



GSTR 2007/1 - Goods and services tax: when retirement village premises include communal facilities for use by the residents of the premises

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Goods and Services Tax Ruling

Goods and services tax: when retirement village premises include communal facilities for use by the residents of the premises

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Preamble

*This document is a ruling for the purposes of section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

What this Ruling is about

1. This Ruling explains when retirement village premises include communal facilities for use by the residents of the premises as required by paragraph (c) of the definition of **retirement village** in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). In this Ruling, paragraph (c) of the definition is referred to as the *communal facilities requirement*. In particular, this Ruling explains:

- when the residential premises of the retirement village include communal facilities;¹
- what are 'communal facilities' in the retirement village context; and
- when communal facilities are for use by the residents of the premises.

2. This Ruling also considers the *communal facilities requirement* in regard to services, off-site facilities and facilities not yet in existence.

3. This Ruling does not rule on the other requirements of the definition of retirement village.²

4. All legislative references in this Ruling are to the GST Act unless otherwise stated.

¹ Paragraph 23(b) of the *Acts Interpretation Act 1901*: unless the contrary intention appears, words in the singular number include the plural and words in the plural number include the singular. By its ordinary meaning, the word 'facilities' is commonly used in the plural to describe both a single facility and multiple facilities – see *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

² See the definition of retirement village at paragraph 14 of this Ruling.

Date of effect

5. This Ruling explains our view of the law as it applied from 1 July 2000. You can rely upon this Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on this interpretation of the law in GST public and private rulings.

6. If this Ruling conflicts with a previous private ruling that you have obtained or a previous public ruling, this public ruling prevails. However, if you have relied on a previous ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Background

7. The retirement village industry is diverse and villages may:
- be operated by charitable, government or commercial entities;
 - comprise different types of premises, such as independent living units and serviced apartments, or a combination of such premises;
 - offer a variety of occupancy and tenure arrangements; and
 - provide a wide range of facilities and services to residents.

8. The extent to which facilities and services are provided will vary considerably across the industry. As well, there are villages, for example in rural and regional areas, which may rely on some facilities being provided within the wider community.

9. Together with a retirement village resident's right to occupy specific premises, the resident is usually provided with associated rights to use or receive services and facilities that may not ordinarily be provided in the wider community by a landlord to a tenant, or by a lessor to a lessee. These rights are generally provided for under residence and services contracts with the retirement village operator.³

³ A retirement village operator is commonly understood to be the entity that manages and controls the operation of a retirement village.

10. Retirement villages are generally regulated by State and Territory legislation, which is mainly aimed at promoting fair trading practices in operating retirement villages and outlining the rights and obligations of retirement village residents and operators.

11. However, regulation of a retirement village under State or Territory legislation does not necessarily mean that the definition of retirement village in the GST Act is satisfied. The requirements that must be met for premises to be a retirement village for GST purposes differ from the requirements for regulation under State or Territory legislation. Further, the GST Act definition of retirement village does not rely on what is a retirement village for the purposes of the relevant State or Territory legislation.

Context

12. In December 2004, amendments were made to the GST Act by *Tax Laws Amendment (Retirement Villages) Act 2004* (TLA(RV) Act). The amendments provided that residential care, services and accommodation supplied to the residents of serviced apartments in a retirement village may be GST-free under subsection 38-25(3). The amendments also provided that certain supplies made to residents of a 'retirement village', as defined, by a charitable institution or a trustee of a charitable fund that operates the retirement village are GST-free under section 38-260. Since the introduction of GST, and prior to the introduction of section 38-260, GST-free supplies have been able to be made by all charities, including charities that operate retirement villages, under section 38-250. This provision continues to apply, and can be relied on to make GST-free supplies instead of section 38-260. Therefore, the definition of 'retirement village' for GST purposes is only applicable in meeting the requirements of specific concessional provisions in the GST Act (that is, subsection 38-25(3) and section 38-260). It has no effect on any other legislation that refers to the term 'retirement village'.

13. Paragraph 1.1 of the Explanatory Memorandum to the Tax Laws Amendment (Retirement Villages) Bill 2004 explains that the amendments:

- ensure that supplies of care services and accommodation are GST-free when supplied to residents of serviced apartments of retirement villages that require and receive daily living activities assistance or nursing services;⁴ and

⁴ Subsection 38-25(3).

