GSTR 2000/D12 - Goods and services tax: supplies that are GST-free for pre-school, primary and secondary education courses

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This document has been finalised by GSTR 2000/30.

Generated on: 28 November 2026, 02:57:12 AM

Draft Goods and Services Tax Ruling
Goods and services tax: supplies that are GST-free for pre-school, primary and secondary education courses

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Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners. When officially released it will be a public ruling for the purposes of section 37 of the ***Taxation Administration Act 1953*** *and may be relied upon by any person to whom it applies.*

What this Ruling is about

1. This Ruling will help you work out which supplies of pre-school, primary and secondary education courses and which supplies related to such education courses, are GST-free under Subdivision 38-C of the *A New Tax System (Good and Services Tax) Act 1999* ('GST Act'). All legislative references in this Ruling are to the GST Act unless otherwise stated.

2. This Ruling only applies to pre-school, primary and secondary courses. When we use the term 'you' in this Ruling, we mean you as the supplier of such a course.

3. The Ruling discusses the GST-free supply of administrative services, field trips and excursions, course materials, the lease or hire of curriculum related goods and student accommodation. This Ruling also deals with education related supplies that are not GST-free.

4. This Ruling does not deal with the application of Subdivision 38-G (non-commercial activities of charitable institutions, etc.) to the supplier of an education course.

Date of effect

5. This Ruling, when finalised, will apply on and from 8 July 1999 (the date of Royal Assent to the Goods and Services Tax ('GST') legislation).

Ruling

6. The supply of an 'education course' is GST-free.[1] An education course includes pre-school, primary and secondary courses. These courses are defined in the Explanations section of this Ruling.

7. The following education related supplies are GST-free:

- supply of an **education course** includes tuition, facilities and other curriculum related activities and instruction;
- supply of **administrative services** directly related to the supply of an education course if the administrative services are supplied by the supplier of the course; [2]
- supply of **course materials** for a subject undertaken in an education course;[3]
- supply by way of **lease or hire of curriculum related goods** to a student by the supplier of a pre-school, primary or secondary course provided the supplier of the course retains ownership in those goods;[4]
- supply of a **right** to receive GST-free education;[5]
- supply of an **excursion or field trip** but only if the excursion or field trip is directly related to the curriculum of an education course and is not predominantly recreational;[6]
- supply of **student accommodation** to students undertaking a primary or secondary course if the supplier of the accommodation also supplies the course;[7]
- supply of **student accommodation** to students undertaking a primary or secondary course if the accommodation is provided in a hostel whose primary purpose is to provide accommodation for students from rural or remote locations who are undertaking such courses;[8]and

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[1] Section 38-85.
[2] Paragraph 38-85(b).
[3] Section 38-95.
[4] Proposed new section 38-97 contained in the Indirect Tax Legislation Amendment Bill 2000.
[5] Paragraph 9-30(1)(b).
[6] Section 38-90.
[7] Subsection 38-105(1).
[8] Subsection 38-105(2).

- supply of cleaning and maintenance, electricity, gas, air-conditioning or heating as part of the provision of student accommodation which is GST-free.[9]
- supply of telephone, television, radio or any other similar thing as part of the provision of student accommodation which is GST-free. [10]

8. The following supplies are not GST-free under Subdivision 38 - C:

- supply of any food as part of an excursion or field trip;[11]
- supply of food as part of student accommodation;[12]
- supply by way of a sale of goods other than course materials.[13] (See paragraphs 70-83 for the definition of course materials); and
- a supply of membership to a student organisation.[14]

The basic rules of GST apply to these supplies.

9. Where the charge you make to a student includes the sale of goods (other than course materials) or the supply of goods and services that are not part of the supply of the education course, you must apportion the fee between the GST-free and taxable parts of the supply.[15] This is commonly referred to as 'unbundling' or 'disaggregation' of the charge.

10. If the charge you make to a student consists of the provision of tuition, facilities and curriculum related activities and instruction only, you are not required to apportion the fee.

11. You will need to apportion a single fee charged for the supply of student accommodation, an excursion or a field trip that includes a supply of food. The Commissioner will accept an apportionment made on a reasonable basis.

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[9] Paragraphs 38-105(3)(a) and (b).
[10] Paragraph 38-105(3)(c).
[11] Paragraph 38-90(2)(b).
[12] Subsection 38-105(4).
[13] Paragraph 38-100(a).
[14] Paragraph 38-100(b).
[15] Section 9-80.

Explanations (this forms part of the Ruling)

Education course

12. The supply of an education course is GST-free.[16] This means that no GST is payable on the supply and you are entitled to an input tax credit for anything acquired or imported to make that supply.[17]

13. The term 'education course' is defined to include (amongst other things):

- a pre-school course;
- a primary course; or
- a secondary course.[18]

14. The term 'school' means an institution that supplies pre-school courses, primary courses, secondary courses or special education courses.[19]

Pre-school course

15. A pre-school course means a course that is delivered:

(a) in accordance with a pre-school curriculum recognised by:

(i) the education authority of the State or Territory in which the course is delivered; or

(ii) a State or Territory body that has the responsibility for recognising pre-school curricula for courses delivered in that State or Territory; and

(b) by a school that is recognised as a pre-school under the law of the State or Territory.[20]

16. A pre-school curriculum includes programs for the development and education of children in the years prior to the commencement of a primary school course.

