

## ***GST treatment for maintenance fees -***

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! This publication is extracted from the Retirement Villages Industry Partnership - issues register. See paragraphs 12 to 16 of issue 1 of that register. This publication should be read in conjunction with the related content of that register where further context is required.



## Retirement Villages Industry Partnership

### GST treatment for maintenance fees

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

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

#### **What is the GST treatment for maintenance fees in non-freehold/strata situations where the resident is not eligible for residential care?**

1. The ATO considers that the word 'residence' in the above definition extends to:
  - (a) that part of any common area and other appurtenances to the building, and
  - (b) the land immediately contiguous to the building, and
  - (c) that is predominantly necessary for the use and enjoyment of the building as a place of residence for individuals.
2. By common areas, which are input taxed, we mean:

Paths, driveways, parks, gardens, and communal recreational facilities (however it should be noted that the extent to which these facilities are used for commercial activities they are taxable supplies) provided they are located within the curtilage of the complex. No input tax credits can be claimed for **input taxed** supplies.
3. Facilities, services or outlets that can not reasonably be expected to be provided as part of residential rent are **taxable supplies**. Examples of areas not included in rented residential premises within the complex include restaurants and associated dining areas where prepared meals are provided, hairdressing/beauty salon, pharmacy, medical room, nursing station, convenience stores and areas geographically situated away from the residence. Examples of services that are not considered to be residential rent include a resident's personal laundry, cleaning and meals, bus services and diversional activities. Subject to the application of a specific GST-free provision of the Act (for example, subsection 38-25(4)) these are **taxable supplies** in respect of which **input tax credits** can be obtained. Each case must be considered on its own facts.

4. The application of the above principles may be addressed by applying the following two questions in relation to determining the GST treatment of maintenance fees:

- (c) To what extent is the supply of the premises, predominantly of 'residential premises'?, and
- (d) To what extent can the maintenance fees be reasonably concluded to be a charge by way of lease, hire or licence for a residential premise (subject to any other provision in the GST Act that make it GST-free or input taxed?)

5. When these questions are applied to the various arrangements used in the industry the GST treatment of maintenance fees to the extent that they relate to residential premises will generally be as follows:

a. Strata/freehold held by resident:	Taxable
b. The proprietor (property owner) leases direct to resident:	Input taxed
c. The proprietor (property owner) leases to resident and the services are provided by a separate *interposed enterprise:	Taxable
d. The proprietor (property owner) leases to resident and the services are provided by an **agent of the proprietor:	Input taxed

\*Where an interposed entity that has no interest in the real property makes supplies to residents in the course of its enterprise these supplies are not supplies of residential rent.

\*\*Fees or commissions charged by an agent for its services are **taxable supplies** where the agent is registered or required to be registered. The amount of credit you are entitled to depends on the extent of your creditable purpose.