


TA 2010/7 - GST - Retirement Village operators who on-sell services to residents in an attempt to claim greater input tax credits

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Taxpayer Alert

TA 2010/7

FOI status: may be released

TITLE: GST – Retirement Village operators who on-sell services to residents in an attempt to claim greater input tax credits

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging higher risk tax planning issues or arrangements that the Australian Taxation Office (ATO) has under risk assessment, or where there are recurrences of arrangements that have been previously risk assessed.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform tax officers of new and emerging higher risk tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO. In these latter cases the Taxpayer Alert will be withdrawn and a notification published which will be referenced to that Taxpayer Alert.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which are of concern to the ATO. These issues will generally require more detailed analysis to provide the ATO view to taxpayers.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a private ruling (noting that the Taxation Administration Act 1953 sets out circumstances where the Commissioner may decline to issue such a ruling). Such taxpayers might also contact the tax officer named in the Taxpayer Alert and/or obtain their own advice.

This Taxpayer Alert is issued under the authority of the Commissioner.

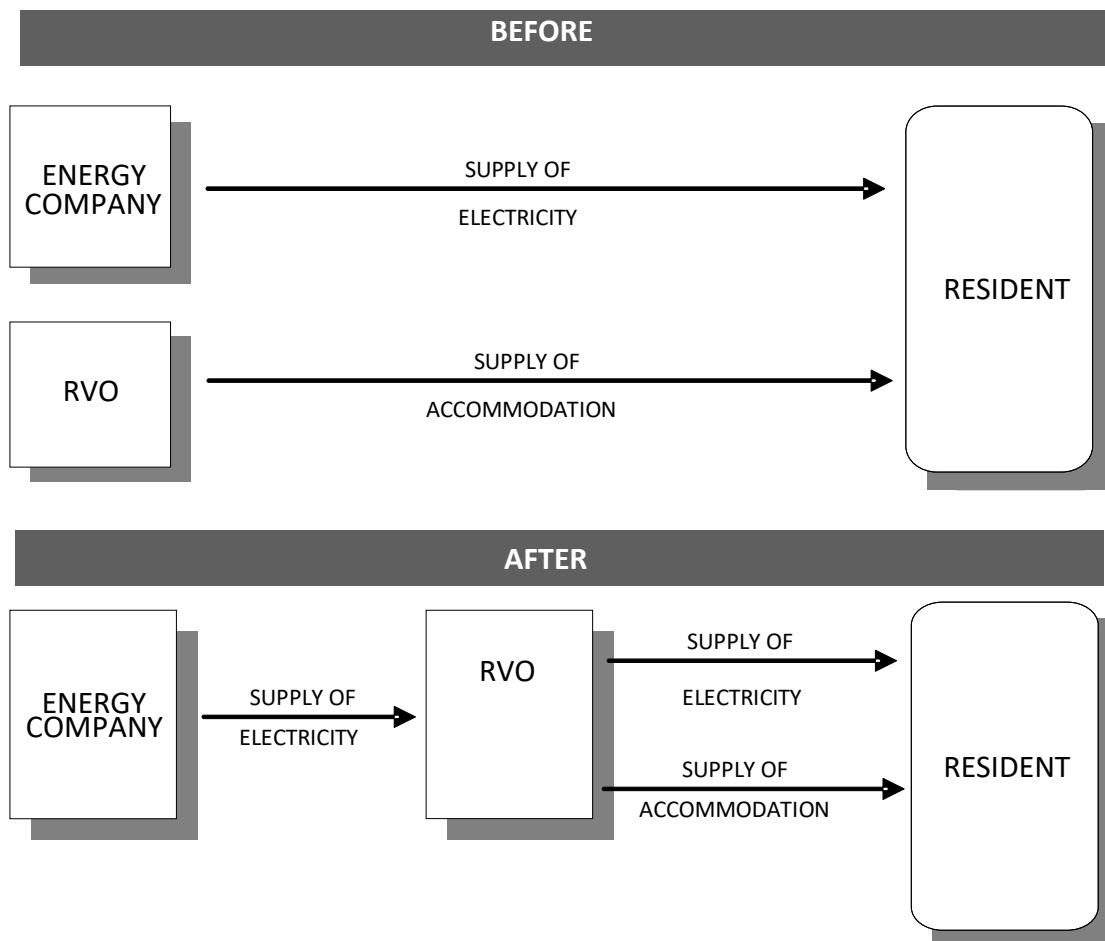
Overview

This Taxpayer Alert describes an arrangement in which a retirement village operator ('RVO') increases its claims for input tax credits (or for decreasing adjustments) by assuming the role of a service supplier, such as an electricity retailer. By buying services and on-supplying them to retirement village residents living in independent living units ('ILUs'), the RVO contends that it is making a taxable supply, separate from its input taxed supply of residential accommodation.

