

# ***GSTR 2002/D5 - Goods and services tax: supplies that are GST-free as professional or trade courses***

 This cover sheet is provided for information only. It does not form part of *GSTR 2002/D5 - Goods and services tax: supplies that are GST-free as professional or trade courses*

This document has been finalised.

There is an [Erratum notice](#) for this document.

## Draft Goods and Services Tax Ruling

### Goods and services tax: supplies that are GST-free as professional or trade 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 entity to whom it applies.*

#### **What this Ruling is about**

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1. This Ruling explains the meaning of ‘professional or trade course’ in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The supply of a course that meets the requirements of the definition is an education course that is GST-free under paragraph 38-85(a).
2. Unless otherwise stated, all legislative references in this Ruling are to the GST Act. When we use the term ‘you’ in this Ruling, we mean you as the supplier of a course.
3. This Ruling does not discuss the supply of administrative services, excursions or field trips, and course materials. Those supplies are explained in Goods and Services Tax Rulings GSTR 2000/30: supplies that are GST-free for pre-school, primary and secondary courses, and GSTR 2001/1: supplies that are GST-free for tertiary education courses.
4. This Ruling does not deal with the application of Subdivision 38-G (that deals with non-commercial activities of charitable institutions).

#### **Date of effect**

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5. This draft Ruling represents the preliminary, though considered, view of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applied from 1 July 2000. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration*

*Act 1953* and may be relied upon, after it is issued, by any entity to whom it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

## Background

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6. The supply of an education course is GST-free under section 38-85. Paragraph (j) of the definition of ‘education course’ in section 195-1 includes a ‘professional or trade course’.

7. A ‘professional or trade course’ is defined in section 195-1 as:

‘a course leading to a qualification that is an *essential prerequisite*:

- (a) for entry to a particular profession or trade in Australia; or
- (b) to commence the practice of (but not to maintain the practice of) a profession or trade in Australia.’

8. For the purposes of the definition of a ‘professional or trade course’ the term ‘essential prerequisite’ is defined in section 195-1 in the following terms:

‘a qualification is an *essential prerequisite* in relation to the entry to, or the commencement of the practice of, a particular profession or trade if the qualification is imposed:

- (a) by or under an industrial instrument;<sup>1</sup> or
- (b) if there is no industrial instrument for that profession or trade but there is a professional or trade association that has uniform national requirements relating to the entry to, or the commencement of the practice of, the profession or trade concerned - by that association; or
- (c) if neither paragraph (a) nor (b) applies but there is a professional or trade association in a State or Territory that has requirements relating to the entry to, or the commencement of the practice of, the profession or trade concerned - by that association.’

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<sup>1</sup> ‘Industrial instrument’ is defined in section 995-1 of the *Income Tax Assessment Act 1997*.

9. Many people enter professions and trades every year. Entry may be through workplace training (including apprenticeship), formal education, or both. Various educational institutions, professional or trade associations, and government and non-government bodies supply the education or training leading to qualifications for entry.

10. The courses that are potentially covered by this Ruling range across diverse professions and trades, including trades relating to the licensed operation of various equipment or machinery.

11. This Ruling deals only with professional or trade courses. A course that you supply may be GST-free as another type of education course, for example, a tertiary course.<sup>2</sup> If your course is GST-free as another type of education course, you do not need to consider whether it is also GST-free as a professional or trade course.

12. In this Ruling, unless otherwise indicated, a reference to a ‘qualification that is an essential prerequisite’ is a reference to ‘a qualification that is an essential prerequisite for entry to, or to commence the practice of, a particular profession or trade’.

## **Ruling and explanations**

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13. The course you supply will be a professional or trade course as defined in section 195-1 if:

- it is a course leading to a qualification (see paragraphs 32 to 40); and
- the qualification is an ‘essential prerequisite’ (see paragraphs 45 to 77).

14. A course that leads to a qualification that is an essential prerequisite for maintaining or progressing within the practice of a profession or trade is not a professional or trade course (see paragraphs 96 to 99).

15. If a person cannot enter, or commence practising in, a profession or trade without a particular qualification, a course that leads to that qualification is a professional or trade course.

16. To decide whether the course you supply is a professional or trade course, you need to ask whether there is a sufficiently direct link between the course, and a qualification that is recognised and imposed for admission to a particular profession or trade. If a sufficiently direct link does exist, then the course is a professional or trade course.

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<sup>2</sup> Tertiary courses are discussed in Goods and Services Tax Ruling GSTR 2001/1: supplies that are GST-free for tertiary education courses.