17. The term 'pre-school curriculum' used in the definition of a pre-school course includes curriculum guidelines, curriculum frameworks and similar terms used by the relevant authorities of the State or Territory.

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[16] Paragraph 38-85(a).
[17] Section 38-1.
[18] Section 195-1.
[19] Section 195-1.
[20] Section 195-1.

18. A pre-school course must be delivered by a school. A school, for the purposes of the GST Act, is an institution that is approved by the relevant state or territory body, to conduct a pre-school course.

Primary course

19. A primary course means:

(a) a course of study or instruction that is delivered:

(i) in accordance with a primary curriculum recognised by the education authority of the State or Territory in which the course is delivered; and

(ii) by a school that is recognised as a primary school under the law of the State or Territory; or

(b) any other course of study or instruction that the Education Minister has determined is a primary course for the purposes of this Act.[21]

20. A primary course is any course delivered by a school in accordance with the primary curriculum recognised by the education authority of the State or Territory. A school, as defined in the GST Act, is an institution approved by the education authority of a state or territory, to conduct a primary course.

21. In practice, schools may vary the delivery of the primary curriculum. In these circumstances, the school curriculum is still a primary course.

22. Regardless of whether a course of study or instruction meets the requirements of paragraph (a) of the definition of primary course, the Education Minister[22] can determine that a course is a primary course for the purposes of the GST Act.[23]

Secondary course

23. A secondary course means:

(a) a course of study or instruction that is a secondary course determined by the Education Minister under

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[21] Section 195-1.

[22] Section 195-1. All references to the Education Minister are references to the Commonwealth Education Minister.

[23] Section 195-1. A determination made by the Education Minister must be approved by Ministerial Council under the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations at Schedule 2 of the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999*.

subsection 5D(1) of the *Student Assistance Act 1973* for the purposes of that Act; or

(b) any other course of study or instruction that the Education Minister has determined is a secondary course for the purposes of this Act.[24]

24. Under the Education Minister's determination, a secondary course can be delivered by a recognised secondary school, a registered training organisation, a higher education institution or a special school.[25]

25. A secondary course includes all secondary courses covered by the determination made by the Education Minister under the *Student Assistance Act 1973*.[26] This determination is also used to identify those courses that students must be undertaking to be eligible for income support as full-time students. The determination lists the type of course and types of educational institutions that can deliver the course. The eligibility of courses for the *Student Assistance Act 1973* is reviewed periodically by the Education Minister.

26. Apart from any determination referred to in paragraph (a) of the definition of a secondary course, the Education Minister can determine that any other course of study or instruction is a secondary course for the purposes of paragraph (b) of the definition.[27]

27. Only courses covered by the Education Minister's determination under subsection 5D(1) of the *Student Assistance Act 1973* or under a separate determination, are GST-free as secondary courses.

28. It is considered that reference to subsection 5D(1) of the *Student Assistance Act 1973* includes both paragraphs (a) and (b) of that subsection and a secondary course includes a part of a course of study or instruction.[28] Therefore parts of a secondary course including the study of one subject or module is covered by the Education Minister's determination under subsection 5D(1) of the *Student Assistance Act 1973* and is GST-free.

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[24] Section 195-1.
[25] Determination of Education Institutions and Courses under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973***.**
[26] A copy of the Education Minister's determination can be found on the tax reform website.
[27] A determination made by the Education Minister must be approved by Ministerial Council under the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations.
[28] Compare the reference to paragraph 5D(1)(a) to the wording in the GST Act.

Education supplies

29. The supply of an education course is GST-free.[29] In certain circumstances, the following associated supplies are also GST-free:

- administrative services;[30]
- lease or hire of curriculum related goods,[31]
- course materials[32]
- rights to receive a GST-free education course;[33]
- excursions or field trips;[34] and
- student accommodation.[35]

Each of these education supplies is explained in the paragraphs below.

Supply of an education course

30. Where you charge a fee for the supply of an education course that consists of tuition, facilities and other curriculum related activities and instruction only, this fee is GST-free.[36]

Tuition

31. The terms 'tuition' and 'curriculum' are not defined in the GST Act and therefore these terms take on their ordinary meanings.

32. The Macquarie Dictionary defines the term '*Tuition*' as – '**1**. teaching or instruction, as of pupils, **2**. the charge or fee for instruction'. '*Curriculum*' is defined as '1.the aggregate of courses of study given in a school, college, university, etc 2. The regular or a particular course of study in a school, college, etc'.[37]

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[29] Paragraph 38-85(a).
[30] Paragraph 38-85(b).
[31] Proposed new section 38-97 contained in the Indirect Tax Legislation Amendment Bill 2000.
[32] Section 38-95.
[33] Paragraph 9-30(1)(b).
[34] Section 38-90.
[35] Section 38-105.
[36] Paragraph 38-85(a).
[37] *The Macquarie Dictionary* 1997, 3rd edition, Sydney.

