GSTR 2011/1EC - Compendium

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Ruling Compendium – GSTR 2011/1

This is a compendium of responses to the issues raised by external parties to draft GSTR 2010/D1 – Goods and services tax: interest-free loans received by the developer of a retirement village.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1 DATE OF EFFECT AND TRANSITIONAL ARRANGEMENTS		
1.1	***Transitional relief for commitments to the date of issue of the final Ruling.*** A fairer and more straightforward approach is to align the transitional arrangements with the date of issue of the final Ruling. Developers can rely on GSTR 2004/9 until the draft Ruling is finalised. The key date for the transitional arrangements should be the date that the draft Ruling is finalised.	The date that GSTR 2011/1 issues is now the key date for the transitional arrangements for that Ruling. → See paragraphs 30-47 of GSTR 2011/1.* **(* Please note: all paragraph references indicated by an arrow in this column are to GSTR 2011/1)**
1.2	***Application of GSTR 2004/9*** The Commissioner notes that he will clarify the scope of GSTR 2004/9 once the draft Ruling is finalised (paragraph 7). The overall reasoning in the draft Ruling appears to weaken, if not over-ride, GSTR 2004/9. Given GSTR 2004/9 is relied on across a wide variety of industries and differing circumstances, it should be confirmed that GSTR 2004/9 will continue to apply in all circumstances, except the narrow circumstances of the draft Ruling.	The Addendum to GSTR 2004/9 excludes retirement villages covered by the class of arrangement specified in the Ruling.

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1.3	***Examples of transitional arrangements*** The Ruling needs some detailed examples relating to the transitional arrangements, given the complexity faced in the sector.	The paragraphs dealing with the transitional arrangements have been revised in order to improve clarity. → See paragraphs 35-37. Given the complexity of the arrangements involved, and the wide range of factual circumstances which can arise, we prefer to provide guidance of a general nature in the Ruling. The Ruling is not intended to be prescriptive, and it is necessary to consider each case on its facts.
1.4	***Transitional arrangement based on feasibility studies*** The test should be the commissioning of a feasibility study prior to the date of issuing the draft Ruling in lieu of the 'commercially committed' test. This test would provide a more equitable outcome considering the significant costs that are involved in undertaking a feasibility study for a large scale development.	It would not be fair or reasonable to base the Ruling's transitional arrangements on feasibility studies alone. Expenditure on a feasibility study, if any, is one factor which may be taken into account in determining whether there is a commercial commitment for the purposes of the transitional arrangements. → See paragraphs 36 and 37.
1.5	***Transitional arrangement based on genuine intent*** Whether a vendor has a 'genuine intention' to develop the property it acquires into a retirement village should be an objective test. Objective facts and circumstances that would assist in demonstrating that the necessary intention include investment goals, financing structures, marketing, finance documents, business plans and feasibility studies accounting reports, past activities and incurrence of expenditure. This would be consistent with the evidentiary requirements outlined in GSTR 2009/4. The transitional rule for consideration should provide that consideration for sale or long term lease excludes the repayment	The concept of genuine intention is implicit in the test of commercial commitment in the transitional arrangements. The commercial commitment test is objective. → See paragraphs 36 and 37. The purpose of the commercial commitment test is to identify cases where the taxpayer's lack of knowledge of the position in the Ruling would cause them to suffer actual financial detriment, as opposed to the loss of an opportunity. An entity who has seriously considered entering into an arrangement might be said to have a genuine intention to do so,

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	benefit if: (i) the sale or long term lease was made prior to the issue of the finalised ruling; (ii) the sale or long term lease is made after the finalised ruling, the vendor acquired title in the land prior to the finalised ruling issuing and the vendor can demonstrate that it had a genuine intent to develop the land into a retirement village prior to the issue of the finalised ruling; (iii) the sale or long term lease is made by a vendor after the issue of the finalised ruling and: (A) the vendor acquired title in the land after the issue of the finalised public ruling; and (B) the vendor had a contract in place or was a party to an option to purchase the land or any other written agreement prior to the issue of the finalised public ruling; and (C) the vendor can demonstrate that it had a genuine intent to develop the land into a retirement village prior to the issue of the finalised public ruling.	even though they would not suffer any significant loss if that arrangement did not proceed.
1.6	***Transitional arrangements and options*** It is common for developers to secure property through entry into a contract to acquire land and entry into an option arrangement to purchase land. The transitional arrangements should apply equally to both.	The final Ruling recognises that the purchase of an option is one of the factors which may be taken into account in determining whether a commercial commitment exists. → See paragraphs 36 and 37.

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1.7	***Relationship between transitional arrangement for consideration and input tax credits*** The transitional arrangements should apply to all sales or long term leases of retirement villages that occur before the transition date, regardless of whether the developer has included the 'repayment benefit' as part of the consideration for its input tax credit apportionment purposes. The link between input tax credits and consideration in paragraph 11 has no legislative or other basis and should not apply to taxable supplies of retirement villages that occurred prior to the transitional arrangements key date. We accept that the condition may be applied to taxable supplies of new retirement villages after the transitional arrangements key date.	The date that GSTR 2011/1 issues is now the key date for the transitional arrangements for that Ruling. → See paragraphs 30-47.
1.8	***Transitional arrangements and going concerns*** The transitional arrangements should apply to the purchaser of a retirement village as a going concern.	The Ruling now applies to the purchaser of a retirement village as a going concern. → See paragraphs 46 and 47.
1.9	***Division 129*** The transitional arrangements should extend to adjustment events under Division 129.	The Ruling requires the principles in the transitional arrangements to be applied consistently for subsequent adjustments under Division 129. → See paragraph 44.

