

# ***CR 2012/19 - Goods and services tax: Higher Education Student Services and Amenities Fee***

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## Class Ruling

### Goods and services tax: Higher Education Student Services and Amenities Fee

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#### **ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant provision(s)**

2. The relevant provisions dealt with in the Ruling are:

- Section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act);
- Section 38-85 of the GST Act;
- Section 195-1 of the GST Act.

#### **Class of entities**

3. The class of entities to which this Ruling applies consists of higher education providers who have agreed to be named in this class ruling and are listed below:

- Australian Catholic University
- Bond University

- Charles Sturt University
- CQ University Australia
- Curtin University of Technology
- Deakin University
- Edith Cowan University
- Griffith University
- Charles Darwin University
- Flinders University
- James Cook University
- La Trobe University
- Macquarie University
- Monash University
- Murdoch University
- Queensland University of Technology
- RMIT University
- Southern Cross University
- Swinburne University of Technology
- The Australian National University
- The University of Melbourne
- The University of Newcastle
- The University of Queensland
- The University of Sydney
- The University of Western Australia
- Torrens University Australia
- University of Adelaide
- University of Ballarat
- University of Canberra
- University of New England
- University of Southern Queensland
- University of Tasmania
- University of Technology, Sydney
- University of the Sunshine Coast
- University of Western Sydney
- University of Wollongong

Within this ruling these higher education providers are also collectively referred to as the Universities.

4. Section 16-1 of the *Higher Education Support Act 2003* (the HES Act) defines a **higher education provider** as a body corporate that is approved under Division 16 of that Act.

5. Section 195-1 of the GST Act defines a **higher education institution** as an entity that is a higher education provider as defined in section 16-1 of the HES Act.

6. All the Universities are higher education institutions and higher education providers.

### **Qualifications**

7. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

8. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 25 of this Ruling.

9. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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11. This Ruling applies from 1 January 2012. The Ruling continues to apply after 1 January 2012 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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The following description of the scheme is based on information provided by the applicant.

12. In addition to providing higher education courses to students, the Universities also provide infrastructure for facilities, services and activities that are of direct benefit to the students of the University.

13. Universities were prevented, pursuant to subsection 19-37(2) of the HES Act from imposing a fee on students for use of non academic services or amenities. This subsection states:

(2) A higher education provider must not require a person enrolled with, or seeking to enrol with, the provider to pay to the provider or any other entity an amount for the provision to students of an amenity, facility or service that is not of an academic nature, unless the person has chosen to use the amenity, facility or service.

14. The HES Act was amended by the *Higher Education Legislation Amendment (Student Services and Amenities) Act 2011* which commenced on 3 November 2011. The Explanatory Memorandum states that the amendment will 'allow higher education providers to charge a compulsory student services and amenities fee'. The amendment effectively allows higher education providers to commence charging the fee to students for the 2012 academic year.

15. New subsection 19-37(4) of the HES Act provides an exception to subsection 19-37(2) and allows a higher education provider to require the payment of a 'student services and amenities fee' (SSA Fee).

16. New subsection 19-37(5) of the HES Act defines a student services and amenities fee. This subsection states:

(5) A **student services and amenities fee** is an amount:

(a) that a higher education provider requires a person enrolled, or seeking to enrol, with the provider to pay for a period starting on or after 1 January 2011 to support the provision to students of amenities and services not of an academic nature, regardless of whether the person chooses to use any of those amenities and services; and

- (b) that is determined by the provider in accordance with the Administration Guidelines; and
- (c) that is not more than the amount worked out for that period for the person in accordance with those guidelines; and
- (d) that is payable on a day determined in accordance with those guidelines; and
- (e) that is such that the total of all amounts that are covered by paragraphs (a), (b), (c) and (d) for the same provider and person is not more than \$250, for amounts for periods falling wholly or partly within a calendar year starting on or after 1 January 2011.

17. The amount of \$250 mentioned in paragraph (5)(e) is indexed annually.

18. New section 19-38 of the HES Act limits the way higher education providers can spend the SSA fees they receive.

19. The higher education provider may not spend funds received from SSA fees to support a political party or to support the election of a person as a member of the legislature of the Commonwealth, a State or Territory, or a local government body.

20. The effect of new subsections 19-38(3) and (4) of the HES Act is to require higher education providers to only spend amounts received as SSA fees on the following services:

- (a) providing food or drink to students on a campus of the higher education provider;
- (b) supporting a sporting or other recreational activity by students;
- (c) supporting the administration of a club most of whose members are students;
- (d) caring for children of students;
- (e) providing legal services to students;
- (f) promoting the health or welfare of students;
- (g) helping students secure accommodation;
- (h) helping students obtain employment or advice on careers;
- (i) helping students with their financial affairs;
- (j) helping students obtain insurance against personal accidents;
- (k) supporting debating by students;
- (l) providing libraries and reading rooms (other than those provided for academic purposes) for students;
- (m) supporting an artistic activity by students;

- (n) supporting the production and dissemination to students of media whose content is provided by students;
- (o) helping students develop skills for study, by means other than undertaking courses of study in which they are enrolled;
- (p) advising on matters arising under the higher education provider's rules (however described);
- (q) advocating students' interests in matters arising under the higher education provider's rules (however described);
- (r) giving students information to help them in their orientation;
- (s) helping meet the specific needs of overseas students relating to their welfare, accommodation and employment.