33. It is not the intention of this ruling to define what a particular curriculum for a pre-school, primary or secondary course should include. This is the responsibility of the State and Territory Departments that are responsible for approving those courses.[38]

Facilities

34. The supply of facilities is part of the supply of an education course. Facilities include such items as the provision and maintenance of buildings, grounds, libraries, computer and science laboratories.

35. Facilities also include access to the Internet, the provision of classroom sets of textbooks, sporting and musical equipment, computers and any other curriculum related items.

36. As the supply of facilities is part of the supply of an education course, it is irrelevant whether the amount charged for the supply of the facilities is included in the fee you charge for the course or whether it is charged separately. It is also irrelevant whether payment for the supply of facilities is made voluntarily or compulsorily.

37. Voluntary contributions made to school building funds will be considered to be gifts if the school building fund has gift deductibility status under section 30-25 item 2.1.10 of the *Income Tax Assessment Act 1997*. Gifts to a non-profit body are not consideration for a supply and therefore will not be subject to GST[39].

Example - facilities

38. Rowing is offered as part of the Physical Education subject at St Patrick's Secondary School. The school owns rowing sheds that are located on the local river that house the boats and equipment. The rowing sheds are treated as part of the school facilities.

Example - capital levy

39. MVC Primary School charge parents a capital improvement levy. The levy is a compulsory contribution made by parents towards the general infrastructure of the school, including the school buildings. This fee is consideration for the supply of the school facilities. As the supply of facilities is part of the supply of an education course, this contribution is GST-free.

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[38] Whilst the relevant State or Territory body approves the curricula for secondary courses, the Education Minister determines whether a secondary course is GST-free.

[39] Paragraph 9-15(3)(b).

Example - Internet charges

40. Dianne is undertaking her final year of a secondary course. Part of the tuition fee charged for the year includes a charge for access to the school's Internet service. Dianne is allocated 10 hours of Internet use to complete curriculum related activities during the year.

41. Access to the school's computer services is part of the school facilities and the charge for this service is GST-free. A supply by an Internet service provider direct to the student is subject to GST.

Curriculum related activities and instruction

42. The supply of curriculum related activities is part of the supply of an education course. Curriculum related activities include visits to you by organisations such as animal farms, theatre companies and science fairs.

43. The supply of curriculum related instruction is part of the supply of an education course. Curriculum related instruction includes instruction by external tutors or any third parties engaged by you to deliver part or all of the curriculum. It also includes remedial and advanced (extension) teaching provided by you for individual students.

44. As the supply of curriculum related activities and instruction is part of the supply of an education course, it is irrelevant whether the amount charged for the activity or instruction is included in the fee you charge for the course or whether it is charged separately. The amount charged must be paid to you, as the supplier of the education course. If the amount charged for the activities or instruction is paid by students to the provider of the activities or instruction, it is not GST-free to students as a supply of an education course.[40]

45. However, if the provider is approved by the relevant state or territory body to conduct a pre-school, primary or secondary course, the supply made to students is the supply of an education course in its own right and is GST-free.

46. If the supply of the activity or instruction to you is made by an entity that is registered or required to be registered, the supply to you is a taxable supply[41] and the amount you pay for the activities or instruction includes GST. You are entitled to input tax credits in respect of the GST paid on the acquisitions by you of activities or

[40] The provider of the curriculum related activities should also refer to section 38-250 of the GST Act.
[41] Section 9-5.

instruction. The subsequent supply that you make to students is GST-free.

Example – Remedial Teaching

47. Georgia is a Year 7 student and the school engages a private tutor to assist Georgia with her reading skills. The private tutor charges the school a GST inclusive fee. Engaging the services of private tutors to assist students with learning difficulties is a creditable acquisition and the school is entitled to an input tax credit for the GST paid. The subsequent supply by the school to Georgia is GST-free.

Example – Drug Education

48. An organisation offers drug education services to local organisations and community groups including schools. The organisation approaches Warranvale High to park their caravan in the school grounds and to give students the option of attending their seminar on drugs.

49. The organisation charges the students directly for attending their seminar. The charge is a GST-inclusive fee as the seminar is not conducted by the school.

50. *Had the school contracted with the organisation directly, the fee charged to the school would still be taxable. If the school determined that the course was related to its curriculum, the fee charged to students would be GST-free and the school would be entitled to claim an input tax credit.*

Supply of an education course – apportioning the fee

All Inclusive Fee

51. Where you charge a single fee to a student which may include any of the following:

- the sale of goods;
- the supply of items that are not part of the supply of the education course;
- a field trip or excursion that is predominantly recreational;
- the provision of food; or
- a membership to a student organisation;

you must apportion the fee between the GST-free, input taxed and taxable parts of the supply. (The above list is not exhaustive. See Appendix 1 for a comprehensive case study of the apportionment between taxable and GST-free supplies).