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1.10	***Imputed interest*** If the benefit of the interest free loans (imputed interest) is to be included in consideration for input taxed supplies, then the transitional arrangements should state that the requirement to recognise that benefit does not apply to creditable acquisitions made before the date the finalised public ruling is issued.	The Ruling contains transitional arrangements relating to the calculation of input tax credits, which apply from the Ruling's date of issue. → See paragraphs 40 and 45.
1.11	***Other methods of apportionment*** The apportionment methodology should be as follows: (i) if the vendor discloses an apportionment methodology that differs from that in GSTR 2009/4, where the Vendor can demonstrate that it has made a genuine attempt to apply a fair and reasonable apportionment methodology (notwithstanding the method applied may not be consistent with the ATO endorsed method as set out in the public ruling), the vendor will not have a shortfall amount in respect of input tax credits claimed or adjustments in relation to that retirement village. For input tax credits/adjustments in relation to other retirement villages, the vendor can either apply the ATO's apportionment method set out in the public ruling or request approval from the ATO to apply a different methodology, if it considers such a methodology is fair and reasonable in its circumstances. In applying Divisions 129, 131 and 132 of the GST Act or any other provision for which extent of creditable purpose or application is relevant, the developer would continue to use its original apportionment methodology, notwithstanding that it may be different to that contained in the public ruling); (ii) if the vendor adopts the ATO's position in the draft Ruling, adjusts its input tax credit entitlement/adjustments and discloses	The Ruling contains a transitional arrangement relating to the requirement to reduce the extent of creditable purpose by reference to the interest-free use of borrowed money. → See paragraphs 40-45. In relation to a test based on 'genuine intent', see Issue No 1.5 of this Compendium. Whether a method of apportionment is fair and reasonable depends on the nature of the method used and the circumstances in each case. We cannot see a reason for applying a test based on 'genuine attempt' specifically on the grounds that a method has been adopted which differs from the method in GSTR 2009/4. We do not consider it to be fair or reasonable for an entity to apply a method of adjustment which is inconsistent with the method used to determine their previous extent of creditable purpose. → See paragraph 23. As is the case with other public rulings, a vendor will be protected from having to pay underpaid tax, penalty or interest if it follows the Ruling.

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	this to the ATO, the vendor will not be subject to penalties and/or any general interest charge.	
2 CLASS OF ARRANGEMENT AND SCOPE OF THE RULING		
2.1	***Questions at issue*** In paragraph 2, the draft Ruling indicates that it deals with two issues. However, the draft in fact deals with the following questions as matters of principle: • What is the supply or supplies that are made by the vendor as a result of the 'sale of a retirement village' (RV) in the circumstances set out in paragraph 13 of the draft. • Whether 'assuming responsibility for repaying ongoing contributions received by the vendor is consideration for the acquisition of the RV. • Whether the 'assumption' is 'consideration expressed as an amount of money' for the purposes of section 9-75 of the GST law. • The extent of creditable purpose of the acquisitions made by the developer/vendor in developing the RV.	The introduction to the Ruling now refers to the price of a supply, which relates to the question of whether consideration is 'expressed as an amount of money'. → See paragraph 2. We do not think it is necessary or desirable for the introduction to the Ruling to set out all of the issues which must be addressed before the main issues in the Ruling can be resolved.
2.2	***Particularity of class of arrangement*** The draft Ruling should state with particularity: • the way in which a relevant provision applies or would apply; • whether it applies to entities generally or a class of entities; and • whether it applies in relation to a class of scheme or a particular scheme. The draft Ruling does not identify these three matters with sufficient clarity to satisfy the requirements of the TAA. In particular, the	We do not agree that the draft Ruling was lacking in particularity. The Ruling contains minor clarifications in relation to the arrangement addressed. → See paragraphs 4-8.

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	'scheme' to which the ruling relates is specified only in the most general of terms in paragraph 13.	
2.3	***Application to the arrangement identified*** The final Ruling should state that the requirement to reflect the benefit of interest-free loans as consideration is limited to the retirement village arrangement specified.	The Ruling's application is limited to the class of arrangement identified. → See paragraphs 4-8.
2.4	***Application to substantially similar arrangements*** The Ruling should apply to arrangements which are substantially similar to, although not identical to, the arrangement specified. There will be circumstances where an entity other than the developer operates the retirement village and is responsible for entering into residence contracts with incoming residents. The draft Ruling should confirm that the transitional arrangements apply in these circumstances.	The point is acknowledged. The ATO will consider whether further guidance is necessary in relation to alternative arrangements following the issue of the Ruling.
2.5	***Application to entities that do not develop a retirement village*** How does the draft Ruling apply to entities that do not develop retirement villages? e.g. Does the ruling apply to an entity that acquires a developed retirement village?	The application of the Ruling is expressly limited to the class of arrangement identified. → See paragraphs 4-8. The Ruling applies to entities which acquire a retirement village for the purposes of determining an increasing adjustment under Division 135. → See paragraphs 4, 6(f), 28, 46-47. The ATO will consider whether further guidance is necessary in relation to alternative arrangements following the issue of the Ruling.

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2.6	***Application where no intention to sell*** The Ruling will not apply where retirement village assets were held *for use* and with no intention of sale. For example, a large corporate group which has loan licence retirement villages in its portfolio of assets would not need to impute interest revenue (paragraphs 25 and 26) in its GST disentitlement calculation that it performs for its monthly corporate overheads disentitlement calculations. Clarification should be made in the final version as to whether the mere holders of retirement village assets would be subject to this ruling, if such assets were held *for use* rather than for sale but were subsequently sold due to changed circumstances.	The Ruling is intended to apply to an arrangement involving the sale of a retirement village as new residential premises, whether or not the intention to sell existed at the time the land was acquired, or the retirement village constructed. The Ruling does not apply to arrangements where there is no sale of a retirement village as new residential premises. → See paragraph 6(f). The application of the Ruling is limited to the class of arrangement identified. → See paragraphs 4-8. The ATO will consider whether further guidance is necessary in relation to alternative arrangements following the issue of the Ruling.
2.7	***Application to supply of a retirement village by long-term lease*** The draft Ruling, at paragraph 2, dot point one, should also refer to the supply of a retirement village by way of long-term lease.	The Ruling refers to a supply by way of long-term lease. → See paragraph 8(d).
2.8	***Part of a retirement village as new residential premises*** It should be clarified whether the sixth bullet point in paragraph 13 of the draft Ruling only applies where the whole retirement village has been sold as 'new residential premises'. Given that the units in retirement villages are typically tenanted on a progressive basis, the whole retirement village would not need to be 'new residential premises'.	The Ruling refers to the supply of a part of a retirement village. → See paragraph 8(c).

