GSTR 2001/1 - Goods and services tax: supplies that are GST-free for tertiary education courses

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http://ato.gov.au/General/Rulings-and-ATO-view/In-detail/Public-rulings--overview/Changes-to-GST-public-r
to check how this ruling is likely to be affected by the change in the law. ((Note added on 16 July 2010))

This document has changed over time. This is a consolidated version of the ruling which was published c

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Goods and Services Tax Ruling
Goods and services tax: supplies that are GST-free for tertiary education courses

Contents	Para
What this Ruling is about	**1**
Date of effect	**5**
Context of this ruling	**6**
Ruling and explanations	**10**
Detailed contents list	**184**

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 Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling primarily deals with supplies of tertiary courses that are GST-free under Subdivision 38-C of *A New Tax System (Goods and Services Tax) Act 1999* (the 'GST Act'). All legislative references in this Ruling are to the GST Act unless otherwise stated.

2. This Ruling also deals with Masters, Doctoral and tertiary residential college courses.

3. This Ruling does not deal with supplies of education courses that are not tertiary courses. A course that is not a tertiary course may still satisfy the definition of another type of education course[1].

4. When we use the term 'you' in this Ruling, we mean you as the supplier of such a course. Suppliers of tertiary courses include higher education institutions, registered training organisations and any other education institution approved to deliver tertiary courses.

Date of effect

5. This Ruling applies on and from 1 July 2000.

Note: The Addendum to this Ruling that issued on 15 October 2003 applies on and from 15 October 2003.

Context of this ruling

6. This Ruling will assist you in determining the GST status of courses and other educational related supplies you provide. It is not the intention of this Ruling to address the GST implications of non-educational supplies made or received by you, such as grants or imports.

7. This Ruling discusses the GST-free supply of administrative services, course materials and curriculum related field trips and excursions. This Ruling also addresses educational related supplies that are not GST-free, such as the sale, lease or hire of goods other than course materials and accommodation provided to tertiary students.

8. This Ruling deals with the application of Subdivision 38-G (non-commercial activities of charitable institutions, etc.) to the extent that it relates to accommodation provided to tertiary students and food supplied as part of accommodation provided to tertiary students.

9. The ATO's interpretation in this Ruling of educational related supplies that qualify for GST-free treatment is similar to the ATO's interpretation in Goods and Services Tax Ruling GSTR 2000/30, setting out GST-free supplies for pre-school, primary and secondary education courses.

[1] Section 195-1.

Ruling and explanations

10. The supply of an 'education course' is GST-free.[2] This means that no GST is payable on the supply and you are entitled to an input tax credit for creditable acquisitions or creditable importations you obtain to make that supply.[3]

11. The term 'education course'[4] is defined in the Act to include (amongst other things):

- a tertiary course; or
- a Masters or Doctoral course; or
- a tertiary residential college course.

Definition of a tertiary course

12. A tertiary course means:

(a) a course of study or instruction that is a tertiary course determined by the Education Minister[5] under subsection 5D(1) of the *Student Assistance Act 1973* for the purposes of that Act;[6] or

(b) any other course of study or instruction that the Education Minister has determined is a tertiary course for the purposes of this Act.[7]

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[2] Section 38-85.
[3] Section 11-5 and section 15-5.
[4] Section 195-1.
[5] All references to the Education Minister are references to the Commonwealth Education Minister.
[6] The *Student Assistance Act (SAA) Determination (No. 2002/1)* – Determination of Education Institutions and Courses under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973* can be accessed on the Department of Education, Science and Training's website at www.dest.gov.au.
[7] Section 195-1.

Requirements specified in paragraph (a) of a 'tertiary course' as defined in the Act

13. A tertiary course includes all tertiary courses covered by the determination issued by the Education Minister under the *Student Assistance Act 1973*.[8] 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.

14. In determining whether an education course is an approved tertiary course, it does not matter to whom the course is delivered. For example, an education course specified as an approved tertiary course under the Education Minister's determination will be GST-free regardless of whether it is delivered to resident students or non-resident students studying in Australia.

15. A course provided under contract that is specifically designed for non-resident students, and is not available to resident students, is not an approved tertiary course under the Education Minister's determination.

Requirements specified in paragraph (b) of a 'tertiary course' of the Act – separate determination

16. Paragraph (b) of the definition of a tertiary course allows the Education Minister to determine, independently of the requirement set out in paragraph (a), that a course is a tertiary course as defined in section 195-1.

17. A determination made by the Education Minister under paragraph (b), must be approved by Ministerial Council under the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations.[9]

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[8] The *Student Assistance Act (SAA) Determination (No. 2002/1)* – Determination of Education Institutions and Courses under subsection 3(1) and 5D(1) of the *Student Assistance Act 1973*.