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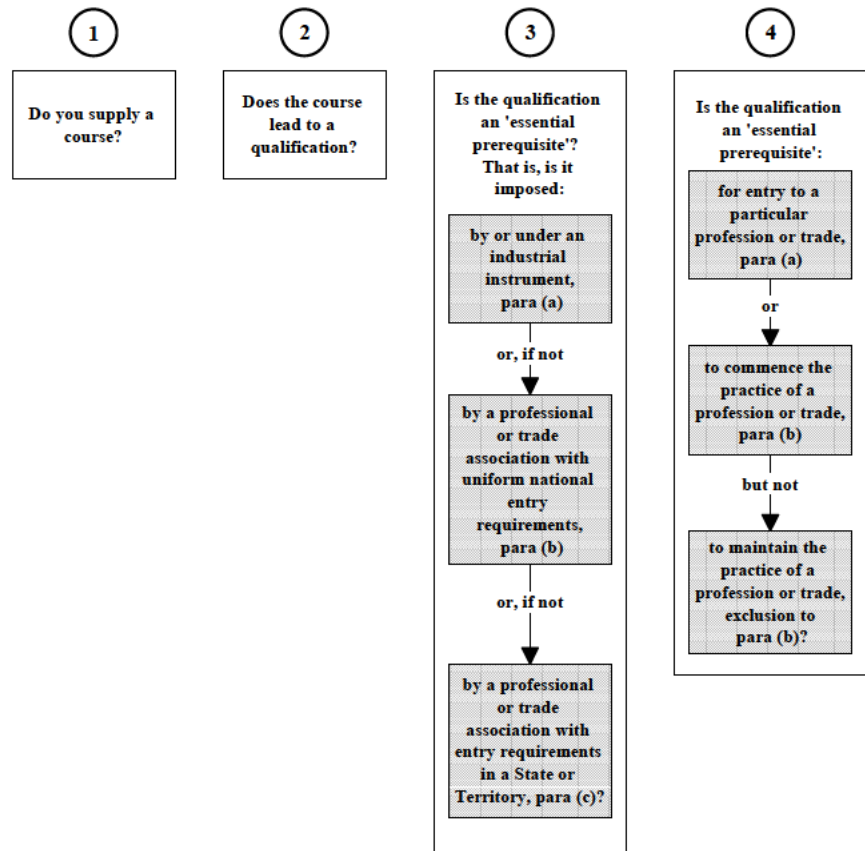
17. The particular qualification must be imposed by an industrial instrument or, in the absence of any industrial instrument relating to that profession or trade, by a professional or trade association at the national level. In the absence of an industrial instrument or a professional or trade association at the national level, the qualification must be imposed by a professional or trade association at the State or Territory level.

18. The definition of a ‘professional or trade course’ in section 195-1 requires you to examine the characteristics of the particular course you supply. Your examination does not need to consider the recipients’ intention, nor whether the participants actually enter or practise a particular profession or trade.

19. A course that essentially teaches basic skills (for example, reading or writing), necessary for most jobs, or that enhances general knowledge and/or provides generic skills (for example, learning how to drive a motor vehicle), is not a professional or trade course. These courses do not lead to a qualification that is an essential prerequisite.

### *How you decide whether the course you supply is a ‘professional or trade course’*

20. To determine whether the course you supply is a professional or trade course, you will need to ask a number of questions in relation to the section 195-1 definitions of ‘profession or trade course’ and ‘essential prerequisite’. The following chart sets out the questions you need to ask.



You supply a professional or trade course if you can answer yes to each of the above questions.

### What is a course?

21. Whether you supply a course is a question of fact. In the context of the definition of a 'professional or trade course' in section 195-1, a course is a program of systematic and interactive instruction or training, for the acquisition of particular skills or knowledge.

Indicators of a course include, but are not limited to:

- delivery of educational instruction through an instructor or teacher;
- ongoing support and guidance, for example, being available to answer questions;
- assessment of the individual's progress;
- monitoring or supervision;
- provision of feedback concerning the individual; and

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- assessment of competency or satisfactory completion at the end of the program of instruction.<sup>3</sup>

22. The definition of professional or trade course in section 195-1 does not require that the instruction or training be of a specified length or time. The length of the program of instruction or training is not determinative of whether it is a course for the purposes of the definition.

23. The mere supply of things such as a self-paced software program without any instruction, support, assessment, supervision or feedback is not the supply of a course.<sup>4</sup> Although these things may be used as learning tools, they do not satisfy the requirements of a course because they lack elements of interactive teaching.

