GSTR 2012/3DA - Draft 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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This document has been finalised.

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Draft 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 draft Addendum when finalised will be a public ruling for the purposes of the *Taxation Administration Act 1953*. It will amend Goods and Services Tax Ruling GSTR 2012/3 to:

(a) broaden the Commissioner's view on the meaning of the term 'common corridor' in paragraph (c) of the definition of 'serviced apartment' set out in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999,* and

(b) update references made to *A New Tax System (Goods and Services Tax) (GST-free supply – Residential Care – Non-government Funded Supplier) Determination 2015* and the Quality of Care Principles 2014.

GSTR 2012/3 is to be amended as follows:

1. Paragraph 4

Omit '38G'; substitute '38-G'.

2. Footnote 9

Omit 'Act'; substitute 'Bill'.

3. Paragraph 40

Omit the paragraph; insert:

> 40. A common corridor required by paragraph (c) of the definition of serviced apartment in section 195-1 includes internal and external passageways that connect the apartments in a single complex of apartments. In this context, the phrase 'single complex of apartments' draws upon the ordinary meaning of 'apartments' which refers to rooms or units located within a single building. The composite expression 'single complex of apartments' is read as a single building in which each apartment shares a common wall or walls with other apartments and does not include a single freestanding apartment.

40A. A common corridor does not include an uncovered passageway that connects an apartment to another apartment that is outside of the single complex of apartments. It also does not include pathways and roads, including pathways and roads connecting a single complex with another single complex, within the retirement village. One retirement village may comprise of more than one single complex. Paragraph (c) of the definition of serviced apartment in section 195-1, however, only requires the apartments in a single complex to be accessible from a common corridor and does not require each single complex, when there is more than one single complex in the retirement village, to also be connected by a common corridor.

40B. A common corridor may include a covered passageway which provides protection from the elements, is lit, and is wide enough to allow passage of mobility assistance devices such as walkers, scooters and wheelchairs. A covered passageway, either alone, or in combination with an internal passageway, must provide access to and between all apartments in the single complex. It does not include a covered or an uncovered passageway that connects a freestanding apartment to another freestanding apartment.

4. Paragraph 41

After the paragraph, insert:

Example 4A – Assisted living unit with external corridor is a 'serviced apartment'

41A. *Sunny Months Retirement Haven (Sunny Months) is a retirement village as defined by section 195-1. Sunny Months offers accommodation described as assisted living units. There are 60 assisted living units configured in rows of six units with a covered passageway providing access to each unit through an external doorway. There is a communal dining hall, within the retirement village, for the use of all residents.*

41B. *Each set of six units is located in a single complex of apartments, within the retirement village. They each contain one or two bedrooms, a kitchenette, a separate living area, and bathroom. The bathrooms in each unit are fitted with grab rails and hand rails. All of the units are accessible from the covered passageway.*

41C. *The covered* passageway *can be used by nursing and care staff when a resident requires assistance. This permanent structure provides protection from the elements, is lit, and is wide enough to allow passage of mobility assistance devices such as walkers, scooters and wheelchairs.*

41D. *The assisted living units at Sunny Months have physical characteristics which indicate that they are designed for people who require daily living activities assistance and nursing services. The assisted living units also satisfy all of the other requirements specified in the definition of serviced apartments in section 195-1 and are 'serviced apartments' for the purposes of subsection 38-25(3A).*

41E. *Services supplied to residents of the assisted living units at Sunny Months may, subject to the requirements of paragraph 38-25(3A)(b), be taken to be provided in a residential setting and may be GST-free supplies of residential care under subsection 38-25(3).*

5. Paragraph 42

Omit the heading; substitute:

Example 5 – Assisted living unit with internal corridor is a 'serviced apartment'

6. Paragraph 43

(a) Omit 'building' from the first sentence, substitute 'complex of apartments'.

(b) Omit 'complex' at the end of the first sentence.

(c) Omit 'building' from the fourth sentence, substitute 'single complex'.