- provide that supplies of accommodation, services related to accommodation, and meals are GST-free if provided by a charitable retirement village to a resident of such a retirement village.⁵

14. As part of the amendments, the definition of retirement village was inserted into section 195-1 of the GST Act and states:

retirement village: premises are a retirement village if:

- (a) the premises are residential premises; and
- (b) accommodation in the premises is intended to be for persons who are at least 55 years old, or who are a certain age that is more than 55 years; and
- (c) the premises include communal facilities for use by the residents of the premises;

but the following are not retirement villages:

- (d) premises used, or intended to be used, for the provision of residential care (within the meaning of the *Aged Care Act 1997*) by an approved provider (within the meaning of that Act);
- (e) commercial residential premises.

15. One of the requirements that must be met to make GST-free supplies, under subsection 38-25(3) and section 38-260, is the definition of 'retirement village'.

16. The characteristics set out in the definition of retirement village seek to distinguish retirement village premises from other residential premises in the wider community, thus ensuring that the amendments apply appropriately.

17. It is recognised that retirement villages may also have other characteristics that distinguish such premises from other residential premises, particularly the additional rights and responsibilities found in the residence and services contracts that would not ordinarily be present in agreements in the wider community (such as between a tenant and a landlord or between a lessee and a lessor).

Ruling

18. The residential premises of the retirement village include the land on which the residential building(s) is constructed, along with the surrounding land that actually or substantially contributes to the enjoyment of the building(s) or to the fulfilment of its purposes as residence (whether or not on separate titles).

⁵ Section 38-260. Accommodation and other supplies may also be provided GST-free by charities under section 38-250.

19. The retirement village residential premises *include* communal facilities when:

- the communal facilities are physical; and
- the communal facilities are within, attached to or connected to the residential building(s), or constructed on the surrounding land that actually or substantially contributes to the enjoyment of the building(s) or to the fulfilment of its purposes as a residence (although communal facilities need not themselves be residential premises).

20. Services, such as those provided to residents under either a residence or services contract, are not physical and therefore do not meet the *communal facilities requirement*.

21. Off-site facilities, for example, a nearby community hall, are not communal facilities that are within the residential premises of the retirement village and therefore do not meet the *communal facilities requirement*.

22. Communal facilities are those facilities that are intended and capable of group use by the residents for recreational, sporting, social, religious, or other similar uses that enhance a sense of community among the residents. This is determined objectively having regard to the primary function or purpose of the facilities as evidenced by their physical characteristics.

23. In the retirement village context communal facilities would ordinarily include the following types of facilities: a library, a dining room, a recreation room, a chapel, an equipped gymnasium and outdoor recreational and leisure facilities such as a tennis court, a swimming pool or a barbeque area. The *communal facilities requirement* is satisfied where one or more of these communal facilities are within, attached to, or connected to the residential building(s), or constructed on the surrounding land that actually or substantially contributes to the enjoyment of the building(s) or to the fulfilment of its purposes as a residence (whether or not on separate titles) and are in a practical sense accessible to and able to be used by the residents.

24. While the residents must be able to use the communal facilities, the facilities need not necessarily be for the exclusive use of the residents (for example, the recreation room might be used for a few hours a week by a visiting hairdresser). Further, there is no requirement that the residents actually use the communal facilities provided the facilities are made available for their use. It follows that as the communal facilities must be made available for use by the residents, the facilities must be in existence rather than merely planned to satisfy the *communal facilities requirement*. However, where the communal facilities are temporarily unavailable the *communal facilities requirement* can still be met.

25. The following facilities are not ordinarily communal facilities in the retirement village context: reception areas, pathways, gardens, driveways and landscaping. Any incidental use of such facilities for a group activity would not qualify them as communal facilities.

26. Facilities that are for the resident's own use in their individual units or apartments, such as a television antenna, internet connections or call button facilities, are also not communal facilities.

Explanation (this forms part of the Ruling)

27. The GST Act provides a definition of retirement village in section 195-1. The requirement of paragraph (c) of that definition is that the retirement village 'premises include communal facilities for use by the residents of the premises'. To determine if this requirement is satisfied it is necessary to consider the following elements:

- when the residential premises of the retirement village include communal facilities;
- what are 'communal facilities' in the retirement village context; and
- when communal facilities are for use by the residents of the premises.

When the residential premises of the retirement village include communal facilities

28. Paragraph (c) of the definition of retirement village requires that the premises include communal facilities for use by the residents of the premises. Paragraph (a) of that definition requires that those premises are residential premises.

29. 'Residential premises' is a defined term⁶ and the Commissioner provides guidance as to what are residential premises in Goods and Services Tax Rulings GSTR 2000/20⁷ and GSTR 2003/3.⁸

⁶ Section 195-1.

⁷ Goods and Services Tax Ruling GSTR 2000/20 Goods and services tax: commercial residential premises.

