



Tax Laws Amendment (Retirement Villages) Act 2004

No. 143, 2004

An Act to amend the A New Tax System (Goods and Services Tax) Act 1999, and for related purposes

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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No. 143, 2004

An Act to amend the A New Tax System (Goods and Services Tax) Act 1999, and for related purposes

[Assented to 14 December 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Retirement Villages) Act 2004*.

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2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Retirement villages

Part 1—Amendments

A New Tax System (Goods and Services Tax) Act 1999

1 Paragraph 38-25(3)(c)

After “services” (second occurring), insert “(care services)”.

2 After subsection 38-25(3)

Insert:

- (3A) Services provided to a resident of a *retirement village are taken, for the purposes of paragraph (3)(a), to be provided in a residential setting if, and only if:
- (a) he or she is a resident of a *serviced apartment in the retirement village; and
 - (b) there is in force a written agreement under which the operator of the retirement village provides daily meals and heavy laundry services to all of the residents of the apartment.
- (3B) However, services provided to a resident of a *serviced apartment in a *retirement village are not taken, for the purposes of paragraph (3)(a), to be provided in a residential setting if:
- (a) the *Aged Care Minister has determined in writing:
 - (i) the levels of care services that residents of serviced apartments in retirement villages must require in order for subsection (3) to apply; and
 - (ii) the way in which the levels of care services required by residents are to be assessed; and
 - (b) the *Aged Care Secretary has not, in accordance with the determination, assessed the person to whom the services are provided as requiring the levels of care services so determined.
- (3C) A determination made for the purposes of paragraph (3B)(a) may be restricted to a specified class of residents of *serviced apartments in *retirement villages.

3 After subsection 38-25(4)

Insert:

(4A) A supply is *GST-free* if:

(a) it is made to a person who is a person of a kind referred to in paragraph (3)(c); and

(b) it is:

(i) a supply, by way of lease, hire or licence, of *residential premises consisting of a *serviced apartment in a *retirement village; or

(ii) a sale of *real property that is residential premises consisting of a serviced apartment in a retirement village; or

(iii) a supply of an excluded security (within the meaning of the *Corporations Act 2001*) in respect of which the right to participate in a retirement village scheme (within the meaning of that Act) entitles the person to use or occupy a serviced apartment in a retirement village; and

(c) in a case where:

(i) a determination made for the purposes of paragraph (3B)(a) is in force; and

(ii) the determination is not restricted under subsection (3C) in such a way that the determination excludes the person;

the *Aged Care Secretary has, in accordance with the determination, assessed the person as requiring the levels of care services determined in the determination; and

(d) it is made in connection with one or more supplies, or proposed supplies, to the person that are or will be GST-free under subsection (3).

4 Subdivision 38-G (heading)

Repeal the heading, substitute:

Subdivision 38-G—Activities of charitable institutions etc.

5 At the end of Subdivision 38-G

Add:

38-260 Supplies of retirement village accommodation etc.

A supply is *GST-free* if:

- (a) the supplier is a charitable institution, or a trustee of a charitable fund, that operates a *retirement village; and
- (b) the supply is made to a resident of the retirement village; and
- (c) the supply is:
 - (i) a supply of accommodation in the retirement village, or a supply of a service related to the supply of the accommodation; or
 - (ii) a supply of meals.

6 Subdivision 38-H (heading)

Repeal the heading.

7 After paragraph 177-10(1)(c)

Insert:

- (ca) paragraph 38-25(3B)(a); or

8 After section 177-10

Insert:

177-11 Delegation by Aged Care Secretary

The *Aged Care Secretary may, in writing, delegate his or her powers under paragraph 38-25(3B)(b) to:

- (a) a person in relation to whom there is in force a delegation by the Aged Care Secretary of functions under subsection 96-2(5) of the *Aged Care Act 1997*; or
- (b) a person:
 - (i) who is a person of a kind specified in a determination that is in force and that is made by the *Aged Care Minister for the purposes of paragraph 38-25(3B)(a); and
 - (ii) whom the Aged Care Secretary is satisfied is qualified and experienced to make assessments of the kind referred to in paragraph 38-25(3B)(b).

