

GSTR 2012/4 - Goods and services tax: GST treatment of fees and charges payable on exit by residents of a retirement village operated on a leasehold or licence basis

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Goods and Services Tax Ruling

Goods and services tax: GST treatment of fees and charges payable on exit by residents of a retirement village operated on a leasehold or licence basis

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Ruling	5
Date of effect	26
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	27
Appendix 2:	
Detailed contents list	62

📌 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.

What this Ruling is about

1. This Ruling explains the goods and services tax (**GST**) treatment of amounts which a resident becomes liable to pay to the operator of a retirement village when the resident’s interest in the village terminates (**exit payments**).
2. In this context, the resident’s ‘interest’ is a right to possession of residential premises under a lease or licence with a right to use the communal facilities of the village.
3. All legislative references in this Ruling are to the *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**) unless otherwise specified.
4. This Ruling does not specifically address:
 - exit payments made by residents of a retirement village where the resident holds a freehold interest;
 - apportionment of input tax credits;

- the development, construction, sale or leasing of retirement villages, nursing homes, hostels or boarding houses;¹
- the activities of charitable institutions under Subdivision 38-G including supplies of retirement village accommodation under section 38-260;
- care services provided in a retirement village; and
- supplies made by third parties to residents.

Ruling

General principles

5. In order to determine the GST treatment of an exit payment in a lease or licence arrangement, it is necessary to consider:

- any supply or supplies made by the operator;² and
- the extent of the connection, if any, between the supply or supplies and the payment.³

6. Where an exit payment is made in connection with a supply, it is 'consideration' for that supply under section 9-15.⁴ In order to determine whether an exit payment has the necessary nexus with any supply, the starting point is the legal arrangements⁵ between the parties.

7. For GST purposes, consideration includes any payment made in connection with a supply.⁶ The connection or nexus between an exit payment and any supply requires an objective evaluation of the legal arrangements between the retirement village operator and the resident in question.⁷

¹ The GST treatment of a sale of a retirement village, in particular circumstances, is addressed in *Goods and Services Tax Ruling GSTR 2011/1 Goods and services tax: development, lease and disposal of a retirement village tenanted under a 'loan-lease' arrangement*.

² See *Goods and Services Tax Ruling GSTR 2006/9 Goods and services tax: supplies*.

³ See *Goods and Services Tax Rulings GSTR 2000/12 Goods and services tax: attributing GST payable and input tax credits for supplies and acquisitions under lay-by sale agreements*; *Goods and Services Tax Ruling GSTR 2002/3 Goods and services tax: prizes*; *Goods and Services Tax Ruling GSTR 2003/11 Goods and services tax: payment on early termination of a lease of goods* and *Goods and Services Tax Ruling GSTR 2006/11 Goods and services tax: appropriations*.

⁴ See GSTR 2006/9, paragraph 180.

⁵ The expression 'legal arrangements' in the context of this Ruling includes any contractual agreement between the parties and any legislation which applies in the circumstances.

⁶ See paragraph 9-15(1)(a).

⁷ *Byrnes v. Kendle* (2011) 243 CLR 253 at 284; *Toll (FGCT) Pty Ltd v. Alphapharm Pty Ltd* (2004) 219 CLR 165 at 179; *Pacific Carriers Ltd v. BNP Paribas* (2004) 218 CLR 451 at 461-462; *Rinehart v. Welker* [2012] NSWCA 95 at [115].

8. The legal arrangements between the parties are the starting point when determining both the entity making a particular supply, and the entity which is the recipient of that supply.⁸ The legal effect of these arrangements is determined by a proper reading of the arrangements as a whole, rather than by reference to particular labels or descriptions adopted or asserted by the parties.⁹

9. A nexus expressed in the legal arrangements between consideration and a particular supply may not always be conclusive. However, it is a factor taken into account in determining whether the consideration is provided for that particular supply. For example, a description of nexus which is artificial or contrived in all the circumstances is not determinative.¹⁰ Whether or not this is the case depends on the facts and circumstances of each situation.

Lease or licence arrangements

Supplies made

10. In a lease or licence arrangement, the operator makes input taxed or GST-free supplies to residents, and may also make taxable supplies.

Input taxed supplies

11. Input taxed supplies to the resident in a lease or licence arrangement may include supplies of:

- residential premises by way of lease or licence; and
- services which are integral, ancillary or incidental to the lease or licence (**incidental services**).

