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For Attention:
The Commissioner of Taxation
Canberra

Draft Goods and Service Tax Ruling (GSTR2013D2) Submission in line with NARPAC (National Alliance of Residential Parks and Communities)

Introduction

The draft ruling considers whether a movable home estate is commercial residential premises and how section 9-5 and section 40-35 of the *New Tax System (Goods and Services Tax Act 1999* GST Act) should apply.

It is apparent right from the start that the definition of "Commercial Residential" (CR) is very narrow and there is some evidence to suggest that this was intentional from the start of the (*Goods and Services Tax) Act 1999* (GST Act).

When persons (primarily pensioners) purchase a home in a residential park they enter into a site agreement (lease) and in Queensland, that lease is perpetual. The suggestion as above of the intention to keep the CR as narrow as possible is based on the fact that the lease agreement between the park operator and the home owner contains in the special terms, wording to the effect that if GST is introduced at a later date, the home owner must pay that GST. This wording is contained in site agreements dating back to 2004 coincides with the introduction of the *Manufactured Homes Residential Parks Act 2003* which came into effect on the 1 March 2004.

This could be easily interpreted that not only was there a possibility of the now proposed change to the GST Act but that it was always intended which makes the whole issue of argument now completely pointless, the intention was always there and thousands of pensioners have been subjected to a massive hoax.

The whole scenario, when we look through the pointless maze of argument now taking place, it is apparent that both Federal and State Governments were privy to the final agenda which was to let private enterprise take over the social housing programmes and apply the sting (GST) when the industry was flourishing. To now proclaim that residential parks were originally deemed to be similar to caravan parks is a total farce, they never were similar. Those that would now argue against the above analogy would have to admit that if what is written here is wrong, then those responsible for the legislation in the first place made a complete hash of it and did not familiarise themselves with the residential parks industry in the first place, thus displaying complete incompetence.

The Queensland Position

The *Manufactured Homes Residential Parks Act 2003* is currently under a much needed review because of heavily weighted privilege in favour of park operators. This privilege in conjunction with what appears to be an inept tribunal system that is allowing home owners to be forced out of their own homes because of excessive site fees.

Now home owners are facing a GST financial burden to boot. This is not going sit well with the review of the legislation!

Based on the deceptive assertions of the Australian Taxation Office (ATO) that residential parks were originally "similar" to caravan parks with the provision for long and short stay accommodation, here in Queensland we have numerous mixed parks. These mixed parks contain caravans with long and short stay accommodation but also contain manufactured homes lived in by the home owners mixed in with caravans for long and short stay accommodation. It is arguable that the manufactured homes owners do now comply with not only being "similar" but are part of the caravan park proper. Are these people (pensioners) to be charged the GST, they are after all living in a caravan park.

This farcical situation and the criteria being pursued by the ATO is ill conceived and drawing a very long bow to boost government coffers at the expense of the most vulnerable, an easy target for all governments.

If we are now allowed to stretch the same long bow, in [38] of the draft ruling it talks of the entity that *"owns or controls the CR premises"* which raises the question of who *owns* and *controls* what.

The Queensland legislation defines a residential park in section 12 as an area of land that includes

(a) Sites; and

(b) Common areas; and

(c) Facilities for the personal comfort, convenience or enjoyment of persons residing in manufactured homes positioned on sites.

Section 14 defines the site agreement as *"an agreement between the park operator and home owner that provides for:*

(a) The rental by the home owner of particular land in a residential park; and

(b) The positioning on the land of a manufactured home; and

(c) The home owner's non-exclusive use of the parks common areas and communal facilities.

This brings us to the question of what is the agreement and as a lay person and not a lawyer; the writer must rely upon the Barron's Dictionary of Legal Terms for interpretation.

Agreement (as written)

"A mutual assent between two or more legally ***competent*** *persons, ordinarily leading to a* ***contract.*** *In common usage, it is a broader term than contract,* ***bargain*** *or* ***promise,*** *since it includes executed* ***sales, gifts*** *and other transfer of* ***property,*** *as well as promises without legal obligation. While agreement is often used as a synonym for contract.*

Contract (as written)

A promise for the **breach** of which the law provides a **remedy,** or the **performance** of which the law recognises as a **duty;** a transaction involving two or more individuals whereby each has reciprocal rights to demand performance of what is promised.

The legislation in Queensland refers only to a “site agreement” although it is convenient for lawyers for the park operators to refer to the agreement as a “license” which of course is a different issue seeking to deliberately divert and falsify the true meaning of the site agreement.

License (as written)

A grant of permission needed to legalise doing a particular thing, exercising a certain privilege or pursuing or pursuing a particular business or occupation. Licenses may be granted by private persons or by government authority.
In the law of **property,** a license is a personal privilege or permission with respect to some use of **land,** and is revocable at the will of the land owner. The privilege attaches only to the party holding it and not to the land itself, since, unlike an **easement,** a license does not represent an **estate** or **interest** in the land.