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2.9	***Rulings on consideration and input tax credits*** The two specific issues covered (i.e. consideration for the supply by sale of a retirement village and availability of input tax credits for creditable acquisitions by the developer to construct or develop the retirement village) should be separated into two GST rulings. This would allow the class of arrangement to be defined separately for each issue, given the scope of these issues varies.	In our view it is appropriate for the Ruling to deal with both consideration for the supply and creditable purpose, given that both issues are fundamental to the GST treatment of the arrangements concerned. → See paragraph 2.
3 CONSIDERATION FOR THE TAXABLE SUPPLY OF A TENANTED RETIREMENT VILLAGE		
3.1	***Economic benefit of ingoing contributions*** There is no consideration for and there is no permanent economic benefit of the resident loans, given that the operator has a legal obligation to pay the funds back to the resident.	We do not consider this statement to be correct. The legal effect of the purchaser's repayments is to satisfy the vendor's legal obligation to repay those amounts. → See paragraphs 50 and 63. The repayment by the purchaser of the ingoing contributions received by the vendor is a benefit to the vendor. → See paragraphs 61 to 65.
3.2	***The need for a promise or undertaking*** Significantly, the fact that the vendor benefits from the purchaser's repayment of outstanding loans does not, of itself, constitute consideration. There must be a promise or undertaking that forms the consideration. Footnote 12 in the draft Ruling misrepresents the law in this regard and is cited out of context. When considering whether the 'repayment benefit' is consideration, the relevant question to ask is whether the undertaking or promise given to the vendor to pay the outstanding liability in the future is	The Ruling does not suggest that the repayment benefit is consideration merely because it is a benefit to the vendor. However, the concept of consideration under the GST is very broad and extends beyond the notion of consideration in contract law. → See paragraphs 52, 53, 54 and 60. We do not agree that footnote 12 of the draft Ruling contains any misrepresentation or that it is cited out of context.

Issue No.	Issue raised	ATO Response/Action taken
	consideration for the supply of the retirement village. The act of repayment of itself is not consideration under the contract or the GST law: GSTR 2006/1 at paragraph 75; GSTR 2006/10; GSTR 2002/2; *Federal Commissioner of Taxation v. Orica Limited* 98 ATC 4494, *Vivat Holdings plc v C & E Comrs* [1995] V & DR 348; *Apple Computer Australia Pty Ltd v George Mekrizis and Ors* [2003] NSWSC 126.	→ See footnote 12. In our view, the concept of consideration for GST purposes is sufficiently broad to cover benefits which are enforceable by means other than contract. → See paragraphs 57-59. The Ruling does not suggest that the act of repayment is consideration for the supply of the retirement village.
3.3	***Undertakings as consideration*** It is necessary to characterise the purchaser's undertaking to the vendor. The characterisation of undertakings given under a contract is discussed in GSTR 2003/16, GSTR 2001/6 and GSTR 2004/9 contradict paragraphs 35-51 of the draft Ruling. An undertaking contained in an agreement is not necessarily consideration for the supply made under the agreement: GSTR 2003/16 at paragraphs 20 and 21. The agreed purchase price (the 'bargain') recognises that the legal liability to repay the debts is an incidence of ownership of the retirement village, and the retirement village asset value is impaired to that extent. The purchaser cannot give valuable consideration for a statutory obligation.	Paragraphs 19 and 20 of GSTR 2003/16 concern a tenant's obligation to repair damage done to the leased premises. Such an obligation may arise under the terms and conditions of the lease, in the event that damage occurs while the lease operates. In contrast, the Ruling is concerned with the repayment of presently existing debts, which have a value and identity which is independent of the things being supplied. → See paragraphs 66-71. This analysis is considered to be consistent with the discussion of 'economic value and independent identity' in GSTR 2001/6, paragraphs 80-85.
3.4	***Obligations imposed by law*** The obligations for the purchaser to repay ingoing contributions arise as a matter of law (the draft notes this requirement at paragraph 14). An obligation imposed as a matter of law is unlikely to represent consideration for a supply to the affected party: See, for example, the then Treasurer's Press Release No 4 of 31 January 2000 concerning statutory exactions by way of tax,	We consider that 'consideration' in a GST context is broadly defined. The meaning extends beyond what would be considered to be consideration as a matter of contract law. See further, Issue No 3.2 of this Compendium. Like contractual obligations, statutory obligations of the kind considered in the Ruling are legally enforceable duties assumed

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	penalties and fines, comments of the ECJ in *Apple and Pear Development Council v. Customs and Excise Commissioners* (Case 102/86), GSTR 2004/9 and GSTR 2001/4. Without more, therefore, the repayment obligation cannot be consideration.	voluntarily. → See paragraph 65. In the *Apple and Pear* case, the European Court of Justice considered whether an annual statutory charge imposed on fruit growers was consideration for the supply of services by a development Council. It was held that the charge was not consideration for such a supply, since there was no 'direct link' between the exercise of the Council's functions and the charges imposed on growers. The Council's functions related to the common interests of growers generally, and there was no relationship between the level of benefits received by growers and the charges they were obliged to pay. In contrast, in the circumstances addressed in the Ruling, there is a direct link between the sale of the retirement village and the repayment benefit, which is only received by the vendor. There is also a direct linkage between the repayment benefit and the value of the retirement village supplied to the purchaser by the vendor. → See paragraphs 61 and 62. The Ruling is consistent with GSTR 2001/4, which acknowledges that a payment made in compliance with a court order or settlement can be consideration; refer paragraphs 97 to 99.
3.5	**The *Iona Farm case*** In *Iona Farm Ltd v. C of IR* (1999) 19 NZTC 15,261, the New Zealand High Court found that, because the lessee had a legal obligation under statute to pay the rates, agreeing to pay them in an agreement with the lessor could not be consideration for the supply, as the obligation already existed. In the case of a retirement village, where the legal obligation to	In the *Iona Farm* case, the New Zealand High Court considered whether a lessor of land was required to be registered for New Zealand GST, on the basis that the open market value of its leasing supplies exceeded the registration threshold. Amongst other things, the taxpayer argued that the market value of those supplies excluded rates which the lessee would be required to

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	repay is imposed on the owner under State and Territory law, the undertaking of the purchaser is the normal obligation of the purchaser and *Iona Farms* is support for the position the Commissioner has already adopted in GSTR 2003/16 (and GSTR 2001/6 and GSTR 2004/9).	pay under statute. The Court concluded that the obligation to pay rates was not part of the consideration for the lease. Young J observed that the statute imposed the primary rating liability on the lessees. On that basis, the decision in *The Trustee*, *Executors & Agency Co New Zealand Ltd v. C of IR* 18 NZTC 13,076 was distinguished. In that case, it had been held that the value of a leasing supply included obligations imposed on the lessee to meet liabilities which were properly regarded as those of the lessor. Similarly, the circumstances covered by the Ruling, the contractual liability to repay ingoing contributions remains with the vendor and can properly be regarded as a liability of the vendor.
3.6	***Implied terms in sale agreement*** The clause referred to in paragraph 41 of the draft Ruling would not be implied in a contract for the supply of the retirement village. Such a term is not necessary to give efficacy to the transaction, and is only to be implied in order to give efficacy to a transaction where it must obviously have been the intention of the parties (*The Moorcock* (1889) 14 PD 64 per Bowen LJ). If the contract is silent on the intention of the parties, there can be no implied term unless it is the clear intention of the parties when entering into the contract.	The Ruling acknowledges that it is necessary to consider each case on its facts. → See paragraphs 55 to 59. The Ruling does not apply to an arrangement which does not contemplate that the purchaser will repay ingoing contributions outstanding at the time of sale. → See paragraph 6(g). Where the vendor is compelled to pay, in the circumstances covered by the Ruling, it will have no new ingoing contributions from which to fund repayment, and no right to exit fees against which the repayment might be offset. Meanwhile, the purchaser, who acquired the retirement village on the basis that it would repay the ingoing contributions, will be unjustly enriched at the vendor's expense.