24. The systematic instruction or interactive training may be supplied in a variety of formats, for example, as:

- one indivisible course, that is, a course that is not divided into subjects (see paragraphs 25 to 26); or
- one course comprising a program of subjects, modules, units, topics or components (subjects) presented together (see paragraphs 27 to 29); or
- a program of subjects that are formally and separately provided as courses in their own right (see paragraphs 30 to 31).

### *Indivisible course*

25. Indicators of a program of instruction or training that is an indivisible course include:

- it is normally of a short duration (a day or less);
- the assessment of competency is for the entire course;
- the course content is closely integrated;
- if the competency is not achieved the whole program needs to be repeated; and
- the consideration is for the whole program.

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<sup>3</sup> These factors are taken from Goods and Services Tax Ruling GSTR 2002/1: supplies that are GST-free as special education courses.

<sup>4</sup> See Goods and Services Tax Ruling GSTR 2002/1: supplies that are GST-free as special education courses.

*Example 1 – supply of an indivisible program*

26. *Loadheavy supplies an eight hour forklift operating training program. Practical and theoretical training in operating the controls is provided throughout the program. Participants pay for the entire program on commencement. Competency is assessed at the end of the program and successful participants are provided with a forklift licence. The program is an indivisible course.*

*A program of subjects as one course*

27. Where the program of systematic instruction or training is divided into subjects that are presented as one course, you will need to consider all of the circumstances of the program to work out whether the whole program, or a part of it, is a professional or trade course. Factors that you need to look at include:

- the relevancy of each subject that makes up the program, to the other subjects and to the qualification that is obtained;
- whether the qualification can be obtained without doing particular subjects;
- whether assessments at the completion of particular subjects or stages of the course lead to other qualifications being obtained; and
- whether a part of the course is directed towards achieving a qualification that is generic and another part is directed towards obtaining another qualification that is imposed for admission to a particular profession or trade.

28. A program of subjects that you supply as one course may be a mixed supply. The supply is a mixed supply if it comprises subjects that are separately identifiable as a professional or trade course, and other subjects or things, that are taxable. You will need to apportion the consideration for a mixed supply between the taxable and non-taxable parts to find the consideration for the taxable part.<sup>5</sup>

*Example 2 – supply of a course that is a mixed supply*

29. *The Patent Examiners' Association of Australia requires that individuals seeking to become patent examiners must have completed*

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<sup>5</sup> Goods and Services Tax Ruling GSTR 2001/8: apportioning the consideration for a supply that includes taxable and non-taxable parts explains a mixed supply and how to apportion the consideration between the GST-free and taxable parts of such a supply.



*a particular training program to enter the profession. The program is supplied as a 200 hour course. It comprises several subjects that are related to the work of a patent examiner and a generic skills subject, 'Personal relaxation and exercise', that is not related to the work of a patent examiner. The program is a mixed supply. The consideration for the supply needs to be apportioned between the subjects that relate to the work of a patent attorney (GST-free as a professional and trade course) and 'Personal relaxation and exercise' (taxable).*

#### *A program of subjects as separate courses*

30. Where the instruction or training is formally divided into subjects that are taught or given separately, and where assessments of competency are made for each, each subject may be a course for the purposes of the definition of a 'professional or trade course' in section 195-1. In such a case, you will be supplying a number of courses, all or some of which may be professional or trade courses.

31. Indicators of such courses include:

- a separate consideration being made for each subject;
- the ability to study some subjects separately or repeat only those subjects for which competency has not been achieved; and
- the assessment of competency for some or all of the subjects.

#### **Does the course lead to a qualification?**

32. Having established that you supply a course, you then need to decide whether the course *leads to* a qualification.

33. We consider that the words 'leading to' require a causal connection between the course that is undertaken and the qualification that is ultimately obtained.

34. We also consider that a causal connection exists where there is a sufficiently direct and demonstrable link or connection between the course and the qualification.<sup>6</sup> The qualification must result from, and will follow successful completion of the course.

35. The words 'leading to' were considered by Davies J in *Ganesh Rao & Ors v. Minister for Immigration and Multicultural Affairs* (1998) 52 ALD 65. His Honour said:

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<sup>6</sup> *Re University Fees; E.C. Commission v. Belgium* (293/85), 2 February 1988 [1988] E.C.R. 527.

