


GSTD 2011/4 - Goods and services tax: Are accommodation bond retention amounts or accommodation charges paid, by residents of an aged care facility covered by the Aged Care Act 1997, that is supplying GST-free services under subsection 38-25(1) of the A New Tax System (Goods and Services Tax) Act 1999, consideration for a GST-free supply?

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Goods and Services Tax Determination

Goods and services tax: Are accommodation bond retention amounts or accommodation charges paid, by residents of an aged care facility covered by the *Aged Care Act 1997*, that is supplying GST-free services under subsection 38-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999*, consideration for a GST-free supply?

❗ This publication provides you with the following level of protection:

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.

Ruling

1. Yes. Accommodation bond retention amounts or accommodation charges paid by residents of a residential care facility, that is supplying GST-free services under subsection 38-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), are consideration for the GST-free supply of the residential care services that the approved provider¹ makes to residents under subsection 38-25(1) and the GST-free supply of accommodation that the approved provider makes to the resident under subsection 38-25(4) of the GST Act.

¹ In this Determination, references to an approved provider are references to an approved provider as defined in the *Aged Care Act 1997*.

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2. Periodic payments of an accommodation bond that are retained by the approved provider and are not refunded when a resident leaves the aged care facility are also consideration for the GST-free supplies of residential care services and accommodation that the approved provider makes to the resident under subsections 38-25(1) and 38-25(4) of the GST Act.

Example – Accommodation bond paid as a combination of a lump sum and periodic payments

3. *Stan is required to pay an accommodation bond to enter an Australian Government funded aged care facility. The amount of the assessed accommodation bond that Stan is required to pay is \$100,000. Stan agrees to pay the amount of the assessed accommodation bond as a combination of a \$50,000 lump sum and periodic payments of \$420 per month.*

4. *Because the \$50,000 lump sum payment paid by Stan is large enough to cover the monthly amounts that the approved provider is entitled to retain, Stan only needs to pay a periodic payment equivalent to the amount that the approved provider could have earned if the remainder of the accommodation bond had been paid as a lump sum.*

5. *The periodic payments Stan makes to the approved provider are not refundable and are kept by the approved provider. The amounts of these periodic payments are consideration for the GST-free services and accommodation supplied to Stan by the approved provider.*

6. *After 7 years, Stan leaves the facility and is entitled to the repayment of the bond less the retention amounts deducted and retained by the approved provider.² The amounts retained by the approved provider from the \$50,000 lump sum payment made by Stan are consideration for the GST-free supplies of residential care services and accommodation, under subsections 38-25(1) and 38-25(4) of the GST Act, supplied to Stan by the approved provider.*

Date of effect

7. This Determination applies both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

14 December 2011

² The retention amount is an indexed amount that is capped under the *Aged Care Act 1997*, and that is deducted from an accommodation bond balance or included in an accommodation bond periodic payment. It accumulates for a maximum period of 5 years. At 1 July 2011, the maximum retention amount was \$318.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Accommodation payments in Australian Government funded aged care facilities

8. There are two types of accommodation payments that may be payable to Australian Government subsidised aged care facilities that are regulated by the *Aged Care Act 1997* (Aged Care Act):

- Residents requiring low care or entering an extra service place (at high or low level care) may be asked to pay an *accommodation bond*.
- Residents requiring high care other than on an extra service basis may be asked to pay an *accommodation charge*.

Accommodation bonds

9. An accommodation bond is an amount a resident of a residential care facility may be required to pay when they enter an aged care facility that is covered by the Aged Care Act.

10. There are a number of ways in which an accommodation bond may be paid, including:

- a lump sum;
- periodic (fortnightly or monthly) payments; or
- a combination of lump sum and periodic payments.

11. Any part of an accommodation bond that is paid as a lump sum is in the nature of an interest-free loan from the resident to the approved provider. An approved provider is an approved provider as defined in the Aged Care Act and the entity that operates an aged care facility.

12. Periodic payments of an accommodation bond comprise of two components:

- the income that the approved provider could be expected to have derived; and
- the retention amounts that would have been permitted to be deducted, if the accommodation bond had been paid as a lump sum.³

Accommodation bond refunds and retention amounts

13. When a resident leaves an aged care facility, the approved provider is required to refund the amount of the balance of the accommodation bond paid as a lump sum by the resident, less a monthly retention amount that provider is entitled to keep.

14. Periodic payments of accommodation bonds, discussed at paragraph 9 of this Determination, are retained by the approved provider and are not refunded when a resident leaves the aged care facility.

³ Subsection 57-17(3) of the Aged Care Act.

Accommodation charges

15. In certain circumstances when a resident enters an aged-care facility covered by the Aged Care Act, they may be required to pay a daily amount to the approved provider called an accommodation charge.

Supply for consideration

16. Section 9-15 of the GST Act provides that a payment is consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement' of a supply. Thus, there must be a sufficient nexus between a particular payment and a particular supply for the payment to be consideration for that supply.⁴

Accommodation bonds

17. Accommodation bonds, which are in the nature of an interest-free loan to the approved provider of a residential care service under the Aged Care Act, are paid by an aged person to gain access to an Australian government funded aged care facility and access residential care services.

18. Therefore, the retention amounts deducted from an accommodation bond by the approved provider, and the periodic payments of an accommodation bond retained by the approved provider, are payments made by the resident 'in connection with' a package of services and accommodation supplied to them by the approved provider. That is, these amounts are consideration for a supply of services and accommodation supplied by the approved provider.

19. Where an approved provider makes GST-free supplies of residential care under subsection 38-25(1) of the GST Act, the supply of the accommodation to the resident in the course of making those GST-free supplies is also GST-free under subsection 38-25(4). Therefore, the retention amounts deducted from an accommodation bond by an approved provider and periodic payments of an accommodation bond are consideration for GST-free supplies of services and accommodation.

Accommodation charges

20. Like accommodation bonds, accommodation charges are paid by an aged person, to an approved provider, so that they can access the care services and accommodation supplied by the approved provider in the context of an aged care facility that is covered by the Aged Care Act. Therefore, accommodation charges are also consideration for the services and accommodation supplied by the approved provider, and accommodation charges paid to an approved provider that is making GST-free supplies of residential care under subsection 38-25(1) of the GST Act are consideration for GST-free supplies of services and accommodation under subsections 38-25(1) and 38-25(4) of the GST Act.

⁴ See paragraph 50 of Goods and Services Tax Ruling GSTR 2001/6: non-monetary consideration.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 2001/6; TR 2006/10

Subject references:

- aged care industry
- GST consideration
- GST health

- GST-free

Legislative references:

- Aged Care Act 1997
- Aged Care Act 1997 57-17(3)
- ANTS(GST)A 1999 9-15
- ANTS(GST)A 1999 38-25(1)
- ANTS(GST)A 1999 38-25(4)
- TAA 1953

ATO references

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