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ATO ruling to make retirement villages more expensive

ELEANOR HALL: Retirement village providers are warning the Australian Tax Office that its latest ruling will run their businesses into the ground.

The ATO ruled that the operators must pay the GST on the individual contributions made by residents and held by the operators.

But the sector says this effectively triples the amount of GST they have to pay and that it will hamper investment in new buildings.

Jennifer Macey has our report.

JENNIFER MACEY: Australia's growing elderly population means demand for new units in retirement villages is high.

Simon Owen the national president of the Retirement Village Association says there's a long waiting list and investment in new buildings can't keep up with the demand.

SIMON OWEN: At the moment, across our members with retirement village owners and operators, we require something in the region of around 10,000-15,000 new retirement living units per annum to keep up with the ageing population and we're delivering not even half of that at the moment.

JENNIFER MACEY: But a new ruling from the Australian Taxation Office may make those available beds even more expensive.

Simon Owen says the ATO has effectively slapped a 70 per cent GST bill on the sale of a retirement village.

SIMON OWEN: We're extremely disappointed with the ruling and particularly the impact that it is going to have on our members across Australia. This could and will most likely lead to a complete lack of investment in the retirement sector and this is really just going to be another nail in the coffin.

JENNIFER MACEY: When an elderly person or couple move into a retirement village, they pay a lump sum that's held by the operator as a deposit to pay for the management of their stay or building upgrades.

If they die or move out, that money is refunded.

Yesterdays ATO ruling means the vendor has to pay GST on those individual contributions on top of the GST paid for the sale of the village.

Tax lawyer Geoff Mann is a partner at the firm Blake Dawson.

GEOFF MANN: The liabilities that we are talking about arising now, under this view as compared to previously are very significant. The sorts of examples that you talk about is where a village might get sold for \$10 million cash, it wouldn't be unrealistic for the GST to be \$10 million. So effectively all of the cash price that the person would normally receive would be eaten up in the GST liability. I suppose the alternative is they then put price up to \$20 million but then the village isn't economic for someone to buy.

If there is an increased liability someone is going to have to pay for it. It is either the developers that are going to sacrifice profit, it is going to be residents perhaps who have to pay more to get into these villages.

So somewhere something is going to have to give here.

JENNIFER MACEY: Geoff Mann says the ATO ruling is unusual because the new operator of the village is required under state and territory law to take on the obligation to repay the money if residents die or move out.

GEOFF MANN: You know, it is not necessarily a straight forward issue but I think that the tax office has embarked down the path of choosing a liability when it is not clear there is one and this is after nearly 11 years of GST and by their own admission, their previously expressed views were different. They had indicated previously that if there was a statute that imposed the liability on you, then that wouldn't be part of the consideration that you are considered to have given when you bought something.

JENNIFER MACEY: Derek McMillan is the CEO of Australian Unity Retirement Living and operates 15 villages in New South Wales and Victoria.

His company is currently building five new developments and most units have been sold before they're finished.

But he says he's worried about the future of the sector.

DEREK MCMILLAN: So that is why the industry is so concerned about it because it is like we are double, triple paying the GST. It is just not fair to not only the industry but it is not fair to older Australians as well.

JENNIFER MACEY: He's appealing to the Assistant Treasurer Bill Shorten to put a hold on the ATO ruling.

The World Today contacted both the ATO and the Assistant Treasurer but no-one was available to comment.

ELEANOR HALL: Jennifer Macey reporting.