12. Incidental services are to be regarded as part of an input taxed or composite supply, the dominant part of which comprises the residential premises provided under the lease or licence.

13. Whether or not a service is incidental to a supply depends on the facts of each case. A service may be regarded as incidental where it is intended to ensure, facilitate or enhance the resident's enjoyment of the lease or licence, but is not provided as an end in itself.¹¹ The nature of a service is assessed according to its true character rather than simply by reference to a label or description given to it by the parties.

⁸ See paragraphs 119 to 122 of GSTR 2006/9.

⁹ *Federal Commissioner of Taxation v. Broken Hill Pty Co Ltd* [2000] FCA 1431 at [50].

¹⁰ *cf NM Superannuation Pty Ltd v. Young* (1993) 41 FCR 182 at 199-200; *Re Porter; Re Transport Workers Union of Australia* (1989) 34 IR 179 at 184 (*Transport Workers Union of Australia*).

¹¹ See paragraphs 17 and 55 to 63 of *Goods and Services Tax Ruling GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts; Customs and Excise Commissioners v. Madgett & Baldwin* [1998] BVC 458 at 464; *Customs and Excise Commissioners v. British*

14. The costs of providing services that are integral, ancillary or incidental to the supply of the residential premises are sometimes included in the calculation of the monthly service or maintenance fee. This does not change the nature of the services concerned.

15. **Attachment A** on page 17 of this Ruling contains a non-exhaustive list of things which may be incidental services, depending on the legal arrangements in place.

GST-free supplies

16. Supplies of care services and serviced apartments by an operator of a retirement village are GST-free when subsections 38-25(3) and 38-25(4A)¹² apply. Consequently, exit payments made in this situation are made in connection with GST-free supplies, which also include those services which are integral, ancillary or incidental to the supply of residential premises and care services. Some non-incidental services listed in **Attachment B** on page 18 of this Ruling may be GST-free as well. For example, a medical service may be GST-free under section 38-7; or personal care services, heavy laundry and meals may be GST-free under sub-section 38-25(3).

Taxable non-incidental services

17. An operator may also make taxable supplies to the resident. Taxable supplies consist of services which are not incidental services (**non-incidental services**) and are not GST-free under Division 38. These include optional services which have no necessary connection to the enjoyment of the residential premises under the lease or licence.

18. **Attachment B** on page 18 of this Ruling contains a non-exhaustive list of things which may be non-incidental services, depending on the legal arrangements in place.¹³

Telecommunications plc [1999] BVC 306 at 312; *Beynon & Partners v. Commissioners of Customs and Excise* [2005] 1 WLR 86 at 91; *cf Saga Holidays Ltd v. Federal Commissioner of Taxation* (2005) 149 FCR 41 at 82-83.

¹² See *Goods and Services Tax Ruling GSTR 2012/3 Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels*.

¹³ Some supplies in Attachment B on page 18 of this Ruling may be GST-free or taxable if certain conditions are met.

Payment as consideration for supplies made***Consideration for supplies of residential premises***

19. Exit payments may be treated as consideration for a supply of residential premises. To the extent that an objective assessment in all the circumstances indicates that they are consideration for some other supply or supplies, they are not treated as consideration for residential premises. Supplies of residential premises in a retirement village by way of lease or licence are input taxed unless the supply of the premises is a supply of serviced apartments that are GST-free under subsection 38-25(4A).

20. Neither the method by which an exit payment is to be determined nor the variables used to calculate an exit payment are necessarily decisive in identifying the supply or supplies for which the exit payment is consideration.¹⁴ There may be situations, however, where the method of calculation prescribed for an exit payment, in all the circumstances, is sufficient to establish nexus with a supply other than a supply of residential premises.

21. Subject to contrary indications within the legal arrangements, an exit payment is consideration wholly for supplies that would be input taxed where:

- the operator does not provide services other than incidental services; or
- the operator provides non-incidental services but:
 - the resident is liable to provide separate consideration for them; and
 - the value of that consideration is not less than the market value of the services.

22. An exit payment which is consideration for the supply of residential premises and incidental services retains its character as consideration for an input taxed or GST-free supply where:

- the legal arrangements provide for an adjustment to the exit payment; and
- the adjustment does not relate to something that is a separate supply.

