

# ***TR 2002/14A3 - Addendum - Income tax: taxation of retirement village operators***

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## Addendum

### Taxation Ruling

#### Income tax: taxation of retirement village operators

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It updates Taxation Ruling TR 2002/14 *Income tax: taxation of retirement village operators* to provide compliance guidance in light of the *Retirement Villages Act 1987 (South Australia)* being repealed and replaced by the *Retirement Villages Act 2016 (South Australia)* coming into effect on 1 January 2018.

#### TR 2002/14 is amended as follows:

##### 1. Headers

- (a) From pages 1 to 16, omit all occurrences of the words 'FOI status: **may be released**'; substitute 'Page status: **legally binding**'.
- (b) From pages 17 to 53, omit all occurrences of the words 'FOI status: **may be released**'; substitute 'Page status: **not legally binding**'.

##### 2. Contents table

- (a) After:
- |          |     |
|----------|-----|
| Examples | 169 |
|----------|-----|
- Insert:
- |  |     |
|--|-----|
| <b>Appendix 1:</b> Compliance approach for operators of South Australian retirement villages | 227 |
|--|-----|
- (b) Omit:
- |                        |     |
|------------------------|-----|
| Detailed contents list | 227 |
|------------------------|-----|
- Substitute:
- |                        |     |
|------------------------|-----|
| Detailed contents list | 238 |
|------------------------|-----|

##### 3. Paragraph 226

After the paragraph insert:

#### **Appendix 1 – Compliance approach for operators of South Australian retirement villages**

❶ *This Appendix sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow the advice in this*

***Appendix in good faith and consistently with the ruling section, the Commissioner will administer the law in accordance with this approach.***

227. In accordance with paragraph 26 of this Ruling, where an amount paid by an incoming resident is properly characterised under the relevant arrangement as a lease premium and included in the assessable income of the retirement village operator, the amount payable by the retirement village operator to the resident upon termination of a lease agreement is an allowable deduction in the year in which the retirement village operator becomes liable to make the payment.

228. By contrast, in accordance with paragraph 28 of this Ruling, where the relevant arrangement requires the incoming resident to make a loan, the receipt and repayment of the loan are on the capital account of the retirement village operator. As a result, the receipt of the loan amount is not included in the assessable income of the retirement village operator and the repayment of the loan by the retirement village operator is not an allowable deduction.

229. The difference between loan and lease premium arrangements is outlined in paragraph 29 of this Ruling. For a contract to be characterised as a loan, there needs to be the essential element of a loan present, that is, the obligation to repay. A repayment that is contingent upon a new resident being found, an event that may not happen, means that such an obligation to repay is absent.

230. However, footnote 3 in paragraph 29 of this Ruling makes it clear that provisions of State or Territory legislation may require retirement village operators to repay amounts within a specified period after the resident vacates the property, even if a new resident is not found. In this respect, the repayment would no longer be contingent upon a new resident being found.

231. Subsection 27(2) of the *Retirement Villages Act 2016 (South Australia)*<sup>42</sup> (the Act) is one such provision. Relevantly, it states that, if a residence contract<sup>43</sup> provides for the payment of an exit entitlement<sup>44</sup>, the exit entitlement can be recovered as a debt from the operator when a period of 18 months has elapsed since the resident ceased to reside in the retirement village provided that other conditions have not occurred first.

## **Residence contracts entered into prior to 1 January 2018**

232. Where:

- a residence contract is entered into prior to 1 January 2018 and an amount paid by a resident<sup>45</sup> is properly characterised as a lease premium (and included in the assessable income of the operator)
- the operator becomes obliged to pay an exit entitlement to that resident after 1 January 2018, and
- the operator claims a deduction for the exit entitlement in the year in which the payment is due,

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<sup>42</sup> The Act provides a regulatory framework for the operation of retirement villages in South Australia and comes into operation on 1 January 2018.

<sup>43</sup> As defined in subsection 4(1) of the Act.

<sup>44</sup> As defined in subsection 4(1) of the Act.

<sup>45</sup> As defined in subsection 4(1) of the Act.

the Commissioner will not apply compliance resources to consider the deductibility of that exit entitlement.

#### **Residence contracts entered into on or after 1 January 2018**

233. Where a residence contract is entered into on or after 1 January 2018, in light of subsection 27(2) of the Act, the repayment obligation requirement in paragraph 29 of this Ruling is satisfied. As a result, the contract is considered to be a loan contract as there is a non-contingent obligation for the repayment of an amount.

234. This is so notwithstanding the absence of a similar requirement to that of subsection 27(2) of the Act in the residence contract.

235. Consequently, where a residence contract is entered into on or after 1 January 2018, both the receipt of ingoing contribution and repayment of the exit entitlement are on the capital account of the operator. As a result, the receipt of the ingoing contribution is not included in the assessable income of the operator and the repayment of the exit entitlement by the operator is not an allowable deduction.

236. Paragraphs 233 to 235 of this Ruling will only apply if subsection 27(2) of the Act has not been repealed at the time the residence contract was entered into.

237. However, if subsection 27(2) of the Act had not been repealed at the time the residence contract was entered into but is subsequently repealed while the residence contract remains on foot, paragraphs 233 to 235 of this Ruling will apply.

#### **4. Detailed contents list:**

(a) After *Example 26* insert:

<b>Appendix 1: Compliance approach for operators of South Australian retirement villages</b>	<b>227</b>
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(b) Omit:

<b>Detailed contents list</b>	<b>227</b>
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Insert:

<b>Detailed contents list</b>	<b>238</b>
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#### **5. Legislative references:**

Insert:

- Retirement Villages Act 2016 (South Australia)

This Addendum applies on and from 7 March 2018.

ATO references

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