Both counsel accepted that the words ‘leading to’ imported a causal connection between the course in which the appellant was enrolled and the ultimate achievement of a trade certificate or an advanced certificate.<sup>7</sup>

36. He then said:

I would accept that the words ‘leading to’ import some flexibility into the regulation. The words ‘leading to’ are not technical words. Nevertheless, the course in which the student is enrolled must lead to one of the nominated certificates.

It is not sufficient that the student is studying with the ultimate aim of achieving such a certificate. The regulation specifies not the intent of the student but a characteristic of the course in which the student is enrolled. That is why, in *Deputy Commissioner of Taxation v. Clarke and Kann*,<sup>8</sup> in an analogous context, Bowen CJ, Lockhart & Fitzgerald JJ used the expression ‘will follow’, not the expression ‘may follow’.<sup>9</sup>

37. In *DC of T v. Clarke and Kann* (1984) ATC 4273 in relation to the meaning of the words ‘leading up to the making of, assessments’...in Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*, the Federal Court said:

...a decision does not lead to the making of assessment merely because it precedes the making of an assessment or because its purpose is to enable or facilitate the making of an assessment which may be made. A decision is not a decision leading up to the making of an assessment unless the making of an assessment has followed or will follow from the decision.<sup>10</sup>

38. We consider that a similar interpretation is appropriate when determining the meaning of ‘leading to’ a qualification.

39. In some circumstances, you may supply a course and on its successful completion, another party may supply a qualification that is an essential prerequisite. It does not matter that you are not responsible for the assessment and the issue of the qualification. The course leads to a qualification.

*Example 3 - a qualification issued by a third party*

40. *Bernie completes a course in high-rise crane operation supplied by Lofty Jobs Ltd. Under State law, Lofty Jobs is not authorised to assess Bernie’s competency at the end of the course.*

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<sup>7</sup> *Ganesh Rao & Ors v. Minister for Immigration and Multicultural Affairs* (1998) 52 ALD 65 at 69.

<sup>8</sup> *DC of T v. Clarke and Kann* (1984) ATC 4273; 15 ATR 483.

<sup>9</sup> *Ganesh Rao & Ors v. Minister for Immigration and Multicultural Affairs* (1998) 52 ALD 65 at 70.

<sup>10</sup> *DC of T v. Clarke and Kann* (1984) ATC 4273 at 4276.

*Bernie is assessed by a third party that issues him with his certificate. The course supplied by Lofty Jobs leads to the qualification.*

## **What is a qualification?**

41. ‘Qualification’ is not defined in the GST Act. The term therefore takes its ordinary meaning. The Macquarie Dictionary<sup>11</sup> defines ‘qualification’ as ‘a quality, accomplishment, etc., which fits for some function, office, etc.’

42. A qualification is normally acquired through study or experience and equips a person to perform a particular task or function. In the context of the definition of a professional or trade course in section 195-1, a qualification is an attribute or quality that is acquired after undertaking a course. It is evidenced by some document that indicates successful completion of the course. The document would normally be accepted by a Commonwealth, State or Territory authority or a professional or trade association, or an employer as suitable evidence that a person has successfully completed the relevant course.

43. A relevant authority or professional or trade association may issue a licence or a certificate that qualifies a person to do certain things. For example, a licence to drive a particular class of heavy road vehicle, or a practising certificate. Where this is the case, the certificate or licence is a qualification for the purposes of the section 195-1 definition of a professional or trade course.

44. Documents that are qualifications or that provide evidence of a qualification include:

- a statement of satisfactory completion;
- a certificate (including a degree or diploma);
- a licence; or
- an accreditation.<sup>12</sup>

## **Is the qualification an essential prerequisite?**

45. Your course will only be a professional or trade course if it leads to a qualification that is an essential prerequisite for entry to, or to commence the practice of, a particular profession or trade.

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<sup>11</sup> *The Macquarie Dictionary*, Third Edition.

<sup>12</sup> See *R v. Director General of Health (Cth); Ex parte Thompson* (1976) 11 ALR 471 where Gibbs J said at 476 that ‘...“qualifications” ... is to be understood as referring not directly to the possession of personal skill or ability but rather ... as a “qualification” outside the person, such as a diploma, degree or other hallmark.’

46. Under the section 195-1 definition of ‘essential prerequisite’, the qualification must be imposed:

- (i) by or under an industrial instrument; or
- (ii) if there is no industrial instrument, by a professional or trade association that operates on a national level; or
- (iii) if neither (i) nor (ii) applies, by a professional or trade association that operates at a State or Territory level.