Consideration for taxable or GST-free services

23. By way of contrast, an exit payment is to be treated as consideration wholly or partly for supplies that would be taxable or GST-free where the operator provides non-incidental services and:

- the resident is not liable to provide any separate consideration for those services; or

¹⁴ Cf. *Re Vidler v. Federal Commissioner of Taxation* (2009) 72 ATR 832 at 845.

- the value of the separate consideration they provide is less than the market value of the services.

Capital appreciation or depreciation amounts

24. Depending on the terms of the legal arrangements relating to occupancy of the residential premises, on exit from the village a resident (or their estate) may be entitled to a share of any increase in the market value of the residential unit measured by reference to the contribution paid by the new incoming resident. The increase in value is often referred to as the 'capital appreciation' amount. Where there is a decrease in value measured in the same way, there is a 'capital depreciation' amount. Capital appreciation (or depreciation) amounts relate to the supply of the residential premises and are either a reduction (capital appreciation amounts) or an addition (capital depreciation amounts) to the consideration for the supply of the residential premises, regardless of whether they are set-off or exist as a separate entitlement (or obligation).

Apportionment between taxable and non-taxable components

25. Where an exit payment is consideration for both non-taxable (input taxed or GST-free) and taxable supplies, or consideration for a mixed supply, the exit payment should be apportioned between the taxable and non-taxable components.¹⁵ The apportionment method adopted must be reasonable in all the circumstances.

Date of effect

26. This Ruling applies both before and after its date of issue. However, this Ruling 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 Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

15 August 2012

¹⁵ See paragraphs 25 to 26 and 92 of GSTR 2001/8.

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.*

General principles

27. An exit payment is generally made by a resident of a retirement village to the village operator on exit from the village. The payment is commonly known as a deferred management fee (**DMF**), but may also be referred to as an exit or termination fee. Other payments made at this time may include selling fees, capital improvement fees, renovation fees and cleaning fees.

28. These payments are consideration for a lease or licence of the residential premises where they relate to expenses or outgoings of the retirement village operator incurred in supplying the residential premises or they relate to supplies which are incidental to the supply of residential premises (and not to any other supply made to a resident).

29. Where a supply of services is made to a resident, their treatment is to be determined under the GST basic rules.¹⁶ For example, if a resident is liable to repair damage done to the unit and contracts with the village operator to perform the repair services, then those repair services are subject to GST under the basic rules. Similarly, if the resident is responsible for finding a replacement resident, but contracts with the village operator to find the replacement resident, then the service is taxable under the GST basic rules. These services are taxable regardless of whether the lease or licence of the residential premises is GST-free or input taxed.

30. In a lease or licence arrangement, an exit payment consisting of a DMF is commonly calculated in the following ways:

- a percentage of the entry contribution made by the exiting resident; or
- a percentage of the entry contribution made by the new incoming resident.

In some situations, the calculation may be adjusted by reference to the increase or decrease in the value of the residential unit.¹⁷

31. In order to determine the GST treatment of an exit payment, it is necessary to consider:

- any supply or supplies made by the operator; and
- the extent of the connection, if any, between such a supply or supplies and the payment.

¹⁶ The basic rules are set out in Chapter 2 of the GST Act.

¹⁷ See paragraphs 24 and 57 to 60 of this Ruling.

32. Where an exit payment is made in connection with a supply, it is 'consideration' for that supply under section 9-15 read with the section 195-1 definition of 'consideration'. In order to determine whether an exit payment has the necessary nexus with any supply, the starting point is the legal arrangements between the parties.

33. For GST purposes, 'consideration' includes any payment in connection with a supply and any payment in response to, or for the inducement of, a supply.¹⁸ The connection or nexus between an exit payment and any supply is to be determined by an objective evaluation of the legal arrangements between the retirement village operator and the resident in question¹⁹ and the surrounding circumstances.²⁰

Express statements

34. The legal arrangements between the parties are the starting point when determining both the entity making a particular supply, and the entity which is the recipient of that supply.²¹ The legal effect of these arrangements is determined by a proper reading of them taken as a whole, rather than by reference to particular labels or descriptions adopted or asserted by the parties.²²

35. The parties cannot, by mere labelling or description, either confer a particular legal character on a relationship that it does not truly possess or deny it a character that it does possess.²³ As Gray J stated in *Transport Workers Union of Australia*:

A court will always look at all of the terms of the contract, to determine its true essence, and will not be bound by the express choice of the parties as to the label to be attached to it. ...the parties cannot create something which has every feature of a rooster, but call it a duck and insist that everybody else recognise it as a duck.²⁴

¹⁸ See paragraph 9-15(1)(b).