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3.7	***Implied terms and express terms in supply agreement*** By providing for circumstances where a contract may contain an express clause or, alternatively, where a contract may be silent, the draft Ruling is acknowledging that an express requirement requiring the purchaser to be responsible for the repayment of ingoing contributions does not form part of custom or usage.	The possibility that a term might appear expressly in a particular contract does not indicate that such a term is outside of custom or usage.
3.8	***Implied terms in supply agreement and statute*** The proposition that the acts of the parties would allow a court to 'impute' fundamental terms into a written contract, is inconsistent with the view (at paragraph 8) that the resident liabilities are imposed upon the purchaser 'by statute'. Neither party in a retirement village transaction would transact in such a nature as to resident liabilities given they are transferred by statute. To impute such a clause into the agreement, whereby a court would imply a term into a written contract so fundamental as the resident loan being 'assumed' by the purchaser, has no legal basis.	We do not consider that there is any inconsistency between statute subjecting a purchaser to a liability and a contract (or other arrangement) ensuring that this liability is satisfied by the purchaser rather than the vendor. State and Territory law does not relieve the vendor of its obligation to repay ingoing contributions. Therefore, it is misleading to say that liabilities are 'transferred by statute'. Rather, an arrangement between the parties ensures that the vendor is not ultimately required to bear the cost of satisfying liabilities which it remains contractually obliged to repay. The contention that parties would not transact in a way which involves such an agreement is contrary to our actual experience. We do not agree with the proposition that there is no legal basis for implying a term into a contract of sale requiring the purchaser to repay ingoing contributions, or to indemnify the vendor for doing so. → See paragraphs 55-59.

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3.9	***Contracting out of repayment benefit*** The contracting parties may agree to exclude terms that would otherwise have been implied, which would therefore allow the parties to contract out of the 'implied term' argument.	The Ruling does not suggest otherwise. The Ruling does not apply to an arrangement which does not contemplate that the purchaser will repay ingoing contributions outstanding at the time of sale. → See paragraph 6(g).
3.10	***Assumption and novation*** Contrary to paragraphs 15 and 34 of the draft Ruling, the purchaser does not generally 'assume' the responsibility for repaying ingoing contributions. In *Orica Ltd v. Federal Commissioner of Taxation* 2010 ATC 20-168; [2010] FCA 197 Sundberg J (at paragraphs 118 and 119) explained that an obligation under a contract cannot be 'assumed' in the way suggested in the draft Ruling; see also *Scarf v. Jardine* (1882) 7 App Cas 345 at 351. The form of the 'assumption' and its particular context within the agreement to purchase the retirement village and the operation of the governing law are the relevant matters to take into account to determine whether an undertaking or promise given by the purchaser is 'consideration' under the contract or the broader definition contained in section 9-15 of the GST law. These are the principles articulated in GSTR 2004/9 and GSTR 2003/16. The 'assumption' of the liability referred to as the 'repayment benefit' might be undertaken by way of the grant of an indemnity or other obligation given to the vendor in respect of the burdens of the loan contract. See paragraph 117 and 118 of GSTR 2004/9 and the debt defeasance arrangements in *Federal Commissioner of Taxation v. Orica Ltd* 98 ATC 4494; (1998) 39 ATR 66, where the	The Ruling refers to the benefit received by the vendor from being effectively relieved of its obligation to repay ingoing contributions. → See paragraphs 9 and 49. The Ruling is consistent with paragraphs 15 and 34 of the draft Ruling, which referred to an assumption of responsibility having the practical effect of relieving the vendor from a liability; as opposed to giving rise to a legal novation of the liability from vendor to purchaser. This is consistent with the 'effective assumption' of a liability, discussed in GSTR 2004/9 (refer paragraphs 18-19) as well as the arrangement considered in *Federal Commissioner of Taxation v. Orica Ltd* 98 ATC 4494; (1998) 39 ATR 66. In both instances, liabilities are not legally novated but the practical effect is that the debtor is relieved of their obligation to pay. In *Orica Ltd v. Federal Commissioner of Taxation* 2010 ATC 20-168; [2010] FCA 197 Sundberg J explained that the burden of a contract cannot be assigned in the absence of a novation, and that, as such, it is impossible to assign a contract as a whole. Neither the draft Ruling or Ruling suggest otherwise. The final Ruling does acknowledge, however, that the parties may

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	'assumption' took the form of an indemnification of the borrower and a promise to pay the principal to the creditor.	agree for the vendor's liabilities to be novated to the purchaser. → See paragraph 56(a). We do not see any relevance in the reference to GSTR 2003/16, which relates to inducements to enter into a lease of commercial premises.
3.11	***Discharge of the purchaser's own obligations*** By making a payment to a resident, the purchaser is satisfying its own obligations, not the vendor's. It is not a shared statutory liability. At no stage does the purchaser pay out the obligations of the vendor.	We do not agree with this statement. A payment by the purchaser satisfies the purchaser's own statutory liability and also discharges the contractual liability of the vendor. → See paragraphs 49, 50 and 63.
3.12	***Residents' choice about who to seek repayment from*** The State *Retirement Villages Act*s do not compel a resident to seek repayment of a loan from the purchaser of that retirement village. The resident can effectively choose between seeking repayment from the vendor (original borrower) or the purchaser of the retirement village. It is only where a resident seeks recovery of the loan from the purchaser that the issue arises as to whether the relevant *Retirement Villages Act* operates to impose a statutory obligation on such purchaser to pay that loan amount to the resident.	The Ruling only applies to arrangements which contemplate, expressly or by implication, that the purchaser will repay ingoing contributions outstanding at the time of sale. → See paragraph 6(g). See further, Issue No. 3.6 of this Compendium.
3.13	***The Archibald Howie and Dick Smith cases*** Paragraph 37 states that the assumption is consideration as that term has been interpreted in a revenue law context. Footnote 14 refers to the decisions in *Archibald Howie Pty Ltd v. Commissioner of Stamp Duties (NSW)* (1948) 77 CLR 143 and *Chief*	We consider that 'consideration' in a GST context is broadly defined. The meaning extends beyond what would be considered to be consideration as a matter of contract law. → See paragraph 60.