Separate Fees

52. Where you calculate the amount owing by a student by reference to separate supplies, you are required to determine the GST liability for the taxable part of each supply. You are required to do this regardless of how you label the supply, for example, subject levy, resource levy, general contribution, combined levies, administrative fees or levies.

53. Where you calculate the amount owing by a student by reference to an itemised list, you are required to determine the GST liability in respect of each item.[42]

Example - separate supplies

54. Mary is undertaking a secondary education course. As part of the school's secondary curriculum, she takes media studies that includes photography.

55. The school charges a tuition fee for the year and additional subject levies, including a media studies levy. The levy includes a charge for the media studies instruction and the purchase of a camera. The school bills Mary's parents for the tuition fee and the levy.

56. As the levy includes the sale of a camera, that supply by the school is a taxable supply and GST will be included on that part of the subject levy that relates to the sale of the camera.

Example - supplies not delivered by the supplier of the education course

57. A music teacher gives private music lessons to school students. These lessons are not delivered by the supplier of an education course. The supply of the private music lessons is not the delivery of part or all of the curriculum.

58. If the music teacher is registered for GST purposes, the supply of private music lessons is a taxable supply and is subject to GST – it is not the supply of an education course. It is irrelevant whether the

[42] Refer to Draft Goods and Services Tax Ruling GSTR 1999/D10 on tax invoice requirements.

supply of music lessons in this fashion is made in a school building or at the music teacher's studio.

Students attending two schools

59. Sometimes students enrolled at a school also attend classes at a second school paying fees at both schools. These school fees, to the extent that they are for the supply of an education course as outlined in this Ruling, are GST-free.

Single Subjects

60. Some students are required to undertake one or more secondary subjects conducted by a tertiary institution as prerequisites to studying a tertiary course. Single secondary subjects offered by a tertiary institution will be GST-free as a supply of a secondary education course.

61. Single subjects from an approved secondary course taken in isolation are covered by the Education Minister's determination under subsection 5D(1) of the *Student Assistance Act 1973,* and are GST-free.

Deposits

62. GST is not payable on deposits held as security unless the amount is subsequently forfeited or applied towards the consideration for a taxable supply.[43]

63. For example, if a student pays a security deposit in addition to the hire charge for a musical instrument he or she uses while playing in the school concert band and the student does not return the instrument, you are liable for GST equal to $1/11^{th}$ of the amount of the deposit retained. You account for GST payable in the tax period in which the deposit is forfeited for the taxable supply. [44]

Supply of administrative services

64. If you charge for the supply of an administrative service directly related to the supply of an education course, then the supply is GST-free under paragraph 38-85(b).

65. The supply of administrative services directly related to the supply of an education course includes:

(a) enrolment processing;

[43] Division 99.
[44] Paragraph 99-5(1)(a) and paragraph 9-10(2)(g) of the GST Act.

(b) issue of identity cards;

(c) assessment of students;

(d) processing academic and sporting results;

(e) preparation and printing of student progress reports;

(f) arrangement of meetings with students, parents, guardians;

(g) record-keeping;

(h) administration of Speech Days and other similar school activities;

(i) administration of the school library;

(j) administration of a textbook scheme;

(k) administration of the sale, lease or hire of school equipment to students as part of the supply of an education course to the students; and

(l) administration of the supply of course materials.[45]

Example – Library Fees

66. A library at a secondary school charges students for replacing lost or damaged library cards, lost and damaged books and for the late return of library books.

67. The fee charged for replacing a lost or damaged library card is part of the administration of the library directly related to the supply of a secondary course and is GST-free.

68. A nominal charge for a lost or damaged library book is regarded as part of the supply of an education course and is GST-free. However, if the amount of the fine approximates the purchase price of the book, this supply is akin to a sale and the amount charged will be subject to GST.

69. Nominal fines charged for the late return of library books that are designed to induce compliant behaviour with the use of library facilities are also incidental to the supply of an education course and are not subject to GST.

Supply of course materials

70. If the fee you charge for the supply of an education course includes a fee for course materials provided as part of subjects

[45] The list of administrative services is not exhaustive.

undertaken in an education course, the supply is GST-free under section 38-95 of the GST Act.

71. Course materials are materials or items supplied by you to students. The course materials are required by the student in undertaking a pre-school, primary or secondary course and are used up or convert into classwork, such as paintings etc. Hence the effective life of course materials is limited to the duration of the course.

72. 'Consumed and transformed' has a narrow application[46] in that it applies to materials that are provided by you to students in undertaking a subject such as cooking ingredients in a cooking class, cotton in a textiles class etc. However it is envisaged that course materials could extend to cover things that are also effectively used up in undertaking the course.

73. The term '**consumed**' means destroyed or expended by use; used up.[47] In the definition of course materials, 'consumed' is qualified by the requirement that it be '… by students undertaking the course for the purposes of the course'. So, if in undertaking a subject in an education course, a student uses up or expends materials, the student has consumed course materials. For example, the supply of a workbook that requires the student to complete exercises in it is a course material and therefore is GST-free.