47. A qualification is an essential prerequisite if it is mandatory for a person to have the qualification before he or she can enter into, or commence the practice of, a particular profession or trade. This necessarily requires the imposition of penalties or sanctions if a person enters into, or commences the practice of, the profession or trade without the relevant qualification.

48. A qualification that is imposed for reasons other than for entry to, or to commence the practice of, a profession or trade, is not an essential prerequisite for the purposes of a professional or trade course. Similarly, a qualification required by an employer or group of employers, but which is not imposed by an industrial instrument, or a professional or trade association at either the national level, or State or Territory level will not be an essential prerequisite.

***(i) Industrial instrument***

49. An ‘industrial instrument’ is defined in section 195-1 as having the meaning given by section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) which states:

‘industrial instrument means:

- (a) an Australian law; or
- (b) an award, order, determination or industrial agreement in force under an Australian law.’

50. Section 995-1 of the ITAA 1997 defines ‘Australian law’ to mean ‘a Commonwealth law, a State law or a Territory law’.

51. Many requirements for entry to, or the commencement of the practice of, a profession or trade are contained in regulations to various Australian laws. These regulations are also industrial instruments.

*Example 4 - a qualification imposed under an industrial instrument*

52. *Heavy Vehicle Training Services Ltd supplies a course for learning to drive a heavy vehicle. Upon successful completion of the course, the recipient is issued with a document that states that they*

*have met all the requirements of the State licensing authority. The recipient can then present that document to the licensing authority which then issues the licence. As the licence is imposed under State law it is a qualification that is imposed by an industrial instrument.*

***(ii) Professional or trade association at national level***

53. Where there is no industrial instrument that relates to the entry into, or commencement of the practice of, a profession or trade, you need to determine whether a qualification is imposed by a professional or trade association that has uniform national requirements relating to entry to, or to commence the practice of, the profession or trade concerned.

54. A qualification that is an essential prerequisite can be imposed by only one professional or trade association at the national level.

***(iii) Professional or trade association at the State or Territory level***

55. If there is no industrial instrument, nor a professional or trade association at the national level, but there is a professional or trade association at the State or Territory level that has requirements for entry to, or the practice of, a profession or trade, then the qualification must be imposed by the State or Territory professional or trade association.

56. As with professional or trade associations that have uniform national requirements, a qualification for entry to, or the commencement of, a profession or trade can be imposed by only one professional or trade association for each State or Territory.

***Ability of a professional or trade association to impose a qualification***

57. The ability of any professional or trade association to impose a qualification that is an essential prerequisite may constitute a restriction on entry. Where this is the case, the provisions of Part IV of the *Trade Practices Act 1974* may need to be complied with and appropriate authorisation from the Australian Competition and Consumer Commission may be required.

58. A professional or trade association's ability to impose membership requirements is not conclusive evidence of that association's ability to impose a qualification that is an essential prerequisite.

59. If more than one professional or trade association, either at the national level or for a particular State or Territory, has requirements relating to the entry to, or the commencement of the practice of, the

profession or trade concerned, no qualification, set by any of the associations as a requirement for entry or commencement, would be an ‘essential prerequisite’. None of the associations can prevent someone entering that profession or trade through one of the other associations.

60. The capacity of a professional or trade association to impose a qualification would require some threat of legal sanction or penalty.

*Example 5 - an association that cannot impose a qualification for entry to, or the commencement of the practice of, a profession or trade*

61. *The Australian Cartographers Association (ACA) exists to exchange information between its members and other organisations. It has an approval system under which its members can hold themselves out as being ‘ACA-approved’ and it runs a short course by which members can be approved. The approval is not essential for the practice of cartography. The ACA is not able to impose a qualification that is an essential prerequisite. Its approval course is not a professional or trade course.*

### **What is a professional or trade association?**

62. The term ‘professional or trade association’ is not defined in the GST Act. The Macquarie Dictionary<sup>13</sup> defines ‘association’ as ‘an organisation of people with a common purpose and having a formal structure.’ Whether a body of persons constitutes a professional or trade association is a matter of fact and degree.

63. A professional or trade association normally displays the following characteristics:

- its members are practising the profession or trade;
- it sets its own admittance requirements including acceptable qualifications;
- it sets standards of practice and ethical conduct;
- it aims to maintain the standing of the profession or trade as a whole;
- it has articles of association, by-laws or codes of conduct for its members; and
- it has the ability to impose sanctions on members who contravene the association’s rules.