21. A note at the end of new subsection (4) gives the following examples of allowable expenditure under subsection (4):

- Expenditure by the higher education provider itself where it directly provides the service in question
- Expenditure by the higher education provider where it arranges for someone else to provide the service, or the provider subsidises that person's provision of the service
- Expenditure by the higher education provider on infrastructure for the provision of the service.

22. The SSA fees collected by the Universities may be allocated and expended to various groups to provide the services listed in paragraph 20. However the ultimate responsibility to provide such services to the students lies with the Universities.

23. The services are provided to the general student population. The Universities do not collect the fee in order to provide services or facilities to a particular student or students at the Universities.

24. The Universities are not collecting the SSA fees on behalf or as agent of any third party such as student representative councils.

25. The SSA fee is not a student union membership fee.

## Ruling

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26. The SSA fee collected by the higher education providers under the HES Act is consideration for the supply of facilities and/or the supply of administrative services directly related to the supply of an education course.

27. Where the higher education provider makes a GST-free supply of an education course to a student pursuant to section 38-85 of the GST Act and the definitions of *education course* and *tertiary course*, the SSA fee charged to that student is consideration for the GST-free supply of facilities and/or administrative services.

**Note:** if a higher education provider charges a SSA fee to a student in relation to a course of study that is not GST-free those facilities and administrative services that the SSA fee is used for are also not GST-free. Goods and Services Tax Ruling GSTR 2001/1 at paragraph 37 discusses non-accredited units – which attract GST.

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**Commissioner of Taxation**

28 March 2012

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## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

28. A supply of education is GST-free pursuant to Subdivision 38-C of the GST Act. Section 38-85 states:

### **38-85 Education courses**

A supply is **GST-free** if it is a supply of:

- (a) an \*education course; or
- (b) administrative services directly related to the supply of such a course, but only if they are supplied by the supplier of the course.

29. The definition of *education course* in section 195-1 of the GST Act includes a *tertiary course*.

***tertiary course*** means:

- (a) a course of study or instruction that is a tertiary course determined by the \*Education Minister under subsection 5D(1) of the *Student Assistance Act 1973* for the purposes of that Act; or
- (aa) a course of study or instruction accredited at Masters or Doctoral level and supplied by a \*higher education institution or a \*non-government higher education institution; or
- (b) any other course of study or instruction that the Education Minister has determined is a tertiary course for the purposes of this Act.

30. Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2) defines and specifies approved tertiary courses.

31. The Universities are higher education institutions that make GST-free supplies of undergraduate and post graduate accredited higher education courses.

32. GSTR 2001/1 sets out the Commissioner's guidance on supplies that are GST-free for tertiary education courses.

### ***Fees charged by Universities***

49. A fee will be GST-free if it is charged in respect of the provision of facilities and/or the supply of administrative services directly related to the supply of a GST-free education course (but only if the administrative services are supplied by the supplier of that course).

### ***Facilities***

57. The supply of facilities that are required for the delivery of an education course is GST-free.

58. As the supply of these facilities is part of the supply of an education course, it is irrelevant whether the amount charged for the supply of facilities is included in the fee you charge for the course or whether it is charged separately.

59. Facilities include such items as

- (a) the provision and maintenance of plant, equipment, buildings and grounds;
- (b) access to libraries including the access to library books, periodicals and manuals;
- (c) access to computer and science laboratories;
- (d) access to computers and other on line resources including off-campus dial up Internet services.

60. Many universities levy an Amenities Fee or Miscellaneous Student Activity Fee to help fund the infrastructure of the university. Where this fee is used to make facilities available to the general student population it is GST-free. If the fee relates specifically to a taxable supply or supplies that are made to a particular student or students it is not GST-free.

***Example – Amenities fees charged by University***

61. *Each year, students enrolled at the University of New Victoria are required to pay an amenities fee. This compulsory fee does not confer membership of any student organisation. The fee is levied to provide facilities and services of direct benefit to the students of the university.*

62. *Facilities that are provided include plant and equipment, buildings and lockers. Facilities to make the following services available are also provided: printing and laminating, passport photos, web site, childcare and parking facilities. The amenities fee charged is for a GST-free supply.*

63. *However, when students use some of these facilities and services, for example parking and childcare facilities, it is on a user pays basis. The University must account for GST on these supplies, unless the supply is GST-free or input taxed.*

33. The SSA fee imposed by the Universities will be used to provide facilities similar to those in paragraphs 59 and 60 of GSTR 2001/1 to the general student population. Where the recipient of the supply is undertaking a GST-free education course, the SSA fee is consideration for a GST-free supply or supplies of facilities or services.

34. Paragraph 38-100(b) of the GST Act provides that a supply of membership of a student organisation is not GST-free. If the SSA fee is used to provide a student with membership of a student union, the fee is consideration for a taxable supply. However, the restrictions on use of the fee provided in section 19-38 of the HES Act (paragraphs 18-20 above) appear to preclude the SSA fee being used for this purpose.

## **Appendix 2 – Detailed contents list**

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35. The following is a detailed contents list for this Ruling:

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

GSTR 2001/1; GSTD 2002/1

*Subject references:*

- education courses
- educational Institutions
- goods and services tax
- GST education
- GST-free supply
- higher education institution
- higher education providers
- student services fee

- student amenities and services fee
- tertiary course
- university
- universities

*Legislative references:*

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 3 8-85
- ANTS(GST)A 1999 195-1
- Student Assistance Act 1973
- TAA 1953
- Copyright Act 1968

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*ATO references*

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