⁸ Goods and Services Tax Ruling GSTR 2003/3 Goods and services tax: when is a sale of real property a sale of new residential premises?

30. Consistent with GSTR 2000/20, the Commissioner considers that the term 'residential premises' in the retirement village context encompasses, for example, independent living units and serviced apartments.⁹ Further, consistent with the view expressed in GSTR 2003/3, the residential premises of the retirement village include the land on which the residential building(s) is constructed along with the surrounding land that actually or substantially contributes to the enjoyment of the building(s) or to the fulfilment of its purposes as a residence (whether or not on separate titles).¹⁰

31. The Commissioner's view is that the premises include communal facilities when the communal facilities are physical and are within, attached to, or connected to the residential building(s), or constructed on the surrounding land that actually or substantially contributes to the enjoyment of the building(s) or to the fulfilment of its purposes as a residence. Communal facilities need not themselves be residential premises.

Services

32. Services may be provided under a residence contract and/or an associated services agreement and include, for example maintenance and upkeep of common areas, managerial and administrative services, and the organisation and provision of recreational and social activities for residents. In the Commissioner's view, the retirement village premises do not include services for the purposes of the *communal facilities requirement* as they are not physical.

Off-site facilities

33. The degree to which communal facilities are provided varies considerably across the industry. Some village premises, for example in rural or regional areas, do not include communal facilities but may rely on facilities located elsewhere. For example, an operator may enter into an arrangement for the village residents to use the communal facilities at a neighbouring or nearby retirement village, or lease or licence a nearby community hall for use by the residents of the village. Such arrangements do not satisfy the *communal facilities requirement* as the premises of the village do not include communal facilities.¹¹

⁹ This is consistent with paragraphs 24 to 27 of GSTR 2000/20.

¹⁰ See paragraph 95 of GSTR 2003/3.

¹¹ See paragraph 31 of this Ruling.

Facilities not yet in existence

34. In the Commissioner's view, the *communal facilities requirement* is met when the communal facilities are actually in existence in a temporary or permanent state for use by the residents of the village. If the communal facilities are planned but are not yet in existence, for example in a staged development, the *communal facilities requirement* is not met.¹²

35. Having considered when the residential premises of a retirement village can be said to include communal facilities, it is necessary to consider what are communal facilities in the retirement village context and whether the communal facilities are for use by the residents.

What are 'communal facilities' in the retirement village context

36. The GST Act does not define the term 'communal facilities', and therefore the meaning of the term is determined according to its ordinary meaning taking into account the context in which the term is used.

37. A number of Australian and overseas court cases have referred to communal facilities incidentally in the context of a range of matters. The following cases show that the term 'communal facilities' may be given a very wide meaning depending upon the context in which it is used.¹³

- In *Tourapark Pty Ltd v. Federal Commissioner of Taxation*¹⁴ in considering a taxpayer's claim for the investment allowance in respect of certain new caravans, the court found that the licence granted to the customer of the caravan park included the right to use communal facilities 'such as lavatories, laundries, a swimming pool and parking space'.
- In *Mount Isa Mines Ltd v. Federal Commissioner of Taxation*¹⁵ the court considered objections against income tax assessments. The court accepted that communal facilities, which included a school, shopping centre, hotel, swimming pool and a sports complex, were present in a mining town built to accommodate persons serving in the mining operations.

¹² Notwithstanding that communal facilities may not yet be in existence, the basic GST rules still apply to claiming input tax credits if acquisitions are made for a creditable purpose, for example, for the purpose of making supplies that will be GST-free. However, if acquisitions intended for a creditable purpose are later used to make input taxed supplies, for example, if residential premises are leased for a period prior to communal facilities existing, adjustments may be required under the GST law.

¹³ Although the meaning of the term 'communal facilities' was not an issue in these cases and was not judicially interpreted, the parties accepted the characterisation of the relevant facilities.

¹⁴ (1982) 149 CLR 176 at page 179; 12 ATR 842 at page 843; 82 ATC 4105 at pages 4105 to 4106.

¹⁵ (1990) 21 ATR 159 at page 187; 90 ATC 4267 at page 4292.

- In *Zig Inge Retirement Villages*¹⁶ a case which concerned a permit to build a retirement village, the Tribunal found that Zig Inge Retirement Villages provided a range of communal facilities 'including lounges, courtyard, dining room and recreational areas'.
- In *Colchester Sixth Form College*¹⁷ a case which concerned whether the construction of a new building at the college was the construction of an annexe to an existing building or whether the construction works produced an enlargement of, or an extension to, an existing building, the court referred to 'communal facilities such as the refectory and offices that all add to the facilities of the College'.

