

GSTD 2000/11 - Goods and services tax: is the supply of commercial pilot training GST-free as an education course under section 38-85 of the A New Tax System (Goods and Services Tax Act) 1999 (the GST Act)?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*

Goods and Services Tax Determination

Goods and services tax: is the supply of commercial pilot training GST-free as an education course under section 38-85 of the *A New Tax System (Goods and Services Tax Act) 1999* (the GST Act)?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

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

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

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Date of Effect

This Determination applies [to tax periods commencing] both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Decision

1. The supply of commercial pilot training may be GST-free if it is an education course which is defined to include, amongst other things, tertiary courses and professional and trade courses.
2. The supply of an education course is GST-free. A supply of administrative services that are directly related to the supply of the education course will also be GST-free if those services are supplied by the course provider.¹

¹ Section 38-85 of the GST Act.

3. The term education course is defined in the GST Act to include among other things a tertiary course and a professional and trade course.² A tertiary course is a course of study or instruction determined by the federal Education Minister to be a tertiary course. Tertiary courses include vocational education and training programmes.³
4. The training courses required to obtain a Commercial Pilots licence and additional qualifications, such as a Command Instrument Rating (CIR) may be GST-free as a tertiary course defined in the GST Act.
5. Where a vocational education and training programme includes a commercial pilot training course and that course is provided by a registered training organisation or a higher education institution, it satisfies the requirements of a tertiary course. As such, the course will be GST-free as an education course.
6. Where a commercial pilot course also satisfies the definition of a professional and trade course leading to an essential pre-requisite for entry into the profession of a commercial pilot, this course will be GST-free. This determination sets out which training courses are considered to satisfy the definition in the GST Act of a professional and trade course and those that are not professional and trade courses. In addition, the determination covers GST-free tertiary courses.
7. The following courses will be GST-free as a professional and trade course:
 - (a) The integrated **Commercial Pilots (Aeroplane) Licence (CPLA)** 150 hour program conducted in accordance with the Civil Aviation Safety Authority (CASA) Day Visual Flight rules (VFR) syllabus will be GST-free (this includes the theory and practical components of the program).
 - (b) The Civil Aviation Regulations 1988 regulation 5.104(1)(c) requires a pass in a commercial pilot licence (aeroplane) theory examination.⁴ In the integrated course the theoretical aeronautical knowledge required to pass this examination is provided. For the non-integrated program CASA recommends the completion of a **theoretical aeronautical knowledge course**. If the course is completed as a structured course of study it will be GST-free as a professional and trade course. A structured course means the study of the competencies as set out in the CASA Day VFR syllabus. The aeronautical knowledge may also be acquired by the use of a textbook. The purchase of the textbook would be a taxable supply.
 - (c) **Aircraft instructor** is a different profession to that of pilot. The profession can be entered after satisfying the Civil Aviation Regulations (section 40.7.1). Training to commence as an instructor cannot commence until a person has been issued with a CPLA. The course and training which is the essential prerequisite for entry into the profession of flight instructor is the 50 hours flying time and classroom course. These will be GST-free. The night VFR rating can be obtained during the 50 hours flying to meet the aeronautical experience requirements required to be licensed as a aircraft instructor.

² Section 195-1 of the GST Act.

³ Education Minister's Determination No. 1999/2 - Education Institutions and Courses under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*. See Paragraph 12 of this Goods and Services Tax Determination.

⁴ The Civil Aviation Regulations 1988 regulation 5.104 specifies the requirements to obtain a commercial pilots licence.

GST-free tertiary courses and/or qualifications

8. The following courses will NOT be GST-free as a professional and trade course, but will be GST-free as a tertiary course:

Note: A course and/or qualifications will be GST-free as tertiary courses if the course/qualification is accredited and provided by a higher education institution or a registered training organisation. These courses will be GST-free notwithstanding that they are not professional and trade courses for the purposes of the GST Act.