¹⁹ *Byrnes v. Kendle* (2011) 243 CLR 253 at 284; *Toll (FGCT) Pty Ltd v. Alphapharm Pty Ltd* (2004) 219 CLR 165 at 179; *Pacific Carriers Ltd v. BNP Paribas* (2004) 218 CLR 451 at 461-462; *Rinehart v. Welker* [2012] NSWCA 95 at [115].

²⁰ See paragraph 222 of GSTR 2006/9.

²¹ See paragraphs 119 to 122 of GSTR 2006/9.

²² *Federal Commissioner of Taxation v. Broken Hill Pty Co Ltd* [2000] FCA 1431 at [50]; *Noza Holdings Pty Ltd v. FCT* [2011] FCA 46 at [238].

²³ *South Sydney District Rugby League Football Club Ltd v. News Ltd* [2000] FCA 1541 at [135].

²⁴ *Re Porter; Re Transport Workers Union of Australia* (1989) 34 IR 179 at 184, cf *Natalie Newton (trading as Combine Care for the Elderly) v. Commissioner of Taxation* [2011] AATA 897; *Wright v. Runge ICT Group* [2010] FWA 3148 at [9].

36. Labels or descriptions given to exit payments must be attributed their proper weight in the context of the legal arrangements taken as a whole.²⁵ This may lead to the label or description being disregarded entirely, or to its being given full force and effect. In all cases, however, a label or description will be given a weight appropriate in all the circumstances. Labels are not a substitute for legal analysis.

37. An expressed nexus between consideration and a particular supply may not always be legally conclusive. However, it will be a factor to be taken into account in determining whether the consideration is provided for that particular supply. A description or assertion of nexus which is artificial or contrived in all the circumstances is not determinative of the issue.²⁶

38. For example, in *Re Luxottica Retail Australia Pty Ltd and Federal Commissioner of Taxation*²⁷, the AAT reviewed the allocation of the price of a pair of spectacles between GST-free prescription lenses and taxable frames, where a discount was only applied to the frames. The fact that the pricing methodology was not 'contrived or artificial' was one of the factors taken into account in concluding that the taxpayer had correctly applied the discount to the frames only.²⁸

Lease or licence arrangements

39. In order to determine the GST treatment of an exit payment in a lease or licence arrangement, it is necessary to consider:

- any supply or supplies made by the operator; and
- the extent, if any, to which the exit payment in question represents consideration for any one of those supplies.

40. In a lease or licence arrangement, the operator makes input taxed or GST-free supplies to the resident and may also make taxable supplies.

Input taxed supplies

41. Input taxed supplies to the resident include:

- residential premises by way of lease or licence; and
- services which are integral, ancillary or incidental to the lease or licence (**incidental services**);

²⁵ *South Sydney District Rugby League Football Club Ltd v. News Ltd* [2000] FCA 1541 at [135], *Homecare Direct Shopping Pty Ltd v. CGU Workers Compensation (Vic) Ltd* [2008] VSCA 111 at 48-50.

²⁶ *NM Superannuation Pty Ltd v. Young* (1993) 41 FCR 182 (at 199-200).

²⁷ *Re Luxottica Retail Australia Pty Ltd and Federal Commissioner of Taxation* [2010] AATA 22; (2010) 75 ATR 169.

²⁸ *Re Luxottica Retail Australia Pty Ltd v. Federal Commissioner of Taxation* [2010] AATA 22 at [40]; (2010) 75 ATR 169 at 189, see also *Federal Commissioner of Taxation v. Luxottica Retail Australia Pty Ltd* [2011] FCAFC 20 at [40-42], 191 FCR 561 at 571.

that are in each case not GST-free under section 38-25.

