

GST and serviced apartments

! TERMS WE USE

When we say:

- **you**, we are referring to **retirement village operators**
- **GST credit**, we are referring to the GST term **input tax credit**, and
- **purchases**, we are referring to the GST term **acquisitions**.

! The changes are retrospective to 1 July 2000. If at any time since 1 July 2000 the above supplies were GST-free, but you have treated them as taxable or input taxed, you can claim a refund of overpaid GST or claim GST credits not already claimed.

➤ For more information on refunds and GST credits see 'Claiming a refund or GST credit' on page 3.

WHAT HAS CHANGED?

In December 2004, amendments to the GST Act were made to remove uncertainty about how GST applies to supplies of services and accommodation you make to residents of serviced apartments in retirement villages.

In addition to the already GST-free treatment of daily living activities assistance and nursing services, when certain conditions are met, the following supplies you make to residents are GST-free:

- accommodation
- accommodation-related services, and
- other services such as meals, laundry and cleaning.

These supplies may be GST-free if the serviced apartment is supplied by way of:

- lease, hire or licence
- a sale of real property, or
- a share arrangement that entitles the resident to use or occupy the premises.

The conditions to be satisfied relate to residential setting, the kinds of services and the residents' care needs.

➤ Daily living activities assistance and nursing services are set out in Items 2.1 and 3.8 of Schedule 1 to the Quality of Care Principles 1997, which is available on the Department of Health and Ageing website at www.health.gov.au

WHAT IS A RETIREMENT VILLAGE?

A retirement village is residential premises in which:

- accommodation is intended for people at least aged 55, or a certain age more than 55, and
- there are communal facilities for use by the residents of the premises.

➤ For more information, refer to Goods and Services Tax Ruling GSTR 2007/1 Goods and services tax: when retirement village premises include communal facilities for use by residents of the premises.

However, a retirement village is **not**:

- 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 as defined in that Act, or
- commercial residential premises.

WHAT IS A SERVICED APARTMENT?

An apartment is a serviced apartment in relation to a retirement village if:

- the apartment is designed to be occupied by aged residents who require the full range of daily living activities assistance or nursing services, even if an individual resident does not require all of the services



- at least one responsible person is continuously on call to provide emergency assistance to the residents of the apartment, and is in reasonable proximity to the apartment. This means that a responsible person will be available to provide first aid or to arrange other mobility, nursing or medical assistance to the residents
- the apartment is part of a single complex of apartments and is accessible from a common corridor (which may or may not contain lifts) linking the apartment to the other apartments in the complex, and
- there is a communal dining facility within the retirement village that is available for use by the residents.

A serviced apartment does not include:

- a detached house
- a row house
- a terrace house
- a town house
- a villa unit, or
- an independent living unit.

WHAT ARE THE REQUIREMENTS FOR SERVICES OTHER THAN ACCOMMODATION TO BE PROVIDED GST-FREE?

For you to make GST-free supplies of care services and other services, such as meals, laundry and cleaning, the services must:

- be provided to an aged or disabled person in a residential setting
- be of a kind covered by Schedule 1 to the Quality of Care Principles, and
- include daily living activities assistance or nursing services that are only provided to people who require them.

These requirements are explained in more detail below.

When are services supplied in a residential setting?

Services you provide are supplied in a residential setting if:

- you provide them to a resident of a serviced apartment in a retirement village, and
- under a written agreement, you provide daily meals and heavy laundry services to all the residents of the serviced apartment.

To satisfy the requirement to provide daily meals, you would be expected to provide the residents with:

- breakfast (or the ingredients for residents to prepare their own breakfast)
- lunch, and
- dinner.

You are still satisfying this requirement if the resident is absent from the retirement village on a particular day and receives their meals elsewhere (for example, the resident dines at a relative's home).

- For more information on health services, refer to:
 - *GST and medical services* (NAT 4649)
 - *GST and other health services* (NAT 4650), and
 - the *Health industry partnership issues register*.

- For more information on community care services, refer to Part 11 of the *Charities consultative committee resolved issues document*.

When are services of a kind covered by Schedule 1 of the Quality of Care Principles?

The Aged Care Minister has issued the *GST-free Supply (Residential Care – Non Government Funded Supplier) Determination 2000* ('the determination') that sets out the circumstances in which certain supplies are of a kind covered by Schedule 1 to the Quality of Care Principles.

As a result of amendments to the GST Act, the following requirements in the determination no longer apply when supplies are made to residents of serviced apartments:

- that accommodation be included in a package of services, and
- that charges for accommodation and services be payable to the one entity.

However, it is still necessary that:

- a the care recipient has a continuing need for some or all of the services listed in daily living activities assistance or nursing services in Schedule 1 of the determination, and
- b the services are supplied under a written agreement as a package made up of some or all of the services listed in daily living activities assistance or nursing services of Schedule 1 of the determination, and any other Schedule 1 services that are needed by the care recipient.

Evidence in relation to a) above

An independent assessment of a resident's care needs made by a medical practitioner is objective evidence that a resident has a continuing need for daily living activities assistance or nursing services.

We will accept that services are needed if the written agreement contains a schedule, updated every six months, prepared and signed by a medical practitioner certifying which care services are needed continually.

You must prepare a second schedule to the written agreement and update the agreement every six months to show which care services are being provided to the resident continually.

Alternatively, from 1 October 2007, we will accept a single one-off assessment when a medical practitioner completes the form *Serviced Apartment Care Assessment*. Both existing and new residents of serviced apartments in retirement villages can use this option.