Description

The alert applies to arrangements with features substantially equivalent to the following:

1. An RVO enters into a contract to acquire a service, for example, electricity from an energy company. The RVO assumes the role of an electricity retailer, and on-supplies the electricity to the residents of ILUs under separate contracts.
2. The energy company invoices the RVO for the electricity supplied to the retirement village.
3. The RVO charges individual residents for their use of electricity at a rate equivalent to that charged by the energy company.
4. The RVO treats its supply of electricity to residents as a taxable supply, separate from its input taxed supply of residential accommodation. On this basis, it claims input tax credits (or decreasing adjustments) on certain of its acquisitions, including infrastructure costs for such things as wiring and sub-stations, which it claims relate to the taxable supply of electricity.
5. Further, the RVO claims as input tax credits a higher percentage of its costs for its general acquisitions relating to the operation of the retirement village than it might if it were not making the purported taxable supplies of electricity.
6. This arrangement may replace existing contracts for a direct supply of electricity from the energy company to village residents or may be in place from the beginning of the village's operation.
7. The RVO may also supply other services to village residents under similar contracts.
8. The basic features of the arrangement can be summarised diagrammatically as follows. (The 'before' aspect is absent for villages that are set up under this arrangement from their inception):



Features which concern us

The ATO considers that an arrangement of the type described above gives rise to taxation issues under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) that include whether:

- (a) the RVO's supply of electricity may be a taxable supply within the meaning of section 9-5 of the GST Act;
- (b) the RVO may be entitled to input tax credits under Division 11 (or decreasing adjustments under Division 129) of the GST Act on its acquisitions that are said to relate to that taxable supply and if so, to what extent;
- (c) the anti-avoidance provisions of Division 165 of the GST Act may apply to the arrangement or to any part of it;
- (d) any entity involved in the arrangement may be a promoter of a tax exploitation scheme for the purposes of Division 290 of Schedule 1 to the *Taxation Administration Act 1953* (TAA1953).

The ATO is currently reviewing these arrangements.

Note 1: *If you have received a private ruling in respect of your arrangement, please check whether the application of Division 165 of the GST Act is considered in that ruling. You may not have sought for us to rule on the application of Division 165 to the arrangement ruled upon, or to an associated or wider arrangement of which that arrangement is part. If you want us to rule on whether Division 165 applies to your arrangement, we will first need to obtain and consider all the relevant facts about the*

arrangement, including (if relevant) the manner in which it has actually been implemented.

Note 2: Base penalties of up to 50% of the tax avoided can apply where Division 165 is applied. Base penalties of up to 75% of the tax avoided can apply where you make a false and misleading statement to the Commissioner. Reductions in base penalty will be available if the taxpayer makes a voluntary disclosure to the ATO. If you have any information about the current arrangement, phone us on 1800 060 062. Tax agents wanting to provide information about people or companies who may be promoting arrangements covered by this Alert should call 13 72 68 (Fast Key Code **3 4**).

Note 3: Penalties of up to 5,000 penalty units for individuals, 25,000 penalty units for bodies corporate or up to twice the amount of consideration received or receivable may apply to promoters of tax exploitation schemes under Division 290 of Schedule 1 to the TAA 1953 Taxation Administration Act 1953. The Commissioner can also apply to the Federal Court of Australia for restraining and performance injunctions against promoters where prohibited conduct has occurred, is occurring or is proposed.

Amendment history

Date	Comment
19 January 2024	Updated ATO tip-off hotline numberss

References

Subject references:

- Accommodation
- Creditable Acquisition
- Goods and Services Tax
- Input Taxed Supplies
- Retirement Villages
- Taxable Supply

Legislative references:

- A New Tax System (Goods and Services Tax) Act 1999
 - [Division 9](#)
 - [Division 11](#)
 - [Division 40](#)
 - [Division 129](#)
- Taxation Administration Act 1953
 - [Division 290](#)

Related Practice Statements:

- [PS LA 2008/15 - Taxpayer Alerts](#)

Rulings

- [GSTR 2007/1](#)
- [GSTR 2009/4](#)

Date issued:

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