- (a) A **Private Pilots (Aeroplane) Licence (PPLA)** is not a professional and trade course. The PPLA does not allow a pilot to fly for gain. This is consistent with previous rulings. CASA Day VFR syllabus 1 November 1999 2.8.4 states 'Students undertaking an approved CPLA are not required to be issued with a PPLA and may undertake all training required for the issues of the CPLA while holding an Students Pilots Licence (SPL)'. Thus the PPLA is **not** an essential pre-requisite for obtaining a CPLA and is not GST-free as a professional or trade course.
- (b) The **Air Transport Pilots Licence (ATPL)**. This licence is required if someone wishes to fly as the pilot-in-command of a multi-crew aircraft. It is not the entry point to the profession. The profession is aircraft pilot and the ATPL is a specialisation within the field. This view is supported by the Australian Standard Classification of Occupations (ASCO) occupational definitions which lists one occupation: aircraft pilot. The ATPL therefore is not an essential prerequisite for entry into a particular profession or trade.
- (c) **The 200 hour non integrated** method of obtaining the CPLA is not a professional and trade course for GST purposes. It is not a course, as it is not a prescribed sequence of instruction. It is simply an accumulation of flying hours with a skill assessment by a Chief Flying Instructor. The minimum requirement before seeking a CPLA assessment is 200 hours flying time. This method of obtaining a CPLA is for someone who may have been accruing flying hours for recreational or private purposes and then decides to obtain a commercial licence. There is no practical and objective method of determining between private use and flying hours for the purpose of obtaining a commercial pilots licence.

The following qualifications may be GST-free as tertiary courses:

- (d) No **ratings** are required by regulation to obtain the CPLA and as such are not an essential prerequisite for entry into a particular trade or profession. In order to obtain the CPLA qualification the aeronautical experience includes periods as pilot-in-command, cross country and instrument flight time. Those ratings not obtained while completing a CPLA will be GST-free if undertaken as a tertiary course.
- (e) **Endorsements** obtained incidentally within the training would be GST-free as the course itself is GST-free. Endorsements obtained outside the integrated training course maybe taxable supplies. All qualifications, licences and ratings other than the CPLA would be taxable unless they were GST-free as a tertiary course. An example is an instrument rating. The instrument rating is preferred by employers but is not mandatory. The Civil Aviation Regulations 1988 demand experience in instrument flying but this is not the same. In instrument flying the instructor is sighted while the student wears special goggles and concentrates on the instruments. A requisite number of hours flying in this manner is what is required for the CPLA. If the instrument rating is not acquired through the completion of a tertiary course it will be a taxable supply.

Explanations and Definitions

9. Courses undertaken to gain qualifications are GST-free if the qualifications are an essential prerequisite for entry to employment in a trade, profession or occupation. The course must be one which leads to the commencement of a particular trade or profession, not a course which enhances the skills or employment prospects of someone who is already employed in that trade or profession.

10. To be an essential prerequisite, as defined in section 195-1 of the GST Act, in relation to the entry to a particular profession or trade, the qualification must be imposed:

- by or under an industrial instrument which is defined in section 995-1 of the *Income Tax Assessment Act 1997* to be - an Australian law or an award, order, determination or industrial agreement in force under an Australian law; or
- if there is no industrial instrument for that profession or trade but there is a professional or trade association that has uniform national requirements for entry to, or the commencement of the practice of, that profession or trade concerned – by that association; or
- if there is neither an industrial instrument nor an association with uniform national requirements, then requirements that are imposed by a professional or trade association which is not uniform nationally – for example, a professional association whose requirements differ from State to State that conduct professional or trade courses outside the formal education sector, may still be GST-free.

11. A qualification need not be from a recognised education provider – for example, the exemption could extend to:

- courses offered by associations regulating who can practice in a particular profession; or
- a course to obtain a certificate required to operate a particular type of equipment.

A qualification will not be GST-free merely because it is required by a particular employer or group of employers.

12. A **vocational education and training programme** (as defined by the Education Minister)⁵ means:

- (a) an accredited vocational education and training course;
- (b) a sequence of training consisting of at least one subject or module from an accredited vocational education and training course; or
- (c) a structured approach to the development and attainment of competencies for a particular Australian Qualification Framework (AQF) qualification specified in an endorsed training package.

Commissioner of Taxation

15 November 2000

⁵ Education Minister's Determination No. 1999/2 - Education Institutions and Courses under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*.

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 2006/10

Subject references:

- education course
- goods & services tax
- GST supply
- professional and trade course
- taxable supply

Legislative references:

- ANTS(GST) A99 38-85
- ANTS(GST) A99 195-1
- ITAA 1997 995-1
- Civil Aviation Regulations 1988 5.104
- Civil Aviation Regulations 1988 5.104(1)(c)
- Civil Aviation Regulations 1988 40.7.1
- Students Assistance Act 1973 3(1)
- Students Assistance Act 1973 5D(1)
- TAA 1953 Sch 1 Div 358

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