➤ To obtain a copy of the *Serviced Apartment Care Assessment* form, go to the Retirement Villages Australia (RVA) website at www.retirementvillagesaust.com.au

Conditions for written agreement mentioned in b) above

The written agreement must:

- a specify the type of care services agreed to be provided to the resident, which must include at least **one** of the services listed in 2.1 or 3.8 and the charges applicable to those services, and
- b if the resident needs any of the other services listed in Schedule 1 – set out the type of other services agreed to be provided and the charges applicable to those services.

It is sufficient if you have a single written agreement with the resident that satisfies both the determination and the requirement to provide daily meals and heavy laundry.

➤ If you are not sure whether your written agreement with a resident satisfies the requirements outlined in this fact sheet, you can write to us requesting a private ruling.

WHAT ARE THE REQUIREMENTS FOR ACCOMMODATION TO BE PROVIDED GST-FREE?

A supply of residential premises consisting of a serviced apartment in a retirement village by way of lease, hire, licence, freehold or under a share arrangement is GST-free if:

- the premises are supplied to a resident who requires daily living activities assistance or nursing services, and
- the premises are supplied in connection with the supply of care services and other services, such as meals, laundry and cleaning, that meet the requirements outlined above to be GST-free.

CLAIMING A REFUND OR GST CREDIT

What if I have included GST in the prices of supplies that I have made since 1 July 2000?

If you included GST in the price you charged your residents for supplies of accommodation or other services that were GST-free since 1 July 2000, you may decide to identify the residents concerned and reimburse them the amount of GST included in the price they paid.

Whether you make reimbursements is a matter between you and your residents. If you reimburse the residents, the GST you originally collected and paid to us may be refunded to you.

We cannot directly reimburse your residents. We can refund the GST to you only **after** you have reimbursed the corresponding amount to your residents.

If I decide to reimburse my residents, is there an approved process for refunding the GST?

We don't require you to provide a refund in any particular way. It is your decision how you provide any refund to a resident.

A refund could include providing a cash refund to the resident (or their estate) who received the supply. A refund may also include a credit note to a current resident. However, a credit note will only be acceptable if it is reasonable to expect that you will be able to honour this in the foreseeable future.

We must be satisfied that your residents have received from you the same amount that you claim as a refund or credit from us. You will need to keep accurate and complete records for all refunds to demonstrate the total amount of refunds you have provided.

Having reimbursed my residents, how do I then claim my refund?

If, as a result of these amendments to the GST Act, you have overpaid GST in any tax period since 1 July 2000, you can simply claim a refund on your activity statement(s) in the tax period(s) in which you make refunds to your residents. You can include these GST refunds even if the amount exceeds the correction limits outlined in *Correcting GST mistakes* (NAT 4700).

What if I collected GST on some of these supplies from 1 July 2000 but later started to treat these supplies as GST-free?

You need to work out which supplies you treated as taxable instead of GST-free and follow the refund process explained in 'What if I have included GST in the prices of supplies that I have made since 1 July 2000?'

You do not need to do anything about the supplies of care services or accommodation that you treated in the past as being GST-free, provided those supplies meet the requirements in the GST Act for being GST-free.

What if I have not included GST in the prices of supplies that I have made since 1 July 2000?

If the supplies you have made since 1 July 2000 are GST-free and you have not collected any GST from your residents for these supplies, you do not need to do anything.

However, if you have treated supplies to some residents as GST-free and supplies to those residents do not meet the requirements for GST-free treatment, you will need to revise the relevant activity statements.

➤ For more information on how to revise your activity statement and the correction limits that apply to this, refer to *Correcting GST mistakes* (NAT 4700).

What if I have not claimed GST credits for purchases I have made since 1 July 2000?

If you have made supplies that:

- were treated as input taxed (that is, you have not charged GST for the supply and you could not claim a GST credit), but
- were GST-free,

you are entitled to claim GST credits for the GST included in the cost of the purchases you made in any tax period since 1 July 2000 in order to make those supplies.

You do not have to reimburse your residents before claiming these GST credits.

You can simply claim all GST credits arising from these amendments to the GST Act in your first tax period ending after 14 December 2004, or, within four years after the end of that tax period you can:

- request an amendment to your activity statement for your first tax period ending after 14 December 2004, or
- make a claim on your next activity statement if the amount does not exceed the correction limits outlined in *Correcting GST mistakes* (NAT 4700).

If you claim any GST credits in relation to purchases for which you have previously claimed income tax deductions, you may also need to amend your previous income tax returns. This is because the deductions you claimed were based on the GST inclusive price of the purchases. If you claim GST credits for a purchase you can claim a deduction only for an amount up to its GST-exclusive price. You will therefore need to reduce your income tax deductions to take account of the increase in GST credits that you claim.

! If you request such an amendment to your income tax returns within a reasonable time of claiming the associated GST credits, no penalties or general interest charge will be imposed.

➤ MORE INFORMATION

For copies of our publications or more information:

- visit our website at www.ato.gov.au
- phone us on **13 28 66**
- write to us at
Australian Taxation Office
PO Box 3524
ALBURY NSW 2640

If you do not speak English well and need help from us, phone the Translating and Interpreting Service on **13 14 50**.

If you are deaf, or have a hearing or speech impairment, phone us through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS on www.relayservice.com.au and ask for the ATO number you need.

OUR COMMITMENT TO YOU

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

If you make an honest mistake in trying to follow our information in this publication and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest.

If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at www.ato.gov.au or contact us.

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