

GSTR 2012/3A3 - Addendum - Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels

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Addendum

Goods and Services Tax Ruling

Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2012/3 in respect of the provision of care services for residents in serviced apartments within retirement villages. The ATO view has been broadened and principles provided to assist compliance with subsection 38-25(3A) of the *A New Tax System (Goods and Services Tax) Act 1999*.

GSTR 2012/3 is amended as follows:

1. Paragraph 5

After 'Aged Care Minister', insert '(the Minister)'.

2. Paragraphs 52 to 71

(a) Omit the paragraphs and headings (excluding footnote 11 but including footnote 12); substitute:

52. As explained in paragraph 15 of this Ruling, subsection 38-25(3A) says that services provided to a resident of a serviced apartment in a retirement village will be treated as provided in a 'residential setting' only if there is a written agreement in force under which the operator of the retirement village provides daily meals and heavy laundry services to all residents of the apartment.¹¹

53. When the requirements in subsections 38-25(3) and (3A) are considered together, and the context and purpose of the provisions are taken into account, an operator will **only** meet the requirements in subsection 38-25(3A) when it satisfies the following three principles:

- (i) the resident must have a continuing need for the provision of daily meals and heavy laundry services;
- (ii) the operator must have an obligation to provide daily meals and heavy laundry services; and
- (iii) the operator must make available daily meals and heavy laundry services.

Principle One – resident must have a continuing need for the provision of daily meals and heavy laundry services

54. A resident must have a continuing need for ‘daily meals’ and ‘heavy laundry services’ because both expressions, while undefined, must be read taking into account their context and the purpose of the provision and in a way that results in a coherent interpretation of section 38-25.^{12A}

54A. Consistent with this, the meaning of ‘daily meals’ takes into account the requirements consistently set out in the Quality of Care Principles, and currently reflected in clause 1 and item 1.10 of Schedule 1 to the Quality of Care Principles referred to in paragraph 38-25(3)(b). That is, it means meals^{12B} that are needed by the recipient on a continuing basis and:

- are of adequate variety, quality and quantity for each resident of the serviced apartment;
- are served each day at times generally acceptable to both residents and management, and generally consist of three meals per day plus morning tea, afternoon tea and supper; and
- take into account variances in a resident’s meal requirements as a result of medical needs or religious or cultural observance.

54B. Examples of what ‘generally’ means and the circumstances that would satisfy a medical need or a religious or cultural observance are discussed under Principle Three.

Example 7 – Continuing need for daily living and nursing services for one resident but not the provision of daily meals and heavy laundry services to all residents of a serviced apartment

55. *Jack and Elizabeth live in a serviced apartment in a retirement village. Jack requires daily living activities assistance and nursing services and has a continuing need for these services. Elizabeth does not require any of these services and cares for herself without assistance.*

55A. *Residents of the serviced apartments can choose to have daily meals and heavy laundry services provided by the operator of the retirement village for an extra fee. However, Elizabeth prefers to do her own laundry and enjoys cooking. She cooks lunch and dinner for herself and Jack each day, except for once a week when they have dinner in the communal dining room with friends who also reside at the retirement village.*

55B. *The daily meals and heavy laundry requirements in paragraph 38-25(3A)(b) are not satisfied. Although all daily meals and heavy laundry services are available, Jack and Elizabeth have no arrangement under which the operator provides, or is obliged to provide, daily meals to Jack and Elizabeth (all residents in the serviced apartment). Elizabeth and Jack do not have a continuing need for the provision of daily meals and heavy laundry services.*

Principle Two – operator must have an obligation to provide daily meals and heavy laundry services

56. The written agreement must put the operator of the retirement village under a legal obligation to all residents in the serviced apartment to provide daily meals and heavy laundry services.

Example 7A – Operator’s obligation – arises on election by resident

57. Assume the same facts for Example 7 of this Ruling but that Elizabeth lost hand function in September 2018 and consequently requires daily living activities assistance (item 2.1 of Schedule 1 to the Quality of Care Principles). As a result, Elizabeth and Jack exercised an option in their contract to have their daily meals and heavy laundry services provided to them by the operator of the retirement village because they **both** had a continuing need for these services.

58. Until September 2018, the daily meals and heavy laundry requirement in paragraph 38-25(3A)(b) was not satisfied. Although all daily meals and heavy laundry services were available if Jack and Elizabeth chose to have them provided by the operator, there was no arrangement under which the operator was required to provide daily meals and heavy laundry services to Jack and Elizabeth because neither had a continuing need for these services.