[9] Clause 34 of the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations states that 'A proposal to vary the GST base by way of a Ministerial determination under the GST Act and the GST Transition Act will require the unanimous agreement of the Ministerial Council established under clause 40'. A Ministerial determination is a 'disallowable instrument' for the purposes of sec 46A of the *Acts Interpretation Act 1901*.

Definition of a Masters or Doctoral course

18. A Masters or Doctoral course means:

> 'a course of study or instruction, accredited at Masters or Doctoral level and supplied by a higher education institution or a non-government higher education institution'.[10]

19. A higher education institution is an institution specified in section 4, or paragraph 34(4)(b), (f) or (h), of the *Higher Education Funding Act 1988*.[11]

20. A non-government higher education institution is an institution that is not a higher education institution and that:

(a) is established as a non-government higher education institution under the law of a State or Territory; or

(b) is registered by a State or Territory higher education recognition authority.[12]

Definition of a tertiary residential college course

21. A tertiary residential college course means:

> 'a course supplied in connection with a tertiary course or a Masters or Doctoral course at premises that are used to provide accommodation to students undertaking tertiary courses or Masters or Doctoral courses'.[13]

22. If residential fees include an entitlement to receive tuition or other assistance, at the college or hall of residence, that is in connection with a tertiary course or Masters or Doctoral course the tuition fees are GST-free.[14]

Single units

23. A tertiary, Masters or Doctoral course generally consists of component parts that are commonly referred to as 'subject', 'course', 'module', 'unit' or 'program'. The term 'unit' will be used throughout this Ruling, but has the same meaning as subject, module, course or program.

24. Where you supply one unit of a tertiary course that is covered by the Education Minister's determination and the recipient is enrolled in that unit, the supply of that unit is GST-free.

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[10] Section 195-1.
[11] Section 195-1.
[12] Section 195-1.
[13] Section 195-1.
[14] Refer to paragraph 44 that discusses the GST treatment of mixed supplies.

25. A student is enrolled if his or her personal details are incorporated in the institution's normal student recording mechanism.

26. Similarly, you may supply one or more units of a Masters or Doctoral course that is accredited at a Masters or Doctoral level. Any fee charged, to a student enrolled to undertake one or more of these accredited units, is also GST-free.

27. Some Doctoral courses may or may not contain 'units' as previously discussed. For example, a Doctorate of Philosophy (PhD) that normally takes 3 years or more to complete, will often be a single course of study with no 'units' and this will be GST-free. However, some PhD courses contain components that would be considered to be units and these may also be supplied on a GST-free basis.

28. Sometimes a student enrols in a unit and elects not to be assessed. This is often referred to as 'auditing' a unit. Provided the student is enrolled to undertake a unit that forms part of an approved tertiary course covered by the Education Minister's determination the fee charged is GST-free.

Example – Single unit from an award tertiary course undertaken at a University

29. *Marc is enrolled with Vaughan University to study an individual unit from the Graduate Diploma in Information Technology*

30. *Assignments and research papers are submitted and exams are taken. If Marc decides to subsequently enrol in the Graduate Diploma in Information Technology, the university will credit the unit towards the award of a Graduate Diploma in Information Technology.*

31. *The single unit (also referred to as 'non award study' at some universities) taken on this basis is a GST-free supply as a tertiary course as the unit is part of a tertiary course covered by the Education Minister's determination.*

Example – A unit from a Masters or Doctoral course

32. *The University of Gordon's Bay (UGB) offers places in the degree titled 'Master of Taxation' (MTax) on a full-fee GST-free basis. UGB advises potential students that the MTax is comprised of eight units, which may be studied on a full-time basis. Full-time study involves studying four units per semester and assuming satisfactory results in each unit are achieved, the MTax can be completed in one year. MTax study is an accredited Masters course supplied by a higher education institution and is GST-free.*

33. *The Wanneroo University (WU) also offers a MTax degree on a full-fee GST-free basis. The course outline advises potential students that the MTax at WU is made up of eight units. A full-time student would study four units per semester and complete the course in one year. However, most students study part-time. Part-time study means the student studies only half a full-time load, so that the student can work and study at the same time. You only need to pass four units each year and in two years you will attain a MTax from WU. The MTax is an accredited Masters course supplied by a higher education institution and is GST-free regardless of whether it is undertaken on a full- or part-time basis.*

34. *UGB also advertises MTax 'non-award' enrolment. This means a student will study one unit that will be assessed rather than studying the extra seven units required to achieve the UGB MTax award. WU also promotes full-fee 'single unit' enrolments. Both UGB and WU inform students that the final result will be recorded on the student records and accredited should the student decide to undertake the full MTax course.*