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<sup>13</sup> *The Macquarie Dictionary*, Third Edition.

## A ‘particular’ profession or trade

64. The reference in paragraph (a) of the definition of a ‘professional or trade course’ and in the definition of ‘essential prerequisite’, in section 195-1, to a ‘particular profession or trade’ establishes a requirement that the qualification be specific to the profession or trade in question.

65. Qualifications that are general in nature and that relate to the entry to, or the commencement of the practice of, a number of professions or trades, are not essential prerequisites for entry to, or to commence the practice of, a **particular** profession or trade.

66. Courses that you supply for general knowledge, or for personal development, would not ordinarily be professional or trade courses. This is because they lack a sufficiently direct link between the qualification they lead to and the requirement that the qualification be for entry to, or to commence the practice of, a **particular** profession or trade.

### *Example 6 - a general qualification*

67. *To become a taxi driver, under a State law, a person is required to hold a current motor vehicle driver’s licence. However, such a licence is obtained to enable a person to drive a motor vehicle generally and is a requirement for many occupations. Doing a driving course to obtain a motor vehicle driver’s licence does not lead to a qualification that is an essential prerequisite for entry into a particular profession or trade. The qualification is generic in nature and not for a particular profession. The driving course is not a professional or trade course.*

### ***Can there be more than one qualification that is an ‘essential prerequisite’?***

68. An industrial instrument or a professional or trade association may impose more than one qualification for entry to, or to commence the practice of, a particular profession or trade. Each qualification may be an essential prerequisite if it is specifically for entry to, or to commence the practice of, the profession or trade.

### *Example 7 - two qualifications that are essential prerequisites*

69. *The Legal Practitioners Act of a State requires that before a person can enter into the legal profession as a barrister and solicitor, he or she must have completed a Bachelor of Laws degree from a recognised tertiary institution and a practical year of training under Articles of Clerkship.*

70. *During the year as an Articled Clerk a person is required to undertake a course comprising a range of subjects including: ethics and professional responsibility, trust and office accounting, advocacy skills, wills and estates, revenue and taxation, and legal writing and drafting. Documentary evidence of satisfactory completion of the course is required to be presented to the Legal Practice Board established under the Legal Practitioners Act before entry to the legal profession.*

71. *Both the tertiary qualification and the successful completion of the Articles course are qualifications that are essential prerequisites. The course leading to the tertiary qualification is a tertiary course. The course undertaken during the year of Articles is a professional or trade course.*

72. Where an industrial instrument, or a professional or trade association imposes one of a choice of two or more qualifications for entry to, or to commence the practice of, a particular profession or trade, each qualification is an essential prerequisite.

*Example 8 - one of two qualifications*

73. *The Migration Agents Registration Authority (MARA) is a national body that has the legal authority to register persons as migration agents. A person cannot legally represent themselves as a migration agent unless they are registered with MARA.*

74. *Before a person can apply to MARA for registration as a migration agent they must either successfully complete a Migration Agent workshop or a recognised law degree.*

75. *Both the qualification obtained from successfully completing the workshop and the law degree are essential prerequisites.*

76. A qualification is an essential prerequisite even if entry to, or the commencement of the practice of, a profession or trade can be either by way of obtaining a qualification from doing a course or through work experience.<sup>14</sup>

77. Whether one, more than one, or a choice of qualifications is imposed as an essential prerequisite, a course that leads to any of those qualifications is a professional or trade course, unless the relevant course is not specific to the particular profession or trade (see paragraphs 64 to 66).

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<sup>14</sup> However, work experience is not a course for the purposes of the definition of a 'professional or trade course'.



## **Entry to, or to commence the practice of, a particular profession or trade**

78. In the context of the section 195-1 definition of a professional or trade course, to enter or commence is to begin. This means that a person would not be able to work in and earn a livelihood in a particular profession or trade, either as an employee or on a self-employed basis without the relevant qualification. The qualification entitles the holder, or is one necessary step for the holder, to enter into, or commence the practice of, the relevant profession or trade.

79. In the majority of cases, entry to a profession or trade and the commencement of the practice of the profession or trade will happen at the same time. However, in some cases, entry into a profession or trade may occur prior to the commencement of the practice of a profession or trade, for example, on a self-employed basis.

80. Entry into a particular profession or trade may be on the basis of a qualification that enables the relevant person to perform work on a supervised basis but that qualification does not enable the person to commence practice on his or her own account without some additional qualification being obtained. In these situations, both qualifications are essential prerequisites, one being an essential prerequisite for entry into the profession or trade; the other being an essential prerequisite to commence the practice of the profession or trade. Courses leading to each qualification will be professional or trade courses.