74. The term '**transformed**' means changed in form; changed to something of a different form; or changed in appearance, condition, nature or character, especially where the change is complete or extensive.[48] It has also been defined to mean 'to change in character or condition; to alter in function or nature'.[49] Examples of materials that are changed in form include cooking ingredients in a home economics class, or wood in a manual arts class, or chemicals in a chemistry class.

75. Course materials are defined as materials that you supply that are **necessarily** consumed or transformed by the students undertaking the course, for the purpose of the course.[50] This requirement infers that the materials must be essential or fundamental for the student to use up or convert in undertaking the course. If the student purchases materials directly from a third party such as a stationer, the supply is not the supply of course materials and the basic rules for the GST apply.

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[46] Refer to the explanatory memorandum to the GST Act, paragraph 5.54.
[47] *The Macquarie Dictionary* 1997, 3rd edition, Sydney.
[48] *The Macquarie Dictionary* 1997, 3rd edition, Sydney.
[49] *The Oxford English Dictionary*, volume 2, (Micrographic edition) Oxford, Clarendon Press, 1987.
[50] Section 195-1.

76. The following are examples of course materials: [51]

- photocopied or printed educational materials that specifically relate to the course;
- taped lectures that specifically relate to a course;
- course notes for a particular course;
- unexposed film and developing chemicals;
- art supplies;
- ingredients used in a cooking class, wood used in a woodwork class and chemicals used in a chemistry class;
- work books that provide space for students to complete exercises, etc.; and
- consumable stationery items to the extent to which they are necessary for the course.

77. The following are examples of materials that are not course materials: [52]

- textbooks[53];
- musical instruments;
- computers;
- calculators; and
- sporting equipment.

78. Although the items mentioned in paragraph 77 may be used in undertaking courses, these items retain their generic application for other purposes and are not consumed or transformed in the manner outlined in paragraphs 71 to 75.

Example – Course Packs

79. At the beginning of the year a primary school charges each student a fee for a 'course pack'. The course pack includes consumable supplies such as art materials, exercise books, pencils, paint, a calculator and compass.

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[51] The list is not exhaustive.

[52] The list is not exhaustive and these items may be considered to be facilities. Refer to paragraphs 34 to 41.

[53] The Education Textbook Subsidy Scheme applies to textbooks. The Department of Education Training and Youth Affairs (DETYA) is administering the Educational Textbook Subsidy Scheme. Information on the scheme can been obtained by telephoning DETYA's call centre on 1300 139 249 or alternatively by accessing the following web site, www.textbooksubsidy.gov.au.

80. The students use the course packs in undertaking their primary course. The consumable supplies such as art materials, exercise books, pencils and paint are course materials that students use up and convert into classwork in undertaking their primary course and are GST-free.

81. The calculator and compass are not course materials and are subject to GST as these items are not consumed or transformed as part of the primary course.

82. The charge for the course pack needs to be apportioned between the GST-free and taxable parts of the supply.

83. After 1 July 2000 the primary school reviews its practices and supplies two course packs to students. One pack contains GST-free course materials and the other pack includes the materials subject to GST.

Supply by way of lease or hire of goods

84. The lease or hire of curriculum-related goods to students undertaking a pre-school, primary or secondary course are GST-free provided certain conditions are met.

85. To qualify for this treatment, the following four conditions must be met:-

(i) the supply must be directly or principally for use by a student in undertaking a pre-school, primary and secondary course; and

(ii) the goods must be hired or leased by you as the provider of a pre-school, primary or secondary course; and

(iii) at all times, you retain the right to decide who uses the goods and the use to which the goods will be put; and

(iv) there is not any transfer, or agreement to transfer ownership of the goods or imposing an obligation, or conferring a right, to transfer ownership of the goods to any student at any stage.[54]

86. The supply you make is in the nature of hire when a student has exclusive use of the thing supplied through payment of a fee or charge, whether the charge is separate to or embedded in another fee or charge.

[54] Proposed new section 38-97 contained in the Indirect Tax Legislation Amendment Bill 2000.

87. For example, the hire of textbooks and musical instruments, or the supply of a laptop computer by way of lease for a student to use in undertaking a pre-school, primary or secondary course will be GST-free.

Example – Laptop computers

88. Joshua attends Blair College and needs access to a laptop computer in undertaking his secondary course. Blair College leases a number of laptop computers from Howard's Computer Store. As part of the lease arrangement with Howard's Computer Store, Blair College has the right to decide who uses the laptop computers and has the right to subsequently hire the laptop computers to its students for a fee.

89. The hire of the laptop computer for Joshua's exclusive use is GST-free as the hire arrangement between Joshua and Blair College does not include any agreement to transfer ownership of the goods to Joshua at any stage.

Supply by way of sale, lease or hire of goods other than course materials

90. If you supply by way of a sale, lease or hire of goods other than:

- course materials;[55] or
- education related goods;

then the supply attracts GST.[56] The sale of education related goods also attracts GST.