Residential premises

42. Where the supply is by way of lease or licence, and it is not the supply of a serviced apartment covered by subsection 38-25(4A), the operator makes an input taxed supply of residential premises by way of lease or licence over a unit to the resident.²⁹ In some circumstances, the operator also makes a supply of a licence over the common areas in the village. The common areas licence involves an input taxed supply³⁰ where the common areas are an ancillary or incidental part of the 'residential premises' made available to the resident under the legal arrangements.³¹

Incidental services

43. In a lease or licence arrangement, the operator may also provide incidental services to a resident. Where these services are integral, ancillary or incidental to the supply of residential premises, they are part of an input taxed, composite supply,³² the dominant part of which is the residential premises provided under the lease or licence. In this context, services are considered to be 'incidental services' where they are 'ancillary' to the lease or licence in the sense described in *Customs and Excise Commissioners v. Madgett & Baldwin*.³³

... a service is ancillary if, first, it contributes to the proper performance of the principal service and second, it takes up a marginal proportion of the package price compared to the principal service. It does not constitute an object for customers or a service sought for its own sake, but a means of better enjoying the principal service.

44. The question whether a service is integral, ancillary or incidental to the supply of residential premises by way of lease or licence depends on the circumstances of each case. No single factor determines whether a part of a supply is integral, ancillary or incidental to another part of the supply. In the present context, an incidental service is one intended to ensure, facilitate or enhance the resident's enjoyment of the lease or licence and is not provided as an end in itself.

²⁹ Paragraph 40-35(1)(a).

³⁰ The view taken here is that the lease and licence together provide 'residential premises' including both the unit and common areas.

³¹ Paragraph 40-35(1)(a).

³² See paragraphs 17 and 55 to 63 of GSTR 2001/8.

³³ *Customs and Excise Commissioners v. Madgett & Baldwin* [1998] BVC 458 at 464.

45. The connection between a service and the supply of residential premises is to be assessed by reference to the true character of the service, rather than the labels or descriptions used by the parties. Accordingly, the parties cannot make a service integral, ancillary or incidental to the supply of accommodation merely by stating that it has that character in the legal arrangements.

46. Under the legal arrangements, there may be adjustments to the exit payment. This may occur, for example, where there is an entitlement of the resident to a share in the capital appreciation amount, or where the resident is required to pay a share of a capital depreciation amount.³⁴

GST-free supplies

47. Supplies of care services and serviced apartments and in a retirement village are GST-free to the extent they are covered by subsections 38-25(3) and 38-25(4A).³⁵ Consequently, exit payments made in these situations are made in connection with GST-free supplies, including services which are integral, ancillary or incidental to the supply of residential premises and care services.

Taxable supplies

48. The operator may also make taxable supplies to the resident. Taxable supplies in this context include services (**non-incidenta services**) which are not incidental to a supply of residential premises by way of lease or licence. Non-incidenta services may include optional services which have no necessary connection to the enjoyment of the residential premises under the lease or licence.

49. **Attachment B** contains a non-exhaustive list of non-incidenta services.

Payment as consideration for supplies made

Consideration for supplies of residential premises

50. Exit payments are treated as consideration for a supply of residential premises, except to the extent that an objective assessment of all the circumstances indicates that they are consideration for some other supply or supplies. A supply of residential premises by way of lease or licence is input taxed unless the premises are a GST-free supply of a serviced apartment under subsection 38-25(4A).

³⁴ See paragraphs 24 and 57 to 60.

³⁵ See GSTR 2012/3.

51. Neither the method by which an exit payment is to be determined nor the variables used to calculate an exit payment are necessarily decisive in identifying the supply or supplies for which the exit payment is consideration. There may be situations, however, where the method of calculation prescribed for an exit payment, after considering the objective circumstances, may be sufficient to establish nexus with a supply other than a supply of residential premises.

52. Exit payments are commonly calculated by reference to the duration of the lease or licence, rather than the services actually provided. Unless particular terms of the legal arrangements indicate otherwise, these exit payments are, to some extent, consideration for the supply of residential premises, or for a composite supply of residential premises and incidental services.

53. Unless particular terms of the legal arrangements indicate otherwise, an exit payment is wholly consideration for supplies that are input taxed (or GST-free where the supplies are covered by section 38-25) where:

- there is a supply of residential premises;
- the operator does not provide services other than incidental services; or
- the operator provides non-incidental services but:
 - the resident is liable to provide separate consideration in respect of them; and
 - the value of that consideration is not less than the market value of the services.³⁶

54. In these cases, the connection between the exit payment and the making of supplies of residential premises and incidental services may be inferred from the lack of any connection between the payment and non-incidental services.

Consideration for taxable or GST-free supplies of services

55. By way of contrast, it may be that an exit payment is consideration for the taxable supply of non-incidental services where the operator provides non-incidental services and:

- residents do not provide any separate consideration for those services; or
- the value of the separate consideration they provide is less than the market value of the services.

