



GST and serviced apartments in retirement villages

This fact sheet explains the goods and services tax (GST) treatment of certain supplies you, as a retirement village operator, make to residents of serviced apartments in your retirement village.

! 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**.

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

- ! 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 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.

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 normally be expected to provide:

- breakfast (or provisions used by the resident 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-free medical services* (NAT 4649)
- *Apart from medical services, what other health services are GST-free?* (NAT 4650), and
- the Health industry partnership issues register on our website at www.ato.gov.au

➤ For more information on community care services refer to Issue 11 of the Charities consultative committee resolved issues document on our website at www.ato.gov.au

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 current 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 the amendments to the GST Act, the requirements in the current determination that accommodation be included in a package of services, and that charges for accommodation and services be payable to the one entity, do not apply when supplies are made to residents of serviced apartments.

However, it is still necessary that:

- 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 current determination, and
- 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 current determination, and any other Schedule 1 services that are needed by the care recipient.

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 on a six monthly basis, prepared and signed by a medical practitioner certifying which care services are needed on a continuous basis.

A second schedule to the written agreement must be prepared by you and updated on a six monthly basis to show which care services are being provided to the resident on a continuous basis.

Our view on how to satisfy these requirements is published in paragraphs 13 to 16 of Issue 10 of the Retirement village industry partnership issues register on our website at www.ato.gov.au.

It is sufficient that you have a single written agreement with the resident that satisfies both the current 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 meets the requirements outlined above to be GST-free.

❗ There is provision under the amendments to the GST Act for the Aged Care Minister to make a new determination that will apply to residents of serviced apartments. This new determination may specify the level of care services required and the way in which the levels of care services required are to be assessed.

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 do 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 only refund the GST to you **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).

❗ To assist us to administer the amendments, when you claim a refund on your activity statement, please also email **ATO_Serviced_Apartments@ato.gov.au** with your ABN and the amount of overpaid GST you are claiming.

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?' above.

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 prior to claiming these unclaimed 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).

! To assist us to administer the amendments, when you claim a refund on your activity statement, please also email **ATO_Serviced_Apartments@ato.gov.au** with your ABN and the amount of GST credits you are claiming.

If you claim any GST credits in respect of 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, whereas if you claim GST credits for a purchase you can only claim a deduction 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

If you need more information you can:

- visit our website at **www.ato.gov.au**
- phone **13 28 66**
- obtain a fax by phoning **13 28 60**, or
- write to us at PO Box 9935 in your capital city.

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

OUR COMMITMENT TO YOU

The information in this publication is current at February 2005.

In the taxpayers' charter we commit to giving you information and advice you can rely on.

If you try to follow the information contained in our written general advice and publications, and in doing so you make an honest mistake, you won't be subject to a penalty. However, as well as the underpaid tax, we may ask you to pay a general interest charge.

We make every effort to ensure that this information and advice is accurate. If you follow our advice, which subsequently turns out to be incorrect, or our advice is misleading and you make a mistake as a result, you won't be subject to a penalty or a general interest charge although you'll be required to pay any underpaid tax.

You are protected under GST law if you have acted on any GST information in this publication. If you have relied on GST advice in this Tax Office publication and that advice has later changed, you will not have to pay any extra GST for the period up to the date of the change. Similarly, you will not have to pay any penalties or interest.

If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser. Since we regularly revise our publications to take account of any changes to the law, you should make sure this edition is the latest. The easiest way to do this is by checking for a more recent version on our website at **www.ato.gov.au**