91. A sale by you occurs where property in the goods passes to the recipient of the supply.

92. The supply of goods and services attracts GST under section 9-5 as taxable supplies. Examples of supplies of goods and services supplied by you that are subject to GST by virtue of section 9-5 are contained in Appendix 2 to this Ruling.

[55] Section 38-100 of the Act does not imply that course materials can be sold GST-free. Course materials are GST-free under section 38-95 of the Act as course materials.
[56] Section 38-100.

Example - Recorder

93. Marvin attends a primary school that charges a music levy for the supply of a recorder for use during the year. Marvin retains ownership of the recorder at the completion of the course.

94. The supply of the recorder is a sale of goods that are not course materials and is subject to GST.

Right to receive GST-free education

95. The supply of a right to receive a supply that would be GST-free under Subdivision 38-C is also GST-free. [57]

96. Where you charge a fee that creates a right for a student to receive a pre-school, primary or secondary course, that supply is GST-free. Such fees include charges for enrolling in a course and fees charged to confirm a student's place at a school.

97. Where an agent acting on your behalf charges a fee that legally binds you to provide a pre-school, primary or secondary course to a student, that fee is also GST-free.

98. Where you charge a fee that merely creates a right to be considered for a position in a school and it does not guarantee entry to a pre-school, primary or secondary course, that charge is not a supply of a right to receive a GST-free course and is subject to GST. Such rights include putting a student's name on a waiting list.

Example – Enrolment Fee

99. A local council organises the enrolment process for all children in its district in pre-school courses. Some of the pre-school courses are conducted by the council and some are offered by private providers. The council acts as agent for the private providers in allocating children to their courses. The council charges parents a fee of $50 that guarantees each child a place in the closest pre-school located to their address. When the fee is collected from the parents it is not known whether a child will be enrolled in a council run pre-school course or a privately run pre-school course. In either case, the council is either acting as agent or acting in its own right in allocating rights for children to attend pre-school courses.

100. The fee creates a right for a student to receive a pre-school course and is a GST-free supply.

[57] Paragraph 9-30(1)(b).

Supply of excursions or field trips

101. If you supply to students excursions or field trips that are directly related to your curriculum and, if they are not predominantly recreational in nature, the supply is GST-free, except for any food component.

102. You make a supply of an excursion or field trip where you coordinate the various elements for the recipients of the supply. These elements include transport, accommodation, entry fees, etc. You work out the charge of the excursion or field trip to each student. Where this is the case, the supply of the excursion or field trip is GST-free to the student.

103. Where you engage a third party to provide all or a part of your excursion or field trip and you pay the third party for this, you are entitled to an input tax credit for the GST paid on the creditable acquisition. The subsequent supply to the student by you is GST-free.

104. It is administratively difficult for a third party to determine whether an activity is directly related to the school curriculum. Only you as the provider of the course can make that decision. Consequently, where a third party supplies any part of the excursion or field trip directly to students and/or staff, this supply is a taxable supply.

105. Any supply of food as part of the excursion, whether supplied by you or by another supplier, is not GST-free under Subdivision 38-C.[58] It is subject to the GST rules relating to food that are contained in Subdivision 38-A.

106. The Commissioner will accept an apportionment on a reasonable basis between the cost of the excursion and the supply of food and other costs. You should apply the basis for apportionment consistently and retain appropriate records.

107. If the activities are directly related to your curriculum, you must then assess whether they are predominantly recreational. To determine whether an excursion or field trip is predominantly recreational, you must consider all the relevant factors relating to the activities in the excursion or field trip. For instance, the time, cost, or purpose of the excursion or field trip would be relevant in determining whether the activities are predominantly recreational. For example, an end of year trip to a Gold Coast theme park or a trip to watch a NRL football match would be predominantly recreational and GST would be payable on these trips.

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[58] Paragraph 38-90(2)(b).

Example - GST-free excursion or field trip and supply of food that is not GST-free

108. A primary school supplies an excursion to its Year 5 class to a capital city for a four day visit. The school arranges to visit the art gallery, museum and other venues that directly relate to the school curriculum undertaken by the students. The class also attends the local cinema and swimming pool for recreation.

109. The school principal considered that the excursion was directly related to the school curriculum. He also considered whether the excursion was predominantly recreational. He considered the time, cost and purpose of the excursion. As the time to be spent at the cinema and swimming pool totalled five hours over the four days and as the cost of these activities was only $15 per student compared to the total cost of the excursion, the principal determined that the supply of the excursion was not predominantly recreational and the total amount remained GST-free.

110. The supply of the food component of the excursion is subject to the GST rules relating to the supply of food. As the food was supplied on premises, the food component is subject to GST.

111. The travel, accommodation and entry fees were packaged by a travel agent for the school. The travel agent's quote of $660 (GST inclusive) per student was accepted by the school. The supply of the excursion by the school to each student is GST-free. The school charges each student $600 and collects the money prior to paying the travel agent. The school is entitled to an input tax credit of $60 per student for the creditable acquisition of the travel arrangements.