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	Commissioner of State Revenue (NSW) v. Dick Smith Electronics Holdings Pty Ltd (2005) 221 CLR 496, however the facts of those cases and the legal framework in which they were decided does not support the significance attributed to them: see *Staatssecretaris van Financien v Cooperatieve Aardappelenbewaarplaats GA* (Case 154/80) [1981] ECR, and the discussion in *Customs and Excise Commissioners v Littlewoods Organisation plc; Lex Services plc v Customs and Excise Commissioners; Customs and Excise Commissioners v Bugeja; Kuwait Petroleum (GB) Ltd v Customs and Excise Commissioners,* [2001] STC 1568 in a value added tax context. Many of the cases referred to in the footnotes and the commentary in previous rulings are concerned with the nexus of the payment or obligation to the supply. In contract law, this element of the 'bargain' is determinative in establishing consideration.	The *Archibald Howie* and *Dick Smith cases* are examples of the broad approach to consideration in a revenue law context. → See paragraph 53, footnote 14. We do not see any relevance in the other cases referred to in this submission, which relate to subjective valuation of consideration for the purposes of European value added tax; compare GSTR 2003/13, paragraph 85I; GSTR 2001/6, paragraphs 72 and 141. The conclusion that the repayment benefit is consideration is supported by the fact that it forms part of the 'bargain' between the parties. → See paragraphs 61 and 62.
3.14	***Legal effect and practical effect*** It is difficult to accept the view in paragraphs 15 and 34 of the draft Ruling that the vendor receives the 'repayment benefit' by reason of a 'practical effect'. The concept of fiscal neutrality or 'practical effect' does not form part of Australian law. Rather, Australian law has regard to the legal effect of transactions: *Commissioner of Taxation v. Gloxinia Investments (Trustee)* [2010] FCAFC 46, per Middleton J at paragraph 91. The legal effect here is that the vendor is never relieved of its obligations in respect of the repayment of ingoing contributions to residents.	The Ruling refers to the benefit received by the vendor from being effectively relieved of its obligation to repay ingoing contributions. → See paragraphs 9 and 49. The concept of fiscal neutrality is not a feature of the Ruling. We do not consider that the Ruling ignores the legal effect of the arrangements it covers. We do not agree with the statement about the legal effect of the arrangement for the vendor. → See paragraphs 49, 50 and 63.

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3.15	***Judicial decisions on 'consideration expressed as an amount of money'*** The giving of an indemnity or promise to extinguish the liability of another is not consideration expressed as an amount of money: *Staatssecretaris van Financien v Cooperatieve Aardappelenbewaarplaats GA; Iona Farm Ltd v CIR; Federal Commissioner of Taxation v. Orica Ltd* 98 ATC 4494; (1998) 39 ATR 66. The treatment of the repayment benefit as consideration expressed as an amount of money is inconsistent with: • The discussion of 'defeasance' arrangements in *Federal Commissioner of Taxation v. Orica* (1998 ATC 449); • The distinction between 'assumption' and 'novation' as described in *Orica Ltd v. Commissioner of Taxation* 2010 ATC 20-168; [2010] FCA 197 *Federal Commissioner of Taxation v. Orica Ltd* 98 ATC 4494; (1998) 39 ATR 66 shows that the promise to extinguish the debt of another is not consideration in money or expressed in money. *Burrill v. Commissioner of Taxation* (1996) 33 ATR 133; 96 ATC 4629 is not authority for the proposition that an undertaking to pay another's debt is consideration expressed as an amount of money. In *Burrill's* case the promise to pay the amount of a loan was made to the borrower.	We do not agree with the proposition that an indemnity cannot be consideration expressed as an amount of money. We do not consider that such a proposition is supported by the authorities cited in the submission. The decision of the Court of Justice of the European Communities in *Staatssecretaris van Financien* was not concerned with whether the repayment of a loan was consideration expressed as an amount of money. There it was held that a reduction in the value of shares in a co-operative, caused by the co-operative refraining from imposing a storage charge on its members, could not be consideration for the provision of services, since there was no direct link between the loss of value and the services and that reduction was not capable of being 'expressed in money'. See further, Issue No 3.13 of this Compendium. The decision of the New Zealand High Court in *Iona Farm* was not concerned with whether consideration was expressed as an amount of money. See further, Issue No. 3.5 of this Compendium. *Federal Commissioner of Taxation v. Orica Ltd* 98 ATC 4494; (1998) 39 ATR 66 concerned an arrangement whereby the Melbourne and Metropolitan Board of Works ('MMBW') undertook to repay certain debts owing by the taxpayer, ICI Australia Ltd ('ICI'). The majority concluded that although the arrangement resulted in a benefit to ICI, that benefit was a reduction in expenditure which was not income. The question whether the benefit was consideration expressed as an amount of money was not considered. However, Brennan CJ observed at ATC 4503 that ICI received 'money's worth – the equivalent of money – by payments made in discharge of its debts'. → See paragraph 74, footnote 34.

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		Orica Ltd v. Commissioner of Taxation 2010 ATC 20-168; [2010] FCA 197 did not concern the question of whether there was consideration expressed as an amount of money. There, consideration in respect of the novation of certain agreements was determined in accordance with a market value substitution rule in the capital gains tax ('CGT') provisions. In *Burrill v. Federal Commissioner of Taxation* 96 ATC 4629; (1996) 33 ATR 133 it was held that certain bonds issued to depositors in a failed building society did not constitute consideration 'otherwise than in cash' for the purposes of section 21 of the *Income Tax Assessment Act 1936*. The Full Federal Court held at 4634 ATC: > In our view the phrase 'consideration… otherwise than in cash' points to a consideration that does not find expression in cash. The consideration in the present case is a promise to pay money. That is not a consideration in kind, and although it is not actually money it sounds in money. We consider the same principles to apply in determining whether consideration finds expression in money. → See paragraph 74, footnote 31.
3.16	***Rulings on 'consideration expressed as an amount of money'*** The giving of an indemnity or promise to extinguish the liability of another is not consideration expressed as an amount of money: GSTR 2006/1. The proposition that a 'repayment benefit' is always consideration '*expressed as an amount of *money*' is not supported by paragraph 40 of GSTR 2001/6, cited in footnote 32. The giving of an undertaking to extinguish another's liability is not	The Rulings referred to do not support the propositions attributed to them in the submission. GSTR 2006/1 deals with guarantees and indemnities in the context of subregulation 40-5.09(3) of the *A New Tax System (Goods and Services Tax) Regulations 1999.* It does not consider whether an indemnity or promise in a contract of sale is consideration expressed as an amount of money.