## **Profession or trade**

81. For a course to be a professional or trade course, it must lead to a qualification that is an essential prerequisite. It is therefore necessary, for the purposes of the section 195-1 definition of a 'professional or trade course', to identify the profession or trade.

82. Whether an occupation or calling is 'a particular profession or trade' is a question of fact and degree. We consider that the terms 'profession' and 'trade' have a wide meaning and are not confined to traditional professions or trades.

## ***What is a profession?***

83. 'Profession' is not a defined term in the GST Act so it takes its ordinary meaning. The meaning of the term 'profession' has altered over time, primarily in line with changing community perceptions.<sup>15</sup>

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<sup>15</sup> *Bradfield v. FCT* (1924) 34 CLR 1 at 7; *Carr v. Inland Revenue Commissioners* (1944) All ER 163 at 166-7.

84. In *Robbins Herbal Institute v. Federal Commissioner of Taxation* (1924) 32 CLR 457, (Robbins) Starke J provided a definition of the word ‘profession’ which we consider is appropriate in considering the definition of a ‘professional or trade course’. He said:

The word [profession] implies, as is pointed out in the *Century Dictionary*, professed attainments in special knowledge as distinguished from mere skill, ‘knowledge’ which is ‘to be acquired only after patient study and application’ (see *United States v Laws* (2)). Thus many vocations may fall within the accepted and ordinary use of the word...But whether a person in any given case carries on a profession is a question of degree and always of fact (*Cecil v Commissioners of Inland Revenue* (3); *Currie v Commissioners of Inland Revenue* (4)).<sup>16</sup>

85. We agree with the view stated in Robbins. The term ‘profession’ should not be confined to the traditional meaning of the word, and therefore is not limited to the medical, legal, theological and military professions. Whether an individual occupation is a profession will depend on the facts in each case.

#### ***What is a trade?***

86. ‘Trade’ has a wide meaning involving recognition of a category or body of practical vocational skills of some difficulty and some generality.<sup>17</sup>

87. A number of cases have dealt with the word ‘trade’ for immigration purposes. In *Ranatora v. Minister for Immigration and Multicultural Affairs* (1998) 154 ALR 693, Hill J reviewed several decisions and said:

An occupation may be a trade notwithstanding the absence of formal training and notwithstanding the absence of anything akin to apprenticeship. An occupation will be a trade if it involves skilled handicraft (there is no implication as such of manual labour in the use of this expression) or perhaps as Sackville J referred to ‘*a skilled calling*’.<sup>18</sup>

88. The word ‘trade’ is applicable to any skilled handicraft. It includes the operation of particular pieces of equipment or machinery.

89. Whether the operation of a particular piece of equipment is considered a trade will depend on facts such as the type of equipment and the particular skills required for operating the equipment.

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<sup>16</sup> *Robbins Herbal Institute v. Federal Commissioner of Taxation* (1924) 32 CLR 457, Starke J at 461.

<sup>17</sup> *Tanchiatco v. Minister for Immigration and Multicultural Affairs* (1997) 77 FCR 298, Branson J at 302.

<sup>18</sup> *Ranatora v. Minister for Immigration and Multicultural Affairs* (1998) 154 ALR 693 at 699.

***Can a specialisation be a separate profession or trade?***

90. For the purposes of the definition of a ‘professional or trade course’ in section 195-1, a distinction must be drawn between a course that provides a qualification to enter into a profession or trade and one that is undertaken to acquire specialist or additional skills within that profession or trade.

91. A course leading to a qualification that merely enhances a recipient’s proficiency to undertake a wider range of activities in his or her profession or trade, is not a professional or trade course.

92. For a specialisation to be characterised as a separate profession or trade, its attributes must be more than merely a set of additional skills or endorsements that enable a person to undertake different tasks within their profession or trade. Whether a specialisation within a profession or trade in a broader sense is a separate profession or trade will require a practical judgment having regard to a range of factors in each case, including whether:

- the specialisation services a different client base;
- the tasks performed are in a different field of learning or science;
- the specialisation is covered by an industrial instrument that specifically deals with that specialisation;
- the specialisation has its own distinct professional or trade association that determines the educational or qualification requirements for entry into that specialisation; and
- any additional study of significant duration is required in order to perform the tasks in that specialisation.

