TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

The supply of accommodation in a serviced apartment

Decision date | Rā o te Whakatau: 25 July 2025

Issue date | Rā Tuku: 22 October 2025

TDS 25/24

Subjects | Kaupapa

This item summarises a private ruling about the supply of accommodation in a retirement village that includes the provision of mandatory services and whether this constitutes the taxable supply of accommodation in a commercial dwelling.

Taxation laws | Ture tāke

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise specified.

Summary of facts | Whakarāpopoto o Meka

1. The Applicant is developing a retirement village.
2. The Arrangement is the provision by the Applicant of accommodation in serviced apartments. Along with this accommodation, the Applicant provides mandatory services under a hospitality package.
3. Residents will enter into an occupation right agreement (ORA) for a serviced apartment in the village and will be required to make monthly payments for the provision of care services from the hospitality package.
4. The hospitality package includes morning and afternoon teas, village transport, 24-hour emergency call monitoring, weekly apartment cleaning, a pre-entry health assessment, monthly health checks, organised activities and access to electric vehicles and recreational equipment.
5. The Applicant applied for a private ruling that the provision of accommodation in the serviced apartments with the hospitality package was a taxable supply of accommodation in a "commercial dwelling".

Issue | Take

6. The main issue considered in this ruling was whether, under s 2(1), the supply of accommodation in a serviced apartment with a hospitality package level of services is a "taxable supply" of accommodation in a "commercial dwelling".

Decision | Whakatau

7. The Tax Counsel Office (TCO) decided that the supply of accommodation in a serviced apartment in the village with a hospitality package provided under an ORA is a "taxable supply" of accommodation in a "commercial dwelling" as those terms are defined in s 2(1).

Reasons for decisions | Pūnga o ngā whakatau

Issue | Take: Taxable supply of accommodation in a commercial dwelling

8. The supply of accommodation in any dwelling by way of a licence to occupy will be an exempt supply under s 14 rather than a taxable supply. The supply of accommodation in a "commercial dwelling" is a taxable supply.

9. In reaching this decision, TCO first considered the meaning of "dwelling".

Meaning of "dwelling"

10. Paragraph (b)(ii) of the definition of "dwelling" includes a residential unit in a retirement village or rest home when the consideration paid or payable for the supply of accommodation in the unit is for the right to occupy the unit.

11. If the para (b)(iii) meaning of "dwelling" applies, the units will be dwellings and will not be commercial dwellings (para (b)(ii) of the definition of "commercial dwelling").

12. The key point in para (b)(iii) is that the consideration paid or payable for the supply of accommodation in the dwelling must be for the right to occupy the unit. If part of the consideration paid or payable is for other services, para (b)(iii) will only apply if those services are ancillary or incidental to the supply of accommodation.

13. The Commissioner considered the nature of supplies made by retirement villages in IS 15/02: **Goods and Services Tax – GST and retirement villages** *Tax Information Bulletin* Vol 27, No 11 (December 2015). The Commissioner concluded that:

    - taxpayers must identify the consideration that residents are contractually obliged to pay under the terms of the agreement;
    - if an element is merely ancillary or incidental to another element, there will be only one supply;

- transport and emergency response services are ancillary or incidental to the supply of accommodation;
- care services do not facilitate, enable or contribute to the supply of accommodation and are not an ancillary or incidental feature of the transaction; and
- if a resident is required to purchase a care package, the unit forms part of a commercial dwelling.

14. The hospitality package that forms part of the ORA includes:
    - a pre-entry comprehensive health assessment by a health professional;
    - a monthly resident health check by a health professional;
    - morning and afternoon teas;
    - a weekly "high tea" event;
    - organised activities;
    - 24-hour emergency call monitoring and response;
    - access to electric vehicles;
    - recreational equipment;
    - village transport;
    - daily rubbish removal; and
    - weekly apartment cleaning.
15. The hospitality package, considered as a whole, has services that assist residents with their daily living needs. In addition, the hospitality package has a health/nursing component by including a pre-entry comprehensive health assessment and monthly health checks along with the 24-hour emergency call monitoring. TCO took the view that these care services do not facilitate, enable or contribute to the supply of accommodation and are not an ancillary or incidental feature of the transaction.
16. TCO considered that the residents receive both the supply of accommodation and care services. It follows that para (b)(iii) would not apply because the consideration paid or payable would not be solely for the supply of accommodation.
17. As para (b)(iii) does not apply, the supply is not an exempt supply of accommodation in a dwelling and will be a taxable supply.

Meaning of "commercial dwelling"

18. In para (a) of the definition of "commercial dwelling", subparas (iii) and (v) include a convalescent home, nursing home, rest home, or hospice or premises of a similar kind to those referred in subparas (i) to (iv).

19. TCO considered whether the serviced apartments are part of a rest home and so are a "commercial dwelling" under para (a)(iii). It concluded that the level and nature of care ordinarily provided in a rest home is designed to meet much more of a resident's needs than will be provided in the retirement village. The serviced apartments are not a rest home and do not satisfy para (a)(iii) of the definition of "commercial dwelling".

20. TCO then considered whether the serviced apartments are "of a similar kind" to a rest home or nursing home.

21. The definition of "commercial dwelling" was considered by the Taxation Review Authority[1] where the Authority held that the approach when classifying premises that are similar to the premises listed in paragraph (a)(i) to (iv) was to:

    - begin by comparing them with their closest parallel, taking account of what that term commonly connotes at common law; and
    - then consider, to the extent necessary, the other categories of accommodation stated in the definition of commercial dwelling.

22. The closest comparable to the serviced apartments is a rest home. The ordinary meaning of "rest home" is a place where care and accommodation on a long-term or permanent basis are provided to old or frail people.

23. In the context of premises similar to a "rest home" the key is that the premises provide care services.

24. Generally, care services are in the nature of medical/nursing services and assistance with daily living. The serviced apartments provide accommodation together with some care services to assist residents. The minimum age for entry into the serviced apartments is 65. TCO considered that the care services are broadly similar to a rest home and that they are a "commercial dwelling" under para (a)(v) of its definition.

Taxable supply

25. The supply of accommodation in a commercial dwelling is a taxable supply under s 8. Therefore, having concluded that the provision of the serviced apartments with the

[1] *Case L75* (1989) 11 NZTC 1,435.

hospitality package is the supply of accommodation in a commercial dwelling, TCO decided that the supply is a taxable supply under s 8.