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	consideration in money nor expressed as an amount of money is supported in the following: • The income tax ruling TR 2002/14 in which the obligations are capital proceeds only as a result of particular provisions of the CGT law: paragraph 57; • TR 2007/D10 dealing with earnout arrangements (at paragraph 12); • The description of obligations arising under arrangements in GSTR 2001/6, GSTR 2004/9 and GSTR 2004/4.	GSTR 2001/6, paragraph 40, recognises that merely ascribing a monetary amount or value to a thing will not cause it to be 'expressed as an amount of money'. Similarly, it is considered that *refraining from* ascribing a monetary amount or value to a thing will not *prevent* it from being expressed as an amount of money. The question is not whether the amount is written down by the parties, but whether its character is such that it can be said to 'find expression in' money. → See paragraph 75, footnote 36. The position in the Ruling is consistent with GSTR 2004/9, paragraph 28, which states that a purchaser's assumption of a quantified liability forms part of consideration for supply, expressed as an amount of money. We do not see any relevance in the reference to GSTR 2004/4, which concerns the assignment of payment streams. The income tax Rulings cited in the submission concern capital proceeds for CGT purposes rather than consideration for GST purposes. The CGT provisions are concerned with the money or other property that an entity receives, or is entitled to receive, in respect of a CGT event happening; compare GSTR 2001/6, paragraph 44.
3.17	***Repayment benefit as a supply*** The treatment of the repayment benefit – an obligation to make a payment – as not a taxable supply appears correct (paragraphs 32 and 78-79). It may be worthwhile confirming in the draft Ruling that, as suggested in those paragraphs, this is because the payment of money is not a supply by definition pursuant to s9-10(4) and the obligation to make a payment to another party is not, in and of itself, a separate supply from that payment.	The Ruling contains a reference to subsection 9-10(4). → See paragraph 98, footnote 48.

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4 FAIR AND REASONABLE METHOD OF APPORTIONMENT		
4.1	***Difficulties in applying benefits-based formula*** This 'benefits-based' apportionment formula could result in significant difficulties because it will be very difficult to draw the line in the numerous scenarios involving apportionment of input tax credit entitlements. A revenue based model creates uncertainty and requires subjective judgment. It relies on revenues that are either not derived from an income tax view, have not commercially 'come home', or are so uncertain that reliance on these 'revenues' would lead to distortions and/or massive movements in any percentage disentitlement calculation. This method requires sale forecasts that change materially. The developer's administration cost is increased. The developer does not only need to forecast its GST position based on numbers that expose it to market fluctuations but is faced with adjusting and tracking adjustments under Division 129.	The Ruling does not require taxpayers to calculate their input tax credits using the method contained in paragraphs 15 to 23 of the Ruling. → See paragraph 25. It is acknowledged that any apportionment method based on estimating future economic benefits will involve a degree of imprecision. An approach to estimation will be acceptable, provided that it is fair and reasonable, and appropriate adjustments are made to reflect changes in differences between planned and actual application. Revenue models are considered to be an acceptable means of determining the extent of creditable purpose, provided they take into account all significant economic benefits an entity reasonably expects to obtain. By necessity, such methods involve forecasting the value of economic benefits to be received in the future.
4.2	The draft Ruling contains a formula for apportionment in the ruling that 'represents a fair and reasonable method of calculating the extent of the developer's creditable purpose'. Part 5-5 of Schedule 1 of the TAA could mean that the application of the formula is binding on the Commissioner without any qualification as to whether it is [its] legally appropriate to the particular circumstances of the case. This could create a risk to the revenue for the Commissioner.	Revenue models are considered to be an acceptable means of determining the extent of creditable purpose, provided they take into account all significant economic benefits an entity reasonably expected to obtain. By necessity, such methods involve forecasting economic benefits to be received in the future. If an arrangement has unusual features which are not identified in the Ruling, the acceptability of the method set out in the Ruling needs to be assessed in light of those features. → See paragraph 24.

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4.3	***Requirement to recognise the benefit of interest-free loans*** The introduction of imputed interest is not fair and reasonable and is a complete policy shift.	It is considered that a revenue based method would not be fair and reasonable if it disregarded the significant benefit associated with obtaining access to finance on interest-free terms. → See paragraphs 26, 82, 85, 86, 95 and 96. The transitional arrangement in the Ruling enables the use of a method that does not take into account the benefit of the interest-free use of money, but is otherwise fair and reasonable. → See paragraph 41.
4.4	***Other fair and reasonable methods*** A revenue apportionment method that excludes the benefit of interest free loans should not be automatically rejected. All the facts and circumstances should be considered to determine whether a genuine attempt has been made to apply a fair and reasonable method.	See Issue No. 4.3 of this Compendium. The Ruling does not require taxpayers to calculate their input tax credits using an output based indirect method if a fair and reasonable alternative is available. → See paragraphs 25 and 26.
4.5	***Actual interest*** The Ruling should confirm that any 'actual interest' derived by an entity that invests ingoing contributions, at call, does not need to be included within any apportionment model to avoid any double counting.	The benefit referred to in the Ruling is the benefit to the vendor of having access to the ingoing contribution amounts, interest-free. That benefit may be reflected in interest derived from the use of the borrowed funds. However, the ruling provides for a simplified method for valuing the benefit, which does not have regard to amounts actually earned through the investment of the borrowed funds. → See paragraphs 18 and 87.

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4.6	***Relationship between construction acquisitions and resident loans*** The relationship of this 'purchaser assumption', if it exists, can clearly be indirect (*HP Mercantile Pty Ltd v. Commissioner of Taxation* [2005] FCAFC 126, paragraph 36) under s 11-15, however it must in an objective sense contemplate 'a relatedness as a matter of objective fact between the acquisition and the supply' (*AXA Asia Pacific Holdings Ltd v. Commissioner of Taxation* [2008] FCA 1834, paragraph 124). The statute does not require the tracing of the acquisition to the actual supply (*HP Mercantile* at paragraph 46). The relationship has to be a 'real', substantial and not a trivial one (*AXA Asia Pacific* at paragraph 35) and must be based on 'some more substantial ground' (*Tooheys Ltd v. Commissioner of Stamp Duties (NSW)* 105 CLR 602 [622]). The relationship of the construction of the retirement village to the resident funds is insubstantial as these resident borrowed funds may or may not be used to repay borrowings incurred to construct the premises. There is no implied purchaser assumption relationship to the construction that is either '*real*' or '*substantial*'. There is no purchaser assumption as the resident liabilities are transferred by statute. There is clearly a '*real* or '*substantial*' relationship between the construction and the ultimate sale price of the retirement village and the deferred management fees that will be received along the way from the departure of the resident. This is the relationship of the construction spend to any input taxed supplies and taxable supplies that are made, as a matter of objective fact.	The Ruling does not require the tracing of acquisitions to actual supplies. The Ruling does not seek to relate borrowed funds received by the operator to the construction of the retirement village. The Ruling does recognise that the significant benefit associated with not having to repay such loans is an advantage which is directly related to the sale of the retirement village. → See paragraphs 20 and 93. The Ruling also recognises that the use of ingoing contributions on an interest-free basis is a significant economic benefit which has a real and substantial linkage to the supply of accommodation by way of lease or license. → See paragraphs 85, 95 and 96. The retirement village is constructed, in part, to make leasing supplies, a condition of which will involve the developer receiving loans on an interest-free basis. This condition provides a real and substantial relationship between the benefits associated with the interest free feature of the loans and the making of input taxed supplies. → See paragraph 86.