59. On exercise of the option by Elizabeth and Jack in September 2018, the operator was obligated to provide daily meals and heavy laundry services in accordance with the terms of the contract. Therefore, the requirement in paragraph 38-25(3A)(b) is met.

Example 8 – Operator’s obligation satisfied – external provider as agent for operator

60. Ernie lives at the Sparkling Shores Retirement Village. The terms of the residence contract that Ernie has with the operator obligate the operator to provide daily meals and a heavy laundry service to Ernie for a daily fee payable to the operator.

60A. The operator of the Sparkling Shores Retirement Village has a contract with an external catering company that delivers all of Ernie’s daily meals to him on behalf of the operator. The daily meals requirement in paragraph 38-25(3A)(b) is met in these circumstances.

Example 8A – Separate agreement with operator

61. Margaret resides in a serviced apartment in a retirement village. The operator provides all of Margaret’s meals and does all her laundry.

61A. Margaret’s residence contract includes a general provision which states that meals and laundry services can be arranged should the resident require them. Margaret entered into a separate written agreement with the operator who agreed to provide daily meals and laundry services for a fee.

61B. The separate written agreement with the operator satisfies the ‘written agreement’ requirement in paragraph 38-25(3A)(b). In the absence of this separate agreement, the residence contract would not satisfy the requirement for a ‘written

agreement' because there is no specific provision that creates an obligation to provide daily meals and heavy laundry services.

Principle Three – operator must make available daily meals and heavy laundry services

62. The operator must *make available* heavy laundry services to all residents of the serviced apartments.

62A. The operator must also *make available* daily meals, although this requirement may still be satisfied where the resident does not take and eat every meal. The quantum of meals is set under item 1.10 of Schedule 1 to the Quality of Care Principles referred to in paragraph 38-25(3)(b), which requires generally three meals per day plus morning tea, afternoon tea and supper. A resident may decline to take or eat a meal in limited or irregular circumstances, including, for example, cultural, religious, family, dietary, personal taste, health, recreational or medical reasons.

62B. Whether a failure to take meals leads to paragraph 38-25(3A)(b) not being met by the operator depends on the circumstances. In general terms, limited or irregular situations of the kind mentioned will not breach an operator's obligation. However, a persistent or regular pattern of not taking or eating meals unrelated to the situations mentioned will be an indicator that the paragraph 38-25(3A)(b) obligation is not being met.

Example 9 – Make available daily meals – temporary absence

63. *Neisha resides in a serviced apartment at Paradise Vista Retirement Village. Under a written agreement, the operator provides Neisha with daily meals and heavy laundry services.*

63A. *On Neisha's birthday, her family takes her out for lunch. Although Neisha does not take one or more meals on that day, the daily meals requirement in paragraph 38-25(3A)(b) is still met as Neisha has not taken lunch on this irregular occasion due to family reasons.*

Example 9A – Make available daily meals – meal provided by family

64. *Dino resides in a serviced apartment at Boundless Vistas Retirement Village. The operator is required to provide Dino with daily meals and heavy laundry services.*

65. *Dino's family tells Boundless Vistas Retirement Village that they will visit him weekly and provide a meal for Dino. They cook a meal, bring a takeaway or order a takeaway for Dino on these days.*

65A. *While there is a regular pattern of not taking meals, the meals not taken are limited in number and in proportion to the meals provided. The daily meals requirement in paragraph 38-25(3A)(b) is met.*

Example 9B – Make available daily meals – religious and cultural events

66. Assuming the same facts for Example 9A of this Ruling, because of his religious convictions, Dino abstains from eating any food from sunrise to sunset during Ramadan. He usually ends his daily fast at a family member's house, as is the custom.

66A. Although Dino does not take one or more meals during that period, the meals requirement in paragraph 38-25(3A)(b) is still met. This is because the meals not taken are limited in number and in proportion to the meals provided, and Dino has religious and cultural reasons for not taking the daily meals.

Example 9C – Make available daily meals – personal taste

67. Bau-Ling resides in a serviced apartment at Sparkling Shores Retirement Village. The operator is required to provide Bau-Ling with daily meals and heavy laundry services.

67A. Bau-Ling does not like the tuna bake that is made available as a daily meal by the operator. This week she declines the meal. Bau-Ling has a personal taste reason that is a limited and irregular circumstance for not taking the meal. The daily meals requirement in paragraph 38-25(3A)(b) is met.

Example 9D – Make available daily meals – regular pattern of refusal

68. Assuming the same facts for Example 9C of this Ruling, Bau-Ling later adopts the regular pattern of ordering takeaway meals every second day for lunch for reasons other than those mentioned in paragraph 67A of this Ruling.

68A. Bau-Ling informs the retirement village operator of her decision and the operator is no longer required to make lunches available to her on those days as a result.

68B. The daily meals requirement in paragraph 38-25(3A)(b) is no longer met because of the regular pattern adopted of ordering takeaway meals every second day. This situation is more substantial than limited circumstances and shows a regular pattern.

Example 10 – Make available daily meals – resident is unwell

69. Siobhan lives in a serviced apartment at a retirement village where the operator is required to provide her with daily meals and heavy laundry services.

69A. After an outing, Siobhan becomes unwell and cannot eat all the meals provided.

69B. Although Siobhan does not take any meals while she is unwell, the operator continues to meet the paragraph 38-25(3A)(b) obligation while Siobhan is unwell. This is because this is a limited and irregular circumstance for not taking the meals.

Example 10A – Make available daily meals – medical needs

70. Assuming the same residency facts for Example 10 of this Ruling, Siobhan continues to feel unwell, is prescribed medication and is required to fast before medical testing.

71. Although Siobhan does not take any meals until the medical tests have been completed, the operator continues to meet the daily meals requirements in paragraph 38-25(3A)(b). This is because this is a limited and irregular circumstance for not taking the meals.

(b) At the end of paragraph 52, omit the wording of footnote 11; substitute:

¹¹ For the purposes of paragraph 38-25(3A)(b), the residents of each individual apartment are 'all of the residents of the apartment', rather than the residents of all of the serviced apartments in the retirement village.

(c) At the end of paragraph 54, insert new footnote 12A:

^{12A} See the *A New Tax System (Goods and Services Tax) (GST-free supply – Residential Care – Non-government Funded Supplier) Determination 2015* (the Minister's Determination) and the Explanatory Memorandum to the Tax Laws Amendment (Retirement Villages) Bill 2004, in particular paragraph 1.26.

(d) In the last sentence of paragraph 54A, after the word 'meals', insert new footnote 12B:

^{12B} 'Meals' is defined as 'one of the regular repasts of the day, as breakfast, lunch, or dinner' (Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 6 June 2022).

3. Paragraphs 72, 114, 164 (including heading) and 165

Omit 'Aged Care Minister'; substitute 'Minister'.

4. Paragraph 76

Omit 'Minister's determination'; substitute 'Minister's Determination'.

5. Paragraph 112

Omit the wording of footnote 23; substitute:

²³ See the Explanatory Statement to the Minister's Determination.

6. Paragraph 113

In the second dot point, omit 'Aged Care'.

7. Paragraphs 156 to 163

Omit the paragraphs (including the heading and footnotes 35 to 42).

8. Paragraph 167

Omit '(the Minister)'.

9. Paragraph 178

Omit the two last sentences.

10. Paragraph 192

In footnote 57, omit ‘,126 to 130 and 156 to 163’; substitute ‘and 126 to 130’.

11. Paragraph 195

(a) Omit:

<i>Example 7 – Daily meals requirement not satisfied</i>	60
<i>Example 8 – Daily meals – external provider as agent for operator</i>	63
<i>Example 9 – Daily meals and heavy laundry – written agreement</i>	66
<i>Example 10 – Daily meals and heavy laundry – optional under written agreement</i>	69

Substitute:

<i>Example 7 – Continuing need for daily living and nursing services for one resident but not the provision of daily meals and heavy laundry services to all residents of a serviced apartment</i>	55
<i>Example 7A – Operator’s obligation – arises upon election by resident</i>	57
<i>Example 8 – Operator’s obligation satisfied – external provider as agent for operator</i>	60
<i>Example 8A – Separate agreement with operator</i>	61
<i>Example 9 – Make available daily meals – temporary absence</i>	63
<i>Example 9A – Make available daily meals – meal provided by family</i>	64
<i>Example 9B – Make available daily meals – religious and cultural events</i>	66
<i>Example 9C – Make available daily meals – personal taste</i>	67
<i>Example 9D – Make available daily meals – regular pattern of refusal</i>	68
<i>Example 10 – Make available daily meals – resident is unwell</i>	69
<i>Example 10A – Make available daily meals – medical needs</i>	70

(b) Omit:

<i>Provision of daily meals and heavy laundry to all residents of a serviced apartment</i>	156
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(c) Omit:

Subsections 38-25(3B) and 38-25(3C) – Aged Care Minister’s Determination about the level of services required by residents of ‘serviced apartments’ 164

Substitute:

Subsections 38-25(3B) and 38-25(3C) – Minister’s Determination about the level of services required by residents of ‘serviced apartments’ 164

This Addendum applies on and from the date of issue.

Commissioner of Taxation

27 July 2022

ATO references

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