35. *A single unit from either MTax degree is itself a GST-free 'education course' as the single unit is drawn from an accredited Masters course supplied by a higher education institution.*

Example – A single unit undertaken without assessment

36. *Joanne enrols with Dollar Institute to undertake a single unit of 'Financial Planning' from an approved tertiary course. The unit gives students a basic knowledge in financial planning. During the semester, Joanne attended the lectures and tutorials but did not take part in any assessment of the unit. Because Joanne is enrolled in a unit from an approved tertiary course there will be no GST charged on this supply.*

Non-accredited units

37. Single units that are not from an approved tertiary course are referred to as 'non-accredited units'. These units do not satisfy the requirements of the Education Minister's Determination under the *Student Assistance Act 1973* because the Determination only covers accredited courses. Non-accredited units delivered by you will be subject to GST.

38. Non-accredited units, that form part of any course developed by you that comprise a combination of accredited and non-accredited units, will be subject to GST on an apportionment basis. You will be required to use a reasonable basis to determine the portion of the course that is non-accredited and levy GST on that component. What is 'reasonable' will depend on the facts in each case. However, the Commissioner would consider that the calculation of the taxable proportion based on the time taken for each unit would be reasonable.[15]

Example – A course comprising accredited and non-accredited units

39. *Gwingana Institute, a registered training organisation[16] (RTO) has been contracted by Duke Pty Ltd to provide a three-day corporate team-building course to its employees to improve their team building skills. Gwingana Institute charges Duke Pty Ltd $300 per employee to conduct the course. As part of the contract, the Institute developed a training package that comprises one unit in 'conflict resolution' and two units relating to 'building partnerships'.*

40. *The unit in 'conflict resolution' does not form part of any accredited course and has been developed specifically for the employees of Duke Pty Ltd. The two units in 'building partnerships' are part of a vocational education training program that the RTO is registered to provide.*

41. *The three-day course consists of units that are both accredited and non-accredited. The non-accredited units do not form part of the vocational education and training program. The Institute must apportion the course between the components that are accredited and those that are not. All other things being equal, calculation of the taxable proportion based on the time required to conduct each unit would be reasonable. Consequently the fee of $300 per employee was apportioned on the basis that one third of the three-day presentation represented the charge for the non-accredited unit. Consequently, 1/11th of $100 represents the GST component that will need to be recorded in Gwingana Institute's BAS.*[17]

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[15] Section 9-80.

[16] Registered Training Organisation (RTO) is not defined in the GST Act. However, the term is defined in *Student Assistance Act (SAA) Determination (No. 2002/1) –* Determination of Education Institutions and Courses under subsection 3(1) and 5D(1) of the *Student Assistance Act 1973* - as being 'an organisation that is registered by the relevant State or Territory training recognition authority in accordance with the Australian Recognition Framework to provide one or more vocational education and training programmes'.

[17] Section 9-80 requires the supply to be apportioned between its taxable and GST-free or input taxed components.

Education supplies that are GST-free

42. The supply of an education course is GST-free.[18] In certain circumstances, the following associated supplies are also GST-free:

- administrative services;[19]
- course materials;[20]
- right to receive GST-free education;[21]
- excursion or field trip.[22]

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

Supply of an education course

43. Where you charge a fee for the supply of an education course that consists of tuition and facilities and curriculum related activities, this fee is consideration for a GST-free supply and you are not required to apportion the fee.

44. Where a fee you charge is consideration for a mixed supply, that is a mixture of taxable and input taxed or GST-free parts, you must apportion the fee between the taxable, input taxed and GST-free parts of the supply.

45. You will need to apportion a single fee charged for the supply of an education course if the fee includes:

- a supply of membership to a student organisation;
- a supply by way of a sale, lease or hire of goods other than course materials. (See paragraph 82 for the definition of course materials);
- a supply of any food as part of an excursion or field trip;
- a supply of accommodation as part of an excursion or field trip;
- a supply of accommodation to tertiary students; or
- a supply of food as part of accommodation provided to tertiary students.

46. The Commissioner will accept an apportionment made by you on a reasonable basis. The basis of apportionment should be applied consistently.

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[18] Section 38-85.
[19] Paragraph 38-85(b).
[20] Section 38-95.
[21] Paragraph 9-30(1)(b).
[22] Section 38-90.