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4.7	***Economic benefits associated with resident loans*** The loan must be paid when the resident departs and is a loan under TR 2002/14, so we see no other economic benefit from this operator / resident relationship other than that which is currently provided for in the current resident and operator contractual documentation. The economic advantages are catered for in current industry practice. We do not need to 'add' or impute' into the relationship other 'imputed' benefits that as a matter of law, commerce and economics, do not exist. The analysis in the ruling is predicated on the 'significant economic benefit' of the resident loans and imputing this 'significant economic benefit' into a disentitlement calculation that will approximate the developer's GST credit blockage. Your formulaic construction includes both the loans as a denominator and numerator, being of the view that this is 'consideration'. There is no 'purchaser assumption' and to imply one into the contract between the parties has no legal foundation. There is no consideration for and there is no permanent economic benefit of the resident loans, given that we have a legal obligation to pay these funds back to the resident.	The Ruling does not apply to an arrangement which contemplates that loans must be repaid by the vendor when the resident departs. → See paragraph 6(g). We do not agree that there is no benefit associated with the interest-free use of funds as a matter of law, commerce or economics.

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Issue No.	Issue raised	ATO Response/Action taken
4.8	***Amounts not received by developer*** The formula requires the developer to include in the calculation of the 'estimated input-taxed consideration' amounts that the developer never receives. One way of addressing this may be to make clear that the inclusion of the interest-free loans as consideration is picking up the release from the liability for the loans as part of the consideration, not the making of the original loans to the developer.	The Ruling identifies benefits obtained from making input taxed supplies as being amounts which will be paid to the vendor. → See paragraphs 19, 88, 89 and 90. The Ruling clarifies that the face value of the ingoing contributions is not a benefit obtained in respect of the lease. → See paragraphs 19 and 91.
4.9	***Ingoing contributions as deposits*** Contrary to paragraphs 25 and 26 of the draft Ruling, it is not appropriate to include the so-called 'benefit' in consideration for input taxed supplies made by the developer to residents. While the ingoing contributions have been referred to as loans, they are akin to deposits received against a resident's obligation to pay rent (i.e. the DMFs). The specific deposit provisions of the GST Act (Division 99) defer attribution of the amount received and do not seek to impute any benefit from the holding of the money.	We do not consider that the ingoing contribution in the form of an interest-free loan is a 'deposit'. → See paragraph 6(e). Our views on the meaning of 'deposit' are set out in GSTR 2006/2.
4.10	***GST treatment of DMFs*** The draft Ruling does not expressly deal with the GST treatment of DMFs. It should be made clear in the final Ruling that DMFs are consideration for the supply of residential premises to the residents by way of lease or licence, and are consideration for an input taxed supply in accordance with section 40-35(1) of the GST Act. This position would be consistent with the view at item 11 of the Issues Register for the Retirement Villages Industry Partnership. While item 11 refers to freehold arrangements, it has been relied upon by many retirement village operators in respect of lease and licence	The Ruling states that amounts paid to the vendor in respect of the lease of the units will be consideration for the making of input taxed supplies. Whether an amount satisfies that description depends upon its true character under the residence agreement, rather than on whether it is referred to with a label such as 'DMF'. → See paragraphs 19, 88, 89 and 90.

Issue No.	Issue raised	ATO Response/Action taken
	arrangements. The consideration paid by a purchaser is typically based on a multiple of deferred management fees. Including accrued deferred management fees leads to an element of double counting.	
4.11	***Resident levies*** There is no consideration given in the ruling as to whether resident levies should be included in the disentitlement calculation of the operator/developer. The relationship to that of the actual construction is far too remote to be included as supplies pertaining to the development. The essential nature of the resident levies is that they are a pooling of residents' monies to pay for services required by the residents. The operator / developer does not receive any benefit from these transactions; refer for instance sections 116 and 120 of *Retirement Villages Act (NSW).*	Resident levies which are in respect of or incidental to the lease of a unit are considered to be economic benefits relating to the input taxed supply of residential premises. → See paragraphs 19 and 89.
4.12	***Asset use, time-based, or percentage models*** An asset use/time based model or percentage return model provides greater certainty to the industry due to their inherent stability and lack of subjectivity. These models could be 'safe harbour' arrangements and taxpayer's may still be able to use other models, should they be able to satisfy themselves they are objectively 'fair and reasonable'. Deferred management fee income will typically be in the range of 3% to 5% per year, which over the life of a retirement village development could result in a GST disentitlement of 15% to 30%. The asset use model and the percentage return model both could easily equate to this number. It is disputed that these models, or to be more specific, the asset/time use model, does not include the	The Ruling does not provide a safe harbour for apportionment. However, it is accepted that there may be fair and reasonable methods of apportionment and adjustment other than the method described in the Ruling. → See paragraphs 25 and 95.

Issue No.	Issue raised	ATO Response/Action taken
	'significant economic benefits' of the retirement village development. The asset use model and percentage return model could be additional safe harbour models.	
4.13	***Effective life method*** Given the inherent difficulties and compliance costs associated with a revenue based methodology, the Commissioner should explore further the effective life method for the purpose of developing a simpler, safe harbour approach. We do not agree that the effective life method is not a 'fair and reasonable' method.	The term 'effective life method' has no widely-accepted technical or commercial meaning. Without further detail in relation to the operation of the method, we cannot comment on whether it is fair and reasonable. It is accepted that there may be fair and reasonable methods of apportionment and adjustment other than the method described in the Ruling. → See paragraphs 25 and 95.
4.14	***Apportionment based on DMFs*** The common treatment of DMFs being part of the input taxed supply of residential premises has been adopted. A 'typical' loan lease arrangement would involve the following: • An upfront lease payment of $10,000. • Loan of say $390,000 on a $400,000 unit. • A DMF of 28% after 7 years. Ignoring any increase in value of the unit, the total of the lease fee and the DMF is $122,000. If spread over the term of the lease, this represents $17,428 or 4.47% per annum based on the original loan. This return is in fact the real and appropriate benefit received by the developer or operator over the life of any loan/lease.	The example in the submission is based on a long term operation where the entitlement to input tax credits on development would be minimal. In the case of a sale the actual deferred management fees may be one of the benefits obtained from making supplies by way of lease.