Example - supply of an excursion to sporting events directly related to the curriculum

112. Students from secondary schools from all over the State attend the annual State Secondary Schools' Athletics championships ('SSSA'). The students represent the particular region in which their school is located. They are eligible for these championships by qualifying through school, district and regional competition. Competitors purchase their region's athletics uniform, pay registration fees and pay for travel to get to the venue.

113. All these charges are paid by the students to the schools. The schools are entitled to input tax credits for the creditable acquisitions of the uniforms, registration and travel. Participation in the SSSA championships at the representative level is directly related to the curriculum of a secondary course. The supply by the schools of the excursion to the SSSA championships is GST-free. The supply of the athletics uniform is a taxable supply for which the school will obtain an input tax credit.

Example - taxable supply by a third party of an excursion to a swimming carnival

114. The staff and students of a girls' college attend an inter-school swimming carnival to participate in the carnival and support the school team. The transport is supplied by a private bus company – it packages the transport and entry to the pool. The students and staff pay the company directly for the excursion.

115. Although the sport of swimming and participation in inter-school sport are directly related to the school curriculum, the supplier of the education course does not supply the excursion. For this reason, the supply of the excursion is not GST-free to the students. The supply of the excursion to staff is not GST-free.

116. *However, had the girls' college engaged the bus company to supply the packaged excursion, the supply to students and staff would have been GST-free.*

Supply of student accommodation

117. A supply of student accommodation[59] to students undertaking primary and secondary education courses is GST-free if the supply of the accommodation is made by the supplier of the course.[60]

118. Accommodation provided by a hostel whose primary purpose is to provide accommodation to students from rural or remote locations is GST-free to students undertaking a primary or secondary education course. [61]

119. Services supplied to students as part of the student accommodation, such as the supply of cleaning and maintenance, electricity, gas, air-conditioning or heating are GST-free.[62]

120. Also, the supply of telephone, television, radio or any other similar thing as part of the provision of student accommodation is GST-free.[63]

121. Where a school or hostel supplies food to boarding students as part of their board, the supply is subject to the GST rules relating to food that are contained in Subdivision 38-A.[64]

122. Personal laundry services supplied to students that are incidental to the provision of student accommodation are GST-free.

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[59] Subsection 38-105(3).
[60] Subsection 38-105(1).
[61] Subsection 38-105(2).
[62] Paragraphs 38-105(3)(a)&(b).
[63] Paragraph 38-105(3)(c).
[64] Subsection 38-105(4).

However, where a separate fee is charged for personal laundry services, these supplies are not incidental to the student accommodation and attract GST under section 9-5 of the Act.

123. Where a school or hostel supplies to students trips to cinemas, or trips to the local shopping centres as part of their board, these supplies attract GST under section 9-5 of the Act as taxable supplies.

124. The Commissioner recognises that there may be difficulties in differentiating between the accommodation, food and taxable supplies of a single charge for board or hostel accommodation. In view of this, the Commissioner will accept an apportionment on a reasonable basis between the cost of the accommodation, the supply of the food and the supply of other taxable supplies. This basis is up to you. You should apply the basis of apportionment consistently and retain appropriate records.

Example - GST-free supply of student accommodation

125. Michael is a Year 10 student who boards at a school in Sydney. As the supplier of the accommodation is the school, the supply of the student accommodation to Michael is GST-free, except for the supply of food. The school considers Subdivision 38-A and determines that the supply of food to its boarders is taxable.

126. In order to apply the GST rules, the bursar has to decide whether to cost the food supplied directly or by reference to an apportionment. A report is prepared on the value of food and accommodation in the boarding fee. The bursar analyses historical and contemporary data and concludes that food consistently represents 28 per cent of the school's charge for board and accommodation. This percentage does not vary significantly from year to year. The bursar decides that this is a reasonable basis on which to determine GST liabilities.

127. Michael's fees include the GST applicable to the food supplied as part of the supply of student accommodation.

Record keeping - general requirements

128. If you make a taxable supply, a creditable acquisition or a creditable importation, you must keep records that show and explain all transactions and other acts you engage in that are relevant to that taxable supply, acquisition or importation. You must retain those records for at least five (5) years after the completion of the transaction or acts to which they relate. The records must be such as to enable your liability under the GST Act to be readily ascertained.

129. It follows that you should retain records relating to the calculation of taxable supplies and GST-free supplies. Records that you usually keep for administrative or accounting purposes should be sufficient to satisfy these requirements. Where this is not the case, you may need to keep additional records.

Tax Invoices

130. You must provide a tax invoice for any of the taxable supplies you make within 28 days of being requested by the recipient of the supply.[65]

131. The regulations for tax invoices specify that when a mixed supply is made, that consists of taxable and GST-free supplies, each supply must be clearly identified and a brief description given on the tax invoice.

132. An invoice can be generated for a GST-free supply. The same format as a tax invoice may be used provided the invoice clearly specifies that GST has not been charged on the supply.