³⁶ An objective indicator that the consideration is below market value is where the services are provided below cost.

56. In the absence of indications to the contrary in the legal arrangements, a part of an exit payment that is calculated by express reference to the extent of (non-incidental) services performed by the operator would be consideration for those services rather than consideration for the supply of the premises.

Capital appreciation or depreciation amounts

57. Depending on the legal arrangements involved, on exit from the village, a resident (or their estate) may be entitled to a share of any increase in the market value of the residential premises measured by reference to the contribution paid by the new incoming resident. This increase in value is often referred to as the 'capital appreciation amount'. Where there is a decrease in value measured in a similar way, there is what is often called a 'capital depreciation amount'.

58. Subject to the legal arrangements, an entitlement to a share of the capital appreciation amount or the obligation to pay a capital depreciation amount may be either subtracted from or added to other amounts payable by the exiting resident. Alternatively, there may be a separate entitlement or obligation.

59. The first issue in each case is what payment of a capital appreciation amount or an entitlement to a capital depreciation amount relates to. The amount in question may be part of the exit payment or it may represent a separate fee. In both cases, subject to the legal arrangements, the amount may be treated as a reduction or increase in the consideration for the lease or licence of the premises. This is because the amount is calculated by reference to the change in value of the premises, and not on the level or duration of services provided to the tenant.

60. In these circumstances, the payment is connected to the lease or licence of premises. The capital appreciation (or depreciation) amount represents either a reduction (capital appreciation amount) or an addition (capital depreciation amount) to the consideration for the supply of residential premises. This follows regardless of whether the amount in question may be set-off against other payments or it exists as a separate entitlement (or obligation).

Apportionment between taxable and non-taxable components

61. Where an exit payment is consideration for both non-taxable (input taxed or GST-free) and taxable supplies, or consideration for a mixed supply, the exit payment in question should be apportioned between the taxable and non-taxable components.³⁷ The apportionment method adopted must be reasonable in all circumstances.³⁸

³⁷ See paragraphs 25 to 26 and 92 of GSTR 2001/8.

³⁸ See paragraphs 25 to 26 and 92 of GSTR 2001/8.

Appendix 2 – Detailed contents list

62. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Ruling	5
General principles	5
Lease or licence arrangements	10
<i>Supplies made</i>	10
<i>Input taxed supplies</i>	11
<i>GST-free supplies</i>	16
<i>Taxable non-incidentals services</i>	17
Payment as consideration for supplies made	19
<i>Consideration for supplies of residential premises</i>	19
<i>Consideration for taxable or GST-free supplies of services</i>	23
<i>Capital appreciation or depreciation amounts</i>	24
<i>Apportionment between taxable and non-taxable components</i>	25
Date of effect	26
Appendix 1 – Explanation	27
General principles	27
<i>Express statements</i>	34
Lease or licence arrangements	39
<i>Input taxed supplies</i>	41
<i>Residential premises</i>	42
<i>Incidental services</i>	43
<i>GST-free supplies</i>	47
<i>Taxable supplies</i>	48
Payment as consideration for supplies made	50
<i>Consideration for supplies of residential premises</i>	50
<i>Consideration for taxable or GST-free supplies of services</i>	55
<i>Capital appreciation or depreciation amounts</i>	57
<i>Apportionment between taxable and non-taxable components</i>	61
Appendix 2 – Detailed contents list	62
Attachment A – Incidental supplies	Page 17
Attachment B – Non-incidentals supplies	Page 18

References

Previous draft:
GSTR 2012/D2

Related Rulings/Determinations:
TR 2006/10; GSTR 2000/12;
GSTR 2001/8; GSTR 2002/3;
GSTR 2003/11; GSTR 2006/9;
GSTR 2006/11; GSTR 2011/1;
GSTR 2012/3

Subject references:

- creditable purpose
- Goods and services tax
- GST consideration
- GST input tax credits & creditable acquisitions
- GST retirement villages
- GST supplies & acquisitions

Legislative references:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-15
- ANTS(GST)A 1999 9-15(1)(a)
- ANTS(GST)A 1999 Div 38
- ANTS(GST)A 1999 Subdiv 38-G
- ANTS(GST)A 1999 38-7
- ANTS(GST)A 1999 38-25
- ANTS(GST)A 1999 38-25(3)
- ANTS(GST)A 1999 38-25(4A)
- ANTS(GST)A 1999 38-260
- ANTS(GST)A 1999 40-35(1)(a)
- TAA 1953