***Example 9 - a course that provides additional skills***

93. *Graeme is employed as a heavy vehicle driver and holds the appropriate licence. He decides that he would increase his opportunities for advancement by possessing a flammable goods/dangerous goods licence. A dangerous goods vehicle' driver is not in a different trade to a heavy vehicle driver. While a course for heavy vehicle drivers that provides this qualification may enhance his skills and employment prospects, he has already entered the trade of heavy vehicle driver. The 'dangerous goods licence' course is not a professional or trade course as it does not lead to a qualification that is an essential prerequisite.*

94. There are numerous industrial instruments that require a person to obtain approval or certification before a particular task or duty in an occupation can be undertaken. The fact that there is such a requirement does not necessarily mean that the particular task or duty is a separate profession or trade. If the qualification merely relates to the undertaking of a duty or task in a profession or trade, a course leading to that qualification is not a professional or trade course. The qualification is not an essential prerequisite.

*Example 10 - a course that fulfils a legal requirement in relation to a task*

95. *The Workplace Safety Act of a State requires that a person be appointed as a health and safety officer in a workplace of more than thirty people. Any person, including the employer, may perform this role if he or she is approved to do so. The individual performs their normal duties in the workplace and this role as the safety officer is merely an additional task. The legislation places the obligation on the employer to satisfy this requirement. The legal constraint does not relate to a person entering a profession or trade. A course you run to train a person to perform such a role is not a professional or trade course.*

### **Maintaining the practice of a profession or trade**

96. The exclusion in paragraph (b) of the definition of a professional or trade course in section 195-1 ensures that a course which leads to a qualification that is an essential prerequisite to maintaining the practice of a profession or trade, is not a professional or trade course.

97. Maintaining the practice of a profession or trade includes such things as:

- undertaking continuing professional development;
- re-licensing;
- re-accreditation;
- renewal of annual practising certificates; and
- refresher courses.

98. Where your course leads to a qualification that is an essential prerequisite for entry to, or for the commencement of, the practice of a particular profession or trade, and is also a course that may be undertaken for maintenance purposes, the course will still be a professional or trade course.

*Example 11 - to maintain the practice of a profession or trade*

99. *Quickpack Ltd supplies two courses. The first is of 22 hours duration and enables a person to become a baggage handler in the aviation industry. The course content is prescribed by the relevant statutory authority and satisfies the Civil Aviation Regulations 1988 requirement that baggage handlers hold a dangerous goods licence. This course is a professional or trade course. Handlers must complete another course, of eight hours duration, every two years to maintain their licence. Although the eight hour course includes material from the 22 hour course, it is for maintaining employment as a baggage handler. The eight hour course is not a professional or trade course.*

## Your comments

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100. If you wish to comment on this draft Ruling, please send your comments promptly by 13 December 2002 to:

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## Detailed contents list

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**Commissioner of Taxation**

30 October 2002

<i>Previous Draft:</i>	- TAA 1953 37
Not previously issued in draft form	- Trade Practices Act 1974 Part IV - Civil Aviation Act 1988
<i>Related Rulings/determinations:</i>	<i>Case references</i>
GSTR 2000/30; GSTR 2001/1;	- Bradfield v. FC of T (1924) 34 CLR 1
GSTR 2001/8; GSTR 2002/1;	- Carr v. Inland Revenue Commissioners (1944) All ER 163 at 166-7
GSTR 1999-1	- DC of T v. Clarke and Kann; (1984) ATC 4273; 15 ATR 483
<i>Subject references:</i>	- Ganesh Rao & Ors v. Minister for Immigration and Multicultural Affairs (1998) 52 ALD 65
- course	- R v. Sir William Refshauge, Director General of Health (Cth); Ex parte Thomson (1976) 11 ALR 471
- essential prerequisite	- Ranatora v. Minister for Immigration and Multicultural Affairs (1998) 154 ALR 693
- GST-free supply	- Re University Fees; E.C. Commission v. Belgium [1988] E.C.R. 527
- industrial instrument	- Robbins Herbal Institute v. FC of T (1924) 32 CLR 457
- mixed supply	- Tanchiatco v. Minister for Immigration and Multicultural Affairs (1997) 77 FCR 298
- profession	
- professional or trade association	
- professional or trade course	
- qualification	
- taxable supply	
- trade	
<i>Legislative references:</i>	
- ANTS(GST)A99 38-85	
- ANTS(GST)A99 38-35(a)	
- ANTS(GST)A99 38-G	
- ANTS(GST)A99 195-1	
- ITAA 1997 995-1	
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