47. Where fees or charges are levied under a by-law and specified in the Treasurer's determination under Division 81, the payment of the fee or charge is not the provision of consideration and not subject to GST.[23]

Fees charged by Universities

48. Universities and educational institutions charge miscellaneous fees of various descriptions. In determining whether a miscellaneous fee is subject to GST, you must identify the supplies that are made to students in respect of payment of the fee.

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

Tuition

50. Tuition fees in the tertiary sector may be levied on a fee-paying basis or as part of the Higher Education Contribution Scheme (HECS). Payment of these fees is GST-free.

51. Instruction provided in the form of an audio or videotape (or other similar means) would be a supply of tutorials that form part of a tertiary, Masters or Doctoral course. Fees charged to students to cover access to this type of tuition are GST-free.

Example – Withdrawal from a course

52. *Lisa enrols with Tyner Institute to undertake an accredited course in Diploma of Teaching. Three weeks after enrolment, Lisa decides to withdraw from the entire course. She is refunded 75 per cent of the fees in accordance with the Institute's policy. The Institute retains an amount of $400.*

53. *There are no GST implications on the amount of $400 retained by the Institute, as it is consideration for the partial supply of a GST-free education course by the Institute to Lisa.*

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[23] Refer to *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2003*. Note that this Determination is current as at 15 October 2003. However, new Determinations may be issued from time to time. The latest Determination can be downloaded from the Treasury Department's website www.treasury.gov.au (under Bills, Acts and Legislation: *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2003*.

Example – Taped lectures

54. *Melinda attends the Tomlin University of Technology where she is undertaking a Bachelor of Mechanical Engineering. The University makes available lectures and tutorials, for subjects undertaken by Melinda, as part of her Bachelor of Mechanical Engineering, in the form of audiotapes at the beginning of the semester. Melinda is charged a tutorial fee, which includes the supply of the audiotapes.*

55. *The supply of taped lectures by the University to Melinda is GST-free on the basis that the provision of tuition is part of a supply of an education course. The supply of the audiotapes is not GST-free as course materials*[24] *because the tapes are not consumed or transformed. However, the supply of audiotapes is considered to be the provision of tuition and is not regarded as a separate supply. On this basis, the fee charged for both the lectures and the tapes is GST-free.*

Example – Activities not considered to be part of a course

56. *Social and recreational activities are organised for students during Orientation Week at the Fernwood University. These activities are designed to familiarise students with the campus and help them to meet other students before the academic year officially commences. These activities are not considered to be part of an education course. Any charge made for the activities is taxable.*

Facilities

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

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

59. Facilities[25] include such items as:

(a) the provision and maintenance of plant, equipment, buildings and grounds;

(b) access to libraries including the access to library books, periodicals and manuals;

(c) access to computer and science laboratories;

(d) access to computers and other on line resources including off-campus dial up Internet services.

[24] See paragraph 82 for the definition of course materials.
[25] The list is not exhaustive.

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

Example – Amenities fees charged by University

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

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

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

Example – Amenities fee that is taxable

64. *Each year students enrolled at the Booran College of TAFE are required to pay a $20 amenities fee. In return for this fee, the student is given a photocopy card to the value of $20.*

65. *The supply of a photocopying card is the supply of a right and is a taxable supply by the TAFE. As the supply of the photocopy card is a taxable supply, Booran College will have to remit 1/11th of the fee charged.*

66. If the fee is consideration for a supply, part of which is taxable and parts of which are input taxed or GST-free, you must apportion the fee between the taxable, input taxed and GST-free parts of the supply.

Example – Miscellaneous Student Activity Fee

67. *Malachi Vincent University (MVU) charges all enrolled students a fee of $70 per year. MVU refers to this fee as the 'Miscellaneous Student Activity Fee' (MSAF) and the Council of MVU established the following guidelines regarding the use of MSAF funds:*

- *The proceeds are to be used for the benefit of students and, only for expenditure on capital works and capital projects.*
- *MSAF funds are not to be allocated to support educational needs of students that should properly be met by the University.*
- *MSAF funds should be used predominantly for capital works, which they may fund in their entirety or in conjunction with other capital projects funded through the University. In this context the expenditure may cover planning, acquisitions, development, construction, renovation and rehabilitation of assets.*
- *MSAF funds may be used for expenditure on capital equipment and on installations and infrastructure services which are capital in nature, and for recurrent expenditure on their maintenance where this is a requirement of operation.*
- *Public liability insurance cover may be paid from MSAF funds.*

68. *The MSAF provides an orderly arrangement that collects and controls the disbursement of 'miscellaneous funds'.*

69. *The MSAF is for the supply of facilities as part of the supply of an education course and is GST-free.*

Supply of administrative services

70. A supply of administrative services made by you that is directly related to the supply of an education course is GST-free under paragraph 38-85(b).