Case references:

- Beynon & Partners v. Commissioners of Customs and Excise [2005] 1 WLR 86
- Byrnes v. Kendle (2011) 243 CLR 253; [2011] HCA 26
- Customs and Excise Commissioners v. Madgett & Baldwin [1998] BVC 458
- Customs and Excise Commissioners v. British Telecommunications plc [1999] BVC 306
- Federal Commissioner of Taxation v. Broken Hill Pty Co Ltd [2000] FCA 1431; 2000 ATC 4659; (2000) 45 ATR 507

- Federal Commissioner of Taxation v. Luxottica Retail Australia Pty Ltd (2011) 191 FCR 561; [2011] FCAFC 20; 2011 ATC 20-243; (2011) 79 ATR 768
- Homecare Direct Shopping Pty Ltd v. CGU Workers Compensation (Vic) Ltd [2008] VSCA 111
- Natalie Newton (trading as Combine Care for the Elderly) v. Commissioner of Taxation [2011] AATA 897; 2011 ATC 10-226
- NM Superannuation Pty Ltd v. Young (1993) 41 FCR 182
- Noza Holdings Pty Ltd v. FCT [2011] FCA 46 at [238].
- Pacific Carriers Ltd v. BNP Paribas (2004) 218 CLR 451; [2004] HCA 35
- Re Luxottica Retail Australia Pty Ltd v. Federal Commissioner of Taxation [2010] AATA 22; 2010 ATC 10-119; (2010) 75 ATR 169
- Re Porter; Re Transport Workers Union of Australia [1989] FCA 226; (1989) 34 IR 179
- Re Vidler v. Federal Commissioner of Taxation [2009] AATA 395; 2009 ATC 10-093; (2009) 72 ATR 832
- Rinehart v. Welker [2012] NSWCA 95 at [115].
- Saga Holidays Ltd v. Federal Commissioner of Taxation (2005) 149 FCR 41; [2005] FCA 1892; 2006 ATC 4001; (2005) 61 ATR 384
- South Sydney District Rugby League Football Club Ltd v. News Ltd [2000] FCA 1541
- Toll (FGCT) Pty Ltd v. Alphapharm Pty Ltd (2004) 219 CLR 165; [2004] HCA 52
- Wright v. Runge ICT Group [2010] FWA 3148

ATO references

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~~ taxable supplies
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Goods and Services Tax ~~ Health ~~ residential care
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leases
Goods and Services Tax ~~ Property and construction ~~
retirement villages

Attachment A – Incidental services

Item	Action/service
1.	<p>Maintenance of units</p> <p>Ensuring that units are fit for habitation and in good repair.</p>
2.	<p>Maintenance of common areas</p> <p>Maintenance of common areas, including:</p> <ul style="list-style-type: none"> • Car parks; • Driveways; • Barbeque areas; • Gardens; and • Cleaning and garbage disposal.
3.	<p>Maintenance of fittings and fixtures</p> <p>Maintaining, repairing and replacing fittings and fixtures relating to residential premises on village land including call systems and other technological systems relating to the supply of the residential premises.</p>
4.	<p>Safety and security</p> <p>Maintenance of safety equipment, administration of safety procedures, arranging security over common areas or the village as a whole</p>
5.	<p>Administration</p> <p>General administrative services, to the extent that they relate to items 1 to 5 of Attachment A of this Ruling.</p>

Attachment B – Non-incidenta l services

Item	Action/service³⁹
1.	Meals Preparation of meals for residents
2.	Internal cleaning Cleaning of the interior of the resident's unit
3.	Laundry and ironing Provision of laundry and/or ironing services to residents
4.	Linen Supply of linen to residents
5.	Social events The provision of entertainment events for residents, such as a bus trip to a theatre
6.	Hair and beauty Hairdressing, makeup etc
7.	Medical care Provision of specialist medical care including transport to medical appointments
8.	Personal care Assistance with showering, hygiene, dressing, mobility, communication, shopping

³⁹ The supply of some items may be GST-free under Division 38. For example, the supply of medical care may be GST-free under section 38-7, or the supply of personal care services, heavy laundry and meals may be GST-free under subsection 38-25(3).