38. There is no single retirement village industry definition of the term 'communal facilities', however descriptions provided by the industry include:

'Communal Facilities' is the generic term for a wide range of amenities and services offered to residents. Villages are vibrant communities of senior Australians with shared interest and a desire to live life to the full. To serve this community, villages will provide a number of recreational, service and social facilities available to all residents. Each village is different, and a full list of communal facilities will be provided in individual sales kits.¹⁸

What communal or recreational facilities are offered by the village?

Residents treat the delightful facilities of villages as an extension of their own personal living space. They enjoy the convenience of a variety of facilities that may include a library, dining room, swimming pool – and many more – literally on their doorstep.

There are many aspects to village living; a clubhouse or leisure area is a standard feature that may include billiard and card rooms, internet café and more. Many villages offer services such as doctors, physiotherapists, hairdressers and banking. Village living offers safe, convenient and cost-saving proximity to essential and recreational amenities.

Some villages have bowls facilities, workshop areas, vegetable gardens, craft-rooms, gymnasiums, caravan parking and a variety of other features.¹⁹

¹⁶ [2000] VCAT 2330 (30 November 2000) at paragraph 21.

¹⁷ [2000] BVC 2095 at page 2101.

¹⁸ www.retirementvillagesaust.com.au as at 7 February 2007.

¹⁹ www.retirementvillagesaust.com.au as at 7 February 2007.

39. The Commissioner acknowledges from the cases and the industry views that the term 'communal facilities' is capable of broad meaning. However, adopting a view that would allow almost anything to be described as 'communal facilities' would not take account of the context in which the words are used and that the definition serves to distinguish retirement village premises from other residential premises.²⁰ Therefore, the Commissioner adopts an approach that gives meaning to the words 'communal facilities' in the context of the retirement village definition.

40. Support for this approach in interpreting the provision is provided in *HP Mercantile Pty Ltd v. Federal Commissioner of Taxation*²¹ where Hill J stated:

It is clear, both having regard to the modern principles of interpretation as enunciated by the High Court in cases such as *CIC Insurance Limited v. Bankstown Football Club Limited* (1997) 9 ANZ Insurance Cases 61-348; (1997) 187 CLR 384 and s 15AA of the *Acts Interpretation Act 1901* (Cth) that the Court will prefer an interpretation of a statute which would give effect to the legislative purpose, as opposed to one that would not. This requires the Court to identify that purpose, both by reference to the language of the statute itself and also any extrinsic material which the Court is authorised to take into account.²²

41. In the Commissioner's view, to be 'communal facilities for use by the residents' the facilities must first be for the common and shared use of the village residents. Further, the inclusion of the word 'communal' qualifies the phrase 'facilities for use by the residents' to distinguish certain facilities from other facilities that are merely for shared use by the residents. It is therefore necessary to consider what the word 'communal' adds to the phrase in the context of a retirement village.

42. Retirement villages provide community living for retired senior Australians who, for a variety of reasons including social, lifestyle, security and health, have made the decision to reside in a retirement village. Broadly, in the context of a retirement village, it is reasonable to regard 'communal facilities' as those facilities that enhance the sense of community among the residents in contrast to those facilities that are merely available for common or shared use by the residents. The Commissioner takes the view that communal facilities are those facilities that are intended and capable of group use by the residents for recreational, sporting, social, religious, or other similar uses that enhance a sense of community among the residents. This is determined objectively having regard to the primary function or purpose of the facilities as evidenced by their physical characteristics.

²⁰ As explained at paragraph 16 of this Ruling.

²¹ [2005] FCAFC 126.

²² [2005] FCAFC 126, at paragraph 44. See also *Sterling Guardian Pty Ltd v. Federal Commissioner of Taxation* 2005 ATC 4796, Stone J at 4804.

43. While it is not possible to exhaustively list everything that might qualify, the following are considered to be communal facilities – a library, a dining room, a recreation room, a chapel, an equipped gymnasium and outdoor recreational and leisure facilities such as, a tennis court, a swimming pool or a barbeque area. The residential premises include communal facilities when one or more of the communal facilities are within, attached to, or connected to the residential building(s), or constructed on the surrounding land that actually or substantially contributes to the enjoyment of the building(s) or to the fulfilment of its purposes as a residence (whether or not on separate titles).²³ We discuss the requirement that the communal facilities must be for use by the residents at paragraphs 47 to 50 of this Ruling.