7. Paragraph 44

Omit 'complex'; substitute 'retirement village'.

8. Paragraph 46

After the paragraph; insert:

Example 5A – Assisted living unit not a 'serviced apartment'

46A. *If the assisted living units at Happy Days Retirement Haven (referred to in Example 5) are freestanding units (not linked by common walls), then the unit is not part of a single complex of apartments that is accessible from an internal passageway or covered passageway that links the apartment to the other apartments.*

46B. *The assisted living units, therefore, do not satisfy paragraph (c) of the definition of serviced apartments in section 195-1 which requires the apartments to be linked by a common corridor. Services supplied to residents of the assisted living units at Happy Days are not provided in a residential setting and are not GST-free supplies of residential care under subsection 38-25(3).*

9. Paragraph 47

(a) Omit the heading, insert:

Example 6 – Self-contained unit not a 'serviced apartment'

(b) Before 'pathways'; insert 'uncovered'.

(c) Omit 'around it'; substitute 'linking the units'.

10. Paragraph 50

Omit 'apartments'; substitute 'units'

11. Paragraph 51

Omit all occurrences of 'self-contained apartments'; substitute 'self-contained units'.

12. Paragraph 53

(a) Omit the first occurrence of 'Minister's Determination'; substitute 'Quality of Care principles'.

(b) Omit footnote 12; substitute:

[12] By reference to subsection 6(1) in *A New Tax System (Goods and Services Tax) (GST-free supply – Residential Care – Non-government Funded Supplier) Determination 2015* (the Minister's Determination).

(c) Omit 'the Minister's Determination' from the last sentence; substitute 'Schedule 1 to the Quality of Care Principles'.

13. Footnote 15

Omit 'Subsection 5(a)'; substitute 'Paragraph 6(4)(a)'.

14. Paragraph 74

Omit 'and in Schedule 1 to the Minister's Determination'.

15. Footnote 16

Omit 'Subsection 5(b)'; substitute 'Paragraph 6(4)(b)'.

16. Paragraph 80

Omit 'subsection 5(b)'; substitute 'paragraph 6(4)(b)'.

17. Paragraph 84

Omit 'subsections 5(b) and 5(c)'; substitute 'paragraphs 6(4)(b) and 6(4)(c)'.

18. Paragraph 85

Omit 'Subsections 5(b) and 5(c)' from the heading; substitute 'Paragraphs 6(4)(b) and 6(4)(c)'.

19. Paragraph 89

Omit 'subsections 5(b) and 5(c)'; substitute 'paragraphs 6(4)(b) and 6(4)(c)'.

20. Footnote 23

Omit the footnote; substitute

> [23] See the Explanatory Statement to the *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2015*.

21. Footnote 24

Omit the footnote; substitute:

> [24] Section 41-3 of the *Aged Care Act 1997;* paragraph 5.17 of the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998.

22. Footnote 26

Omit 'Act 1999'; substitute 'Bill 1998'.

23. Paragraph 134

Omit:

> Goods and Services Tax Ruling GSTR 2007/1 *Goods and services tax: 'when retirement village premises include communal facilities for use by the residents of the premises'*

Substitute:

> GSTR 2007/1

24. Paragraph 148

(a) Before ‘complex of apartments’; insert ‘single’.

(b) After the second sentence; insert:

The phrase ‘single complex of apartments’ draws upon the ordinary meaning of ‘apartments’ which refers to rooms or units located within a single building. The composite expression ‘single complex of apartments’ is read as a single building in which each apartment shares a common wall or walls with other apartments and does not include a single freestanding apartment.

