilet and washroom is added downstairs.
- The ground floor laundry accessible via the garage is widened to include an airing space and a new external door is inserted to allow for direct access to the backyard.
- Throughout the ground floor, the doors and windows are replaced, as are the floorboards and some of the ceilings. The single front door is replaced with a wide double door entrance requiring alteration to the walls.
- Upstairs, one bedroom is converted into an ensuite bathroom with a doorway placed between the new bathroom and the master bedroom. An external door is added to the master bedroom enabling access to a newly constructed balcony.
- Part of the walls and ceiling in each upstairs room have been water damaged and are replaced with new gyprock. Each upstairs room is renovated with new doors, floor coverings and paint. Larger windows are added to each room which requires alteration to the external brickwork.
- The staircase between the floors is replaced in its entirety and a new storeroom is created underneath the staircase.
- The leaking slate roof of the house is replaced in its entirety with a new tile roof.

Mary decides not to move back in and sells the house to Tom. Tom applies for a FHOG on the basis that the vendor had substantially renovated the house and the house had not been occupied as a residence since the renovations.

Although the house is considered to have undergone substantial renovations, Tom is not eligible for the \$10,000 grant because Mary is not registered for GST and the sale of the premises was not a taxable supply. Provided Tom meets the eligibility requirements for the FHOG, he may be entitled to the \$3,000 FHOG if the contract was entered into before 3 October 2015 as the property is considered to be an established home.

Example 3

Sam applies for a \$10,000 FHOG for a large 4 bedroom house that he believes had been substantially renovated by the vendor. The documentation provided by Sam shows that:

- the house had not been occupied as a residence or otherwise sold since the renovations were completed; and
- the renovations consisted of the removal of a wall between two bedrooms for the purpose of creating a large bedroom with ensuite, the replacement of one bedroom door with gyprock so that the newly created larger bedroom can only be entered by one doorway, repainting and recarpeting of the room, and construction and fitting out of the new adjoined ensuite.

Although significant, the work does not constitute substantial renovations as only one area of the house was affected. Further, the sale of the property was not a taxable supply under the GST Act. Sam is not eligible for the \$10,000 FHOG but, subject to satisfying the eligibility requirements, may be eligible for the \$3,000 FHOG for an established home if the contract was entered into before 3 October 2015.

Example 4

The townhouse Simon purchased directly from the developer is part of a four townhouse complex that had previously been used as a church. All of the townhouses are enclosed within common external walls and have a common entryway and central courtyard. Simon's townhouse has not previously been used for residential purposes.

Simon is able to provide evidence that the property was converted for use as residential premises by a developer who was registered for GST, and that he is the first purchaser of this townhouse. As this is considered the sale of new residential premises, and provided Simon satisfies the FHOG eligibility criteria, he may be eligible to receive the \$10,000 FHOG.

Date of Effect

This Commissioner's practice takes effect from 3 October 2015.

Nicki Suchenia
COMMISSIONER OF STATE REVENUE

26 February 2016

Commissioner's Practice History

Document	Issued	Dates of effect	
		From	To
FHOG 7.0	16 September 2014	16 September 2014	2 October 2015
FHOG 7.1	26 February 2016	3 October 2015	31 August 2017

SUPERSEDED