9 Section 195-1

Insert:

Aged Care Secretary means the Secretary of the Department that administers the *Aged Care Act 1997*.

10 Section 195-1 (definition of *residential care*)

Repeal the definition.

11 Section 195-1

Insert:

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.

12 Section 195-1

Insert:

serviced apartment: an apartment (however described) is a serviced apartment in relation to a *retirement village if:

- (a) the apartment is designed to be occupied by aged residents who require either or both of the following:
 - (i) the services set out in item 2.1 (daily living activities assistance) of Part 2 of Schedule 1 to the *Quality of Care Principles;
 - (ii) the services set out in item 3.8 (nursing services) of Part 3 of that Schedule; and
- (b) at least one responsible person is continuously:
 - (i) on call to render emergency assistance to the residents of the apartment; and

- (ii) in reasonable proximity to the apartment; and
 - (c) the apartment is part of a single complex of apartments to which paragraphs (a) and (b) apply, and is accessible from a common corridor linking the apartment to the other apartments in the complex; and
 - (d) there is in the retirement village a communal dining facility that is available for use by the residents of apartments in the retirement village to which paragraphs (a), (b) and (c) apply.
- However, a detached house, row house, terrace house, town house or villa unit is not a serviced apartment.

Part 2—Application provisions

13 Definition

In this Part:

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

14 General application

- (1) The amendments made by this Schedule (other than items 4 to 6) apply, and are taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after 1 July 2000.
- (2) However, to avoid doubt, a determination made for the purposes of paragraph 38-25(3B)(a) of the GST Act (as amended by this Act) does not apply in relation to any supplies made before the commencement of this item.
- (3) The amendments made by items 4 to 6 of this Schedule apply to supplies made on or after the day on which this Act receives the Royal Assent.

15 Attributing input tax credits

- (1) If:
 - (a) you are entitled to an input tax credit for an acquisition or importation made before the commencement of this item; and
 - (b) you would not be entitled to the input tax credit if the amendments made by this Schedule had not been made;to the extent that you would, apart from this item, attribute that input tax credit to a tax period ending before the commencement of this item, you may instead attribute it to the first tax period ending after that commencement.
- (2) This item does not apply for the purpose of working out adjustment periods for the purposes of Division 129 of the GST Act (which is about adjustments for changes to the extent of creditable purposes).
- (3) This item has effect despite:

- (a) sections 29-10 and 29-15 of the GST Act (which are about attributing input tax credits); and
- (b) section 36 of the *Taxation Administration Act 1953* (which is about the time limit on entitlement to input tax credits).

16 Application of section 36 of the *Taxation Administration Act 1953*

Section 36 of the *Taxation Administration Act 1953* does not apply to a refund under section 35-5 of the GST Act in respect of a tax period to the extent that:

- (a) before the commencement of this item, GST on a taxable supply was attributable to that tax period; and
- (b) because of the amendments of the GST Act made by this Act, the supply is no longer a taxable supply.

17 Application of section 78-50 of the GST Act

Section 78-50 of the GST Act does not apply to a payment or supply made in settlement of a claim under an insurance policy if:

- (a) the entity that paid all or a part of the premium for the insurance policy had, at or before the time referred to in subparagraph 78-50(1)(c)(i) of the GST Act, informed the insurer of the entitlement to an input tax credit for the premium it paid; and
- (b) in so informing the insurer, the entity did not, at that time, understate the extent of the entitlement; and
- (c) because of the amendments of the GST Act made by this Act, the statement of the extent of the entitlement is now an understatement of the entitlement.

18 Application of Aged Care Minister's determinations relating to paragraph 38-25(3)(b) of the GST Act

Any requirement in a determination made for the purposes of paragraph 38-25(3)(b) of the GST Act that accommodation be included in a package of services, or that charges for accommodation be payable to the entity to which charges for services are payable, does not apply in relation to a supply that:

- (a) is made to a resident of a serviced apartment in a retirement village; and
- (b) is connected with a supply of a kind referred to in subparagraph 38-25(4A)(b)(i), (ii) or (iii) to the resident.

*[Minister's second reading speech made in—
House of Representatives on 18 November 2004
Senate on 8 December 2004]*

(210/04)