New Residential Premises

The definition of new residential premises has become a hot topic given that it provides clear access to the 50% CGT discount and ongoing negative gearing. The original legislation did not however, provide any guidance as to what a "new residential premises" would be. The exposure draft released, seeks to provide guidance in the form of a "base case" and three "special" cases.

The requirements across all four cases have certain consistent criteria as follows:

- A new residential dwelling is located in Australia;
- Each new residential dwelling is capable of being legally occupied (by reference to a certificate of occupancy) – the date of the occupancy certificate is important – it is issued after 7.30pm (AEST) on 12 May 2026 ("Budget night"); and
- The legal interest in the new residential dwelling is capable of being acquired by another entity (ie a granny flat adjacent to an existing home will not qualify unless separately titled).

In addition to the above requirements, each case has additional criteria as follows:

Base Case

Simply put, this is where a person acquires an ownership interest in land which does not have a residential dwelling on it and they construct or install a residential dwelling on that land. The constructed or installed residential dwelling would be a new residential dwelling for its owner.

For the purposes of this test whether a dwelling is present needs to be tested. A dwelling should be fit for human habitation and capable of being occupied for residential accommodation. A building that does not meet these requirements is not a dwelling and therefore not a residential dwelling.

Examples include land that has a permanent structure that does not consist wholly or mainly of residential accommodation including buildings that are condemned or derelict, as those houses are not fit for habitation. As such, at what point is a dwelling not fit for habitation – who decides this?

Adding more residential dwellings to a parcel of land

Where a person acquires an ownership interest in land on which there is already a residential dwelling (or residential dwellings) and then, at a later time, there is a greater number of residential dwellings on the same land. The test is applied by reference to the original parcel of land before any subdivision.

Any of the additional dwellings that are newly constructed residential dwellings are new residential dwellings for their owner or owners.

The examples given by the explanatory memorandum include:

- An individual buys a 30-year-old house (Dwelling A) with a large backyard in 2028. The land is subdivided and a second house built (Dwelling B).

  Dwelling A is untouched. Dwelling B meets the requirements and is considered a new residential dwelling.

Level 13, 68 York Street Sydney NSW 2000
Telephone. +61 2 9283 1666 | Email. admin@esvgroup.com.au

esvgroup.com.au

Dwelling A would not meet the requirements, because it was acquired after it had a certificate of occupancy issued.

- An entity acquires land on which there is an existing apartment block. The apartment block is demolished and the entity constructs one or more apartment blocks that contain more residential dwellings than were previously on the same land.

  In this scenario, all the residential dwellings are noted as being new residential dwellings for the entity.

Whilst not addressed in the explanatory memorandum ("EM") a common scenario would be where an existing property is demolished and a duplex is constructed. Based on the EM and its examples, it would appear that both of the new dwellings would be meet the definition of "new residential dwellings", not just the additional dwelling as both would have a new occupancy certificate. Renovations do not appear to result in a new dwelling.

Converting a building to a residential dwelling

Where a person acquires an ownership interest in land which has a building on it that is not a residential dwelling and converts it into a residential dwelling. The converted residential dwelling is a new residential dwelling for its owner.

Acquiring a residential dwelling within 24 months

Where a person acquires an interest in a dwelling within 24 months of a certificate of occupancy being issued, then this will be considered, as a new residential premise.

The property can be bought and sold any number of times within this period as long as the property was a new residential premise for the seller.

Transitional Rule

A transitional rule has been included to ensure that developers that have stock of new residential dwellings which had a certificate of occupancy issued before Budget night can realise the stock as new residential dwellings.

The transitional rule provides that a property will be a new residential premise, despite not being completed before Budget night if:

- The dwelling is, at all times, held by the builder or developer after the announcement time for the purposes of sale;
- The builder or developer had an ownership interest in the dwelling before announcement time; and
- The certificate of occupancy was issued before announcement time.

If you have any questions, please reach out to your Engagement Partner.