Compare **franchise; lease; monopoly.**

Lease (as written)

1. An agreement by the **lessor** temporarily to give up **possession** of **property** while retaining legal ownership **(title);**

2. An agreement by the owner **landlord** to turn over, for all purposes not prohibited by terms of the lease, specifically described **premises** to the exclusive possession of the **lessee** for a definite period and for a consideration called rent.

As mentioned in the third paragraph of the first page, home owners in residential parks in Queensland hold a right to occupy a site in perpetuity which using the above analogies indicates beyond all doubt that home owners in residential parks hold leases which are reinforced by the statute known as the Act *(The Manufactured Homes Residential Parks Act 2003)* (MHRPA).

Further to this analogy we can refer to the *Property Law Act 1974* section:

57A Effect of Act or statutory instrument

Section (2) (b) in the case of a lease—the lessee’s entry into possession under the lease.

This is further enforced by section 94 0f the MHRPA

94 Access by park owner to site

(2) (a) if the home owner consents to the entry.

"Special note: the term park owner under the MHRPA is incorrect because over 80% of what is on the land (park) is the property of the home owners (the homes). The more appropriate term would by park operator".

It has been necessary to identify the true nature of the residential parks in Queensland because we feel it carries certain rights and privileges that do not exist in other States. The MHRPA is currently under review because it is a poor compendium of innuendo that fails to identify the true nature and status of the aforementioned home owners..

The GSTR2013D2

Our understanding for this very dubious attack on pensioners as being probably the most vulnerable group to exploit carries little or no foundation when the criteria for CR is based on something that never existed in the first place. We refer of course to the whimsical claim that residential parks once resembled or were similar to caravan parks; this was never so even in the year 2000. If this was the analysis relied upon by the legislators at the time, it shows a somewhat lack of knowledge or investigation into the industry as a whole and, not the least, a noticeable lack of competence by those involved!

The operative and most futile word to describe these residential parks even today is to refer to them as "mobile home parks" which does not describe for the CR the true nature of these parks. According to the *Essential English Dictionary* the term **Mobile Home** is described as a *"trailer used as a permanent dwelling"*.

Nowhere in the MHRPA does the term mobile home appear. Section 10 of the Act speaks only of a "relocatable" structure that can be moved from one place to another, end of story.

The other misguided observation by the Australian Tax Office (ATO) is that the modern homes in residential parks are more of a fixture than a mobile or relocatable structure, this is not so. The difference being that the standard suburban home or any permanent structure is set into and tied to a substantial concrete footing, whereas, the relocatable home or structure is bolted down to piers that are set in concrete. To relocate the structure requires the bolt fastening to be removed and there is no law that states that the structure must be moved as a complete unit, in fact it is quite normal to separate sections of a structure for ease of relocation.

What is explained in this part should put to rest the true meaning of residential parks; it is clearly the GST legislation that is astray beginning from the year 2000.

The other assertion by the draft ruling is that the owners of residential parks do not provide short and long term accommodation but the owner of the land does not have that control as is explained by the leasing conditions of this paper. As already mentioned, once the land or sites are leased out to the home owners, the land owner gives up control of the sites to the home owners. Now using the same long drawn bow that the ATO uses it can be claimed that because the home owners control the land (sites) they can and do provide short stay accommodation for up to 28 days and occasionally beyond for friends and family who choose to spend their holidays accordingly. With this in mind, residential parks do in fact meet all the criteria set out by the ATO for movability of structures and for long and short term accommodation and therefore should alter the definitions for the CR to include residential parks.

The Social Impact

Through our national body NARPAC (National Alliance of Residential Parks and Communities), we are able to estimate that between three and five hundred thousand pensioners, and others less fortunate within society, will be badly affected by this suggested implementation of GST. As such, it should also be remembered that present struggling residents of residential parks are enfranchised to, and do, vote!

Apart from this initial social impact, there will be the inevitable backlash against residential parks living with the industry as a whole being under dire threat of failure.

Explanatory note:

Is a Residential Park Commercial Residential as per the GST Act

Reference is made to section 195-1 of the Act Dictionary and gives definitions (a) to (f) of what constitutes ***commercial residential premises*** means and reads as:

(a) a hotel, motel, inn, hostel or boarding house; or

(b) premises used to provide accommodation in connection with a school; or

(c) a ship that is mainly let out on hire in the ordinary course of business of letting ships out on hire; or

(d) a ship that is mainly used for entertainment or transport in the ordinary course of a business of providing ships for entertainment and transport; or

(e) a marina at which one or more of the berths are occupied, by ships used as residences; or

(f) a caravan park or camping ground; or

(g) anything similar to residential premises described in paragraphs (a) to (f)

ARPQ
December 2013.

CC:
The Prime Minister the Right Honourable Tony Abbott MP.

The Treasurer the Honourable Joe Hockey MP.

The Leader Mr Clive Palmer MP—Palmer United Party.

Senator Christine Milne—Australian Greens.