Appendix 1

Case study: apportionment between taxable and GST-free supplies

133. A school has an annual school fee of $11,870 (excluding GST) for Years 8 to 10.

134. The fee for the 'course' covers salaries, facilities (including provision of lockers), utilities, individual notebook computers, textbook hire and school uniforms, the ongoing maintenance and construction of school buildings and other costs related to the supply of the 'course' (laboratory coats, camps and computer administration).

135. The school has a GST liability for that part of the annual school fee that represents the supply of a school uniform. GST is payable on the remaining supply and the school is entitled to an input tax credit for anything acquired or imported to make any supply.

136. The school must determine the GST liability for the supply of the 'course' by apportioning the annual school fee between its taxable and GST-free components.

137. To work out the school's GST liability on the annual school fee for the 'course', the school identifies the taxable parts of the supply that consists of the following:

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[65] Refer to Draft Goods and Services Tax Ruling GSTR 1999/D10 on tax invoices.

Part of the supply of the 'course'	Value ($) (GST exclusive)	GST-free Yes (Y)/ No (N)	Explanation
Tuition	3,500	Y	Tuition is part of the supply of an education course: paragraph 38-85(a).
Facilities and maintenance thereof (including provision of lockers)	2,850	Y	Facilities are part of the supply of an education course: paragraph 38-85(a).
Utilities	250	Y	Facilities are part of the supply of an education course: paragraph 38-85(a).
Individual notebook computer	2,900	Y	Lease of curriculum related goods: section 38-97 of the Indirect Tax Legislation Amendment Bill 2000.
Textbook hire	500	Y	Hire of curriculum related goods section 38-97 of the Indirect Tax Legislation Amendment Bill 2000.
School uniforms	1,000	N	Sale of goods that are not course materials: paragraph 38-100(a).
School building levy	220	Y	Facilities are part of the supply of an education course: paragraph 38-85(a).
Laboratory coats	100	Y	Use of facilities: section 38-85.
Camp, excluding food	280	Y	Field trip or excursion (not predominantly recreational): section 38-90.
Computer administration	270	Y	Supply of an administrative service: paragraph 38-85(b).
Annual school fee	**11,870**	-	-

* *For GST purposes, a 'maintenance levy' is treated similarly to a school building fund charge.*

138. The taxable parts of the fee total $1,000. The GST on the taxable value is $100 (10 per cent of $1,000). The school is liable for $100 GST on the supply of the 'course'.

139. The school sends out an invoice to the parents showing the annual school fee of $11,970 (made up of $10,870 GST-free, $1,000 taxable part of the supply and $100 GST).

Appendix 2

140. The following education related supplies of **goods** (that are not course materials) are subject to GST where they are supplied by way of sale. The list is not exhaustive:

(a) school bags and uniforms;

(However, where you facilitate the sale of second-hand uniforms, bags or books on behalf of students/parents and you do not receive any commission, the sale is not a taxable supply by you.)

(b) school insignia patches and honour blazers;

(c) sports clothes;

(d) (If you make a supply of second-hand clothes and other goods, you should consider whether the supply is GST-free under Subdivision 38-G.)

(e) school products or goods produced and sold by the school (such as paintings, crafts, wood work and similar goods);

(f) musical instruments;

(g) equipment; and

(h) new and second-hand books.[66]

141. The following education related supplies of **services** are subject to GST. The list is not exhaustive.

(a) advertising space in the school magazine, newsletter or billboards

(Where you receive a commission on the sale of goods, services or anything else, the commission is consideration for the supply. GST is payable because you are making a taxable supply.);

(b) debutante ball;

[66] If you make a supply of second-hand furniture, books or other goods, you should consider whether the supply is GST-free under Subdivision 38-G.

(c) movie nights where they are not related to the curriculum;

(d) school facilities supplied to third parties;

(e) transport for students to and from school; and

(f) before and after school care.[67]

(If you make a supply of before and after school care, you should consider whether the supply is GST-free under Subdivision 38-C - Childcare.)

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[67] If you make a supply of before and after school care, you should decide whether the supply is GST-free under Subdivision 38-D. This Subdivision covers the supply of child care by suppliers registered under the *Childcare Rebate Act 1993.*

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Your comments

143. If you wish to comment on this draft Ruling, please send your comments promptly by **16 June 2000** to:

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Commissioner of Taxation
31 May 2000

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

GSTR 2000/D10

Subject references:

- administrative services
- course materials
- deposits
- education
- education course
- education Minister
- excursions or field trips
- food
- GST-free supplies
- input taxed supplies
- pre-school course
- primary course
- secondary course
- student accommodation
- taxable supplies

Legislative references:

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- ANTS(GST)A99 9-10(2)(g)
- ANTS(GST)A99 9-15(3)(b)
- ANTS(GST)A99 9-30(1)(b)
- ANTS(GST)A99 9-30(2)
- ANTS(GST)A99 Subdiv 38-A
- ANTS(GST)A99 Subdiv 38-C
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- Student Assistance Act 1973 subs 5D(1); subs 3(1)
- ITAA 1997 30-25
- ANTS(CSFA)A99 Sch 2

ATO references:
NO 99/17934-1
BO
ISSN: 1443 - 5160