44. Where the residential premises include facilities, the primary purpose of which is not to enhance a sense of community among the residents, any incidental use of those facilities for a communal activity would not qualify it as communal facilities. For example, a pathway in a retirement village provides convenient and safe access to various parts of the village but it may also be used for a group walking activity. As the pathway's primary purpose is not to enhance a sense of community among the residents, any incidental use for a group activity would not qualify it as communal facilities. Likewise, a garden that is incidentally used for a group activity is not a communal facility as its primary purpose for being included in the village would not ordinarily be to enhance a sense of community among the residents. Hence, it is the Commissioner's view that in the context of the retirement village definition, reception areas, pathways, gardens, driveways and landscaping are not included for the primary purpose of enhancing a sense of community among the residents and, therefore, are not communal facilities.

45. Facilities that are primarily for the resident's own use in their individual units or apartments, such as a television antenna, internet connection or call button facilities, are also not communal facilities.

46. If the residential premises of the retirement village include communal facilities it is then necessary to consider whether the communal facilities are for use by the residents.

When communal facilities are 'for use by the residents of the premises'

47. The definition of retirement village requires that the communal facilities be for use by the residents. In the Commissioner's view, this is determined objectively with relevant factors including whether the communal facilities are in a practical sense, accessible to, and able to be used by, the residents.

²³ If a village is unsure whether its premises include communal facilities, it can seek guidance from the Tax Office – see paragraph 51 of this Ruling.

48. The communal facilities need not necessarily be for the exclusive use of the residents. For example, the use of a recreation room for commercial purposes for a few hours a week, say by a visiting hairdresser, will not prevent the room being communal facilities.

49. In addition, there is no requirement that the residents actually use the communal facilities provided the facilities are made available for their use.

50. Where the communal facilities are temporarily unavailable, for example, due to maintenance or improvement, the *communal facilities requirement* can still be met.

Guidance from the Tax Office

51. As outlined in paragraph 3, this Ruling does not deal with the other requirements of the definition of retirement village. For example, the effect of paragraph (d) of the definition of retirement village,²⁴ in the situation where there is co-location of a retirement village with a residential care service has not been considered. It is noted that such a situation may not necessarily preclude premises from falling within the retirement village definition. The Commissioner recognises that in some circumstances a village operator may have doubts as to whether their village complies with the definition, even where the communal facilities requirement of paragraph (c) test has been met. If a village operator is experiencing difficulties in reaching a decision, they should seek guidance from the Tax Office.

²⁴ See definition at paragraph 14 of this Ruling.

Detailed contents list

52. Below is a detailed contents list for this Goods and Services Tax Ruling:

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Previous drafts:

GSTR 2006/D3

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/20;
GSTR 2003/3

Subject references:

- communal facilities
- goods and services tax
- premises
- residential care service
- residential premises
- retirement village

Legislative references:

- ANTS(GST)A 1999 38-25(3)
- ANTS(GST)A 1999 38-250
- ANTS(GST)A 1999 38-260
- ANTS(GST)A 1999 195-1
- TAA 1953
- TAA 1953 Sch 1 105-60
- Acts Interpretation Act 1901 23(b)
- Acts Interpretation Act 1901 15AA
- Aged Care Act 1997
- Tax Laws Amendment (Retirement Villages) Act 2004

Case references:

- CIC Insurance Limited v. Bankstown Football Club Limited (1997) 187 CLR 384; (1997) 71 ALJR 294; (1997) 141 ALR 353
- Colchester Sixth Form College [2000] BVC 2095

- HP Mercantile Pty Ltd v. Federal Commissioner of Taxation (2005) 219 ALR 591; (2005) 2005 ATC 4571; (2005) 60 ATR 106; (2005) 143 FCR 553; [2005] ALMD 7333; [2005] FCAFC 126
- Mount Isa Mines Ltd v. Federal Commissioner of Taxation (1990) 90 ATC 4267; (1990) 21 ATR 159
- Sterling Guardian Pty Ltd v. Federal Commissioner of Taxation (2005) 220 ALR 550; (2005) 2005 ATC 4796; (2005) 60 ATR 502; [2005] ALMD 8602; [2005] FCA 1166
- Tourapark Pty Ltd v. Federal Commissioner of Taxation (1982) 56 ALJR 316; (1982) 40 ALR 465; (1982) 82 ATC 4105; (1982) 12 ATR 842; (1982) 149 CLR 176
- Zig Inge Retirement Villages [2000] VCAT 2330 (30 November 2000)

Other references:

- Explanatory Memorandum to the Tax Laws Amendment (Retirement Villages) Bill 2004
- The Macquarie Dictionary, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW
- www.retirementvillagesaust.com.au as at 14 November 2006

ATO references

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