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4.15	***Notional rent rather than notional interest*** There may be some basis to the notional interest being consideration (paragraphs 25-26). An issue that emerges from the Commissioner's analysis is that the benefit of having access to the ingoing contribution amounts, interest-free, and calculated by reference to the financing costs the developer would incur over the relevant period, directly points to the idea that there are, in fact, financial supplies involved, not just input taxed supplies of residential premises. Indeed, on any view, a resident enters into a lease of residential premises with a developer for, in the main, the provision of an interest-free loan (being an input taxed financial supply by the developer comprised of the borrowing). This borrowing or interest-free loan broadly approximates the market value of the residential premises (probably about 90% of a separately titled property). Therefore, an alternative view of the arrangements is that the resident and the developer are also engaged in financial supplies. Based on that alternative approach, the question is also whether it is a barter transaction between the developer and the resident and, following that same analysis, whether or not it is notional interest or, rather, notional rent that the developer should include as the 'estimated input-taxed consideration' when calculating their entitlement to input tax credits. Depending obviously on the interest rate used, the rent value would normally be less than the interest value. In other words, the resident, in addition to paying recurrent charges and a departure fee, has practically agreed to a reduction in the interest rate on their loan such that it equates to the notional rent payable. This is entirely consistent with the context of retirement village arrangements, as the resident is also normally entitled to the greater share of the increase in value of the property	While the benefit associated with the interest-free feature of a loan might be described as being economically in the nature of rent, it is more accurate to describe it as a benefit relating to the use of the borrowed funds. Labelling the value of the benefit from interest-free loans as rent may lead to confusion with other forms of rent. We accept that the making of a loan is a financial supply. However, this analysis does not affect the outcome that there is an economic benefit in obtaining an interest-free loan.

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	while they are a resident. This alternative view may sit better with the legal and economic benefits analysis that the Commissioner has suggested and may also withstand the test of time, particularly after the transitional arrangements in the draft Ruling are no longer applicable.	
5 POLICY-RELATED COMMENTS		
5.1	*Equity* The consideration for the sale of the retirement village for GST purposes will be increased by the face value of the interest-free loans. Whilst purchasers will need to fund the additional GST they will not be entitled to a credit for this additional liability. This is not an equitable outcome. *Finance* The change in methodology may affect retirement village valuations and projected returns. This will have an impact on financing for future retirement village developments. *Social* Any increased tax burden will reduce the incentives for industry to develop and deliver much needed accommodation for our aging society. A reduction in the delivery of retirement villages will limit the options available to the ageing members of our community which in turn will further impact upon housing affordability.	A response to these matters is outside of the scope of the Commissioner's role as an administrator of the taxation law.
5.2	The ruling cuts across public housing and aged care policy and falls well short of providing future certainty to our industry.	A response to these matters is outside of the scope of the Commissioner's role as an administrator of the taxation law.

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5.3	Generally where a valuer values a retirement village they assume a sale on completion of the development to give the financier an indication of what the asset could realise if the financier were required to step in and sell it. The assumed sale on completion is required irrespective of whether the developer actually intends to sell on completion, or intends to continue operating the retirement village for the medium to long-term. Given the significant increase in GST liability once the resident loans are included in the consideration, this could severely impact the financier's appetite for providing finance to the developer. The inclusion of the value of resident loans or the 'repayment benefit' in 'consideration' for GST purposes will often result in a GST liability that exceeds the cash transfer price of the retirement village. This clearly places a significant commercial constraint on the sale or transfer of retirement village freehold that is unreasonable in the circumstances.	A response to these matters is outside of the scope of the Commissioner's role as an administrator of the taxation law.
5.4	The approach contained in the draft Ruling may provide momentum for the respective state revenue offices to consider or reconsider their position on dutiable value. This would have severe economic impact hindering the movement of retirement village freehold, placing a significant inefficiency on the whole industry.	A response to these matters is outside of the scope of the Commissioner's role as an administrator of the taxation law.
5.5	Will this GST imposition be also applied to the sale of individual units in retirement villages and could there be a long-term penalty incurred by operators of the retirement village which could be passed on eventually to the residents of retirement villages?	A response to these matters is outside of the scope of the Commissioner's role as an administrator of the taxation law.

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5.6	The draft Ruling would have an unacceptably detrimental impact on the retirement villages industry - if residents buying into a (e.g.) $400 000 lease unit are going to be required to pay $440 000, with no ability to recover the GST of $40 000 as an input credit (as they are obviously not registered for GST!).	A response to these matters is outside of the scope of the Commissioner's role as an administrator of the taxation law.
6 OTHER COMMENTS		
6.1	***Status as a public ruling*** The draft Ruling, when finalised, should be a public ruling under section 358-5 of Schedule 1 of the *Taxation Administration Act 1953* ('TAA') rather than section 105-60 of Schedule 1 of the TAA.	The Ruling is a public ruling for the purposes of section 358-5 of Schedule 1 to the TAA. At the date of issue of the draft Ruling, section 105-60 of Schedule 1 to the TAA was the relevant provision.
6.2	***Commercial residential premises*** One approach to simplify the existing treatment of retirement villages would be to extend the interpretation of the 'commercial residential premises' to independent living units in retirement villages.	This issue is beyond the scope of the Ruling.
6.3	***Examples*** To assist taxpayers on the application of this draft Ruling, providing examples will enable taxpayers and advisors to clarify any misconception.	Given the complexity of the arrangements involved, and the wide range of factual circumstances which can arise, it is considered preferable to provide guidance of a general nature in the Ruling. The Ruling is not intended to be prescriptive, and it is necessary to consider each case on its facts.

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6.4	***Continuing supply by way of lease*** The Ruling should have a comment that the purchaser of a reversionary interest in retirement village land (subject to a continuing lease) makes a continuing supply by way of lease to the tenant after settlement. This is consistent with the Commissioner's view set out in the Decision Impact Statement for *South Steyne Hotel Pty Ltd & Ors v. Commissioner of Taxation* [2009] FCAFC 155.	This issue is beyond the scope of the Ruling.