What is the meaning of 'directly related' to the supply of an education course?

71. 'Directly related' is not defined in the Act and therefore, takes on its ordinary meaning. The Macquarie Dictionary[26] defines 'directly' to mean 'in a direct line, way or manner; immediately; absolutely'. The term 'related' means 'associated; connected or allied by nature'.

72. The phrase 'directly related' was considered in the context of being 'directly related to employment' for income tax purposes in *FC of T v. Dixon* (1952) 86 CLR 540, at 553-554:

> 'A direct relation may be regarded as one where the employment is the proximate cause of the payment, an indirect relation as one where the employment is a cause less proximate, or, indeed, only one contributory cause'.

73. Therefore, administrative services must be in a direct line or immediately associated or connected with the supply of the education course.

74. Administrative services provided by an entity other than the supplier of the course will be subject to GST.

75. The Act does not outline the administrative services that are directly related to the supply of an education course. However, the ATO considers that the supply of administrative services includes:

(a) program changes;

(b) enrolment services, including the processing of late enrolments;

(c) late issue or replacements of student cards;

(d) examination arrangements and assessments of students including re-assessment of results where a student has failed;

(e) processing academic results including duplicate degree copies;

(f) overdue charges or late payment charges;

(g) record-keeping;

(h) administration of the library;

(i) administration of a textbook scheme;

(j) administration of the supply of course materials;

(k) graduation certificates;

[26] Macquarie Dictionary 1997 3rd Edition Sydney.

(l) course reinstatement;

(m) charges for HECS statements.

This is not an exhaustive list.

Example – Internet charges

76. *Tori attends Sunbury TAFE where part of the course fees charged for the year includes a charge for Internet access from the TAFE. This facility is provided to all students enrolled in the institution. Every student is allowed 200 hours of Internet use to undertake research work. During the year, Tori finds the initial allocation insufficient and subsequently purchases additional access.*

77. *In allocating additional access the TAFE needs to determine whether those hours will be course related. To determine the extent of course related usage, all relevant factors need to be considered, such as the length and purpose of the hours used up. The TAFE must charge the student GST on any Internet hours that are not course related.*

Administrative services that are not GST-free

78. A supply of administrative services to the extent that it is not directly related to an education course is subject to GST.

79. The following administrative charges are subject to GST as they are not administrative services that are directly related to the supply of an education course:

(a) student hall application fees;

(b) application fees for non-resident students studying in Australia (unless the application guarantees the applicant a right to receive a tertiary education course);

(c) graduation dinner;

(d) hire of academic dress.

This is not an exhaustive list.

Example - Graduation ceremony

80. *Upon completion of an accredited tertiary course, students are invited to attend a graduation ceremony to collect their certificate. A graduation fee of $70, which is for the supply of a hired gown and a dinner, is charged to students who attend the ceremony. This supply is taxable.*[27]

Supply of course materials

81. If you charge a fee for the supply of course materials as part of subjects undertaken in an education course, the supply is GST-free under section 38-95.

82. 'Course materials' is defined to mean materials provided by the entity supplying the course that are necessarily consumed or transformed by the students undertaking the course for the purposes of the course.[28]

83. Therefore, in determining whether materials or items will be considered to be course materials, all of the following requirements must be met:

(1) The materials or items are provided by you to students; and

(2) The materials are necessarily consumed or transformed by the students undertaking the course; and

(3) The materials are consumed or transformed for the purpose of the course.

84. The following are examples of course materials when supplied by the educational institution:[29]

- photocopied or printed educational materials that specifically relate to the course;
- course notes for a specific subject outlining the course contents, reading lists, tutorial and seminar topics, assignment and essay questions;
- a study guide consisting of a collection of materials extracted from textbooks, journals and other reading materials including notes of the lecturer;
- unexposed film and film developing chemicals;
- consumable art supplies such as paint, sketch pads, chalk;

[27] The cost of the certificate is not included in the graduation fee.
[28] Section 195-1.
[29] This list is not exhaustive.

- ingredients used in a hospitality course, wood used in courses such as, carpentry and chemicals used in chemistry and related courses;
- work books that provide space for students to complete exercises;
- consumable stationery items specified by you that are necessary for students to undertake the course; and
- scalpels that cannot be resharpened that are used by medical students in surgical operations.

Materials that are taxable

85. The following are examples of materials that are not course materials:[30]

- textbooks;[31]
- textbooks, written by lecturers at the university that are sold on and off campus;[32]
- binders used for assignments/theses;
- musical instruments;
- computers;
- calculators;
- sporting equipment;
- scissors used in a hairdressing course; and
- knives used by hospitality students.

86. Although the items