25. Paragraphs 150 and 151

Omit the paragraphs; substitute:

150. Having regard to the matters discussed in paragraphs 147 to 148 of this Ruling, a common corridor referred to in paragraph (c) of the definition of serviced apartment in section 195-1 is an internal or external passageway of a single complex that connects an apartment to other apartments in that single complex. A common corridor, in the context of paragraph (c) of the definition of serviced apartment in section 195-1, may include a covered passageway which provides protection from the elements, is lit, and is wide enough to allow passage of mobility assistance devices such as walkers, scooters and wheelchairs. A covered passageway, either alone, or in combination with an internal passageway, must provide access to and between all apartments in the single complex. It does not include a covered or an uncovered passageway that connects a freestanding apartment to another freestanding apartment. It also does not include pathways and roads, including pathways and roads connecting a single complex with another single complex of apartments, within the retirement village.

151. One retirement village may comprise more than one single complex. Paragraph (c) of the definition of serviced apartment in section 195-1, however, only requires the apartments in a single complex to be accessible from a common corridor and does not require each single complex, when there is more than one single complex in the retirement village, to also be connected by a common corridor.

26. Paragraph 157

(a) Before the first occurrence of ‘Minister’s Determination’; insert ‘Quality of Care Principles as it applies to subsection 6(1) in the’.

(b) Omit footnote 36; substitute:

> [36] *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2015.*

(c) Omit 'the Minister's Determination' from the third sentence; substitute 'Schedule 1 to the Quality of Care Principles'.

27. Footnote 37

Omit the footnote; substitute:

> [37] (2000) 201 CLR 520; [2000] HCA 35; 2000 ATC 4378; (2000) 44 ATR 370.

28. Footnote 39

Omit the footnote; substitute:

> [39] (1989) 168 CLR 242; [1989] HCA 63.

29. Footnote 40

Omit the footnote; substitute:

> [40] (2008) 235 CLR 602; [2008] HCA 46; (2008) 70 ATR 1.

30. Paragraph 167

(a) Omit 'section 96 of the Aged Care Act' from footnote 44; substitute 'section 96-1 of the *Aged Care Act 1997'.*

(b) Omit '*GST-free Supply (Residential Care – Non-Government-Funded Supplier) Determination 2000*'; substitute '*A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2015*'.

31. Paragraph 168

Omit the paragraph; substitute:

> 168. Section 6 in the Minister's Determination refers to all the types of services that are able to be provided GST-free to eligible residents. The services are listed in Schedule 1 to the Quality of Care Principles under the Aged Care Act, and reflect the services which are GST-free to residents of Commonwealth funded residential aged care services.

32. Paragraph 169

(a) Omit 'listed in Schedule 1 to the Minister's Determination'.

(b) Omit 'Subsection 5(a)'; substitute 'Paragraph 6(4)(a)'.

33. Paragraph 172

Omit the paragraph; substitute:

> 172. For services to be able to be provided GST-free under subsection 38-25(3), paragraph 6(4)(b) of the Minister's Determination also requires the services to be supplied under a written agreement as a package made up of:
>
> - daily living assistance (item 2.1 services) or nursing services (item 3.8 services) of Schedule 1 to the Quality of Care Principles
> - other services mentioned in Schedule 1 to the Quality of Care Principles that are needed by the resident, and
> - accommodation.

34. Paragraph 173

Omit 'Subsection 5(c)'; substitute 'Paragraph 6(4)(c)'.

35. Paragraph 174

Omit 'subsections 5(b) and 5(c)'; substitute 'paragraphs 6(4)(b) and 6(4)(c)'.

36. Paragraph 175

(a) Omit 'subsection 5(b)'; substitute 'paragraph 6(4)(b)'.

(b) Omit 'subsection 5(c)'; substitute 'paragraph 6(4)(c)'.

37. Footnote 49

Omit '*Goods and Services Tax Ruling GSTR 2000/37 Goods and services tax: agency relationships and the application of the law*'; substitute 'GSTR 2000/37'.

38. Paragraph 178

Omit all occurrences of 'subsection 5(b)'; substitute 'paragraph 6(4)(b)'.

39. Footnote 51

Omit the footnote; substitute:

> [51] (1992) 173 CLR 473; (1992) 106 ALR 611; (1992) 66 ALJR 365

40. Footnote 52

Omit the footnote; substitute:

[52] (1992) 173 CLR 473; (1992) 106 ALR 611; (1992) 66 ALJR 365 at CLR 484; ALR 618; ALJR 369.

41. Footnote 54

Omit the footnote; substitute:

[54] The requirements specified in paragraphs 6(4)(b) and 6(4)(c) of the Minister's Determination, for the purposes of paragraph 38-25(3)(b) would also not be satisfied in these circumstances.

42. Footnote 56

Omit the footnote; substitute:

[56] *Hatfield v. Health Insurance Commission* (1987) 15 FCR 487; (1987) 77 ALR 103 at FCR 491; ALR 106-107.

43. Paragraph 195

Omit:

Example 5 – Serviced apartment	42
Example 6 – Not a 'serviced apartment'	47
Example 12 – Subsections 5(b) and 5(c) of the Minister's Determination are not satisfied	85

Insert:

Example 4A – Assisted living unit with external corridor is a 'serviced apartment'	41A
Example 5 – Assisted living unit with internal corridor is a 'serviced apartment'	42
Example 5A – Assisted living unit not a 'serviced apartment'	46A
Example 6 – Self-contained unit not a 'serviced apartment'	47
Example 12 – Paragraphs 6(4)(b) and 6(4)(c) of the Minister's Determination are not satisfied	85

44. Subject references

Omit the subject references.

45. Legislative references

Omit:

- ANTS(GST)A 1999 38B
- ANTS(GST)A 1999 38G

Insert:

- Aged Care Act 1997
- ANTS(GST)A 1999
- ANTS(GST)A 1999 Subdiv 38-B
- ANTS(GST)A 1999 Subdiv 38-G
- TAA 1953

46. Case references

Omit the case references; substitute:

- Asciano Services Pty Ltd v. Chief Commissioner of State Revenue (2008) 235 CLR 602; [2008] HCA 46; (2008) 70 ATR 1
- Chan v. Cresdon Pty Ltd (1989) 168 CLR 242; [1989] HCA 63
- Commissioner of Taxation (Cth) v. Sara Lee Household & Body Care (Aust) Pty Ltd (2000) 201 CLR 520; [2000] HCA 35; 2000 ATC 4378; (2000) 44 ATR 370
- Hatfield v. Health Insurance Commission (1987) 15 FCR 487; (1987) 77 ALR 103
- Hatzimanolis v. ANI Corporation (1992) 173 CLR 473; (1992) 106 ALR 611; (1992) 66 ALJR 365

47. Other references

Omit:

- Explanatory Memorandum to Tax Laws Amendment (Retirement Villages) Bill 2004
- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Act 1999
- Explanatory Statement to the GST-free Supply (Residential Care - Non-Government-Funded Supplier) Determination 2000
- GST-free Supply (Residential Care – Non-Government Funded Supplier) Determination 2000

Insert:

- A New Tax System (Goods and Services Tax) (GST-free Supply - Residential Care - Non-government Funded Supplier) Determination 2015
- Explanatory Statement to the A New Tax System (Goods and Services Tax) (GST-free Supply - Residential Care - Non-government Funded Supplier) Determination 2015
- Explanatory Memorandum to the Tax Laws Amendment (Retirement Villages) Bill 2004

When the final Addendum is issued, it is proposed to apply:

(a) before and after the date of publication of the final Addendum for items 1 to 11, 24, 25 and 43 [regarding the meaning of the term 'common corridor' in paragraph (c) of the definition of 'serviced apartment' set out in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*], and

(b) on and from 20 January 2015 for items 12 to 23, and 26 to 42 [regarding updating references to the *A New Tax System (Goods and Services Tax) (GST-free supply -Residential Care – Non-government Funded Supplier) Determination 2015* and the Quality of Care Principles 2014].

Commissioner of Taxation
13 January 2016

Appendix 1 – Your comments

48. You are invited to comment on this draft Addendum, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

49. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments, and
- be published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	**Friday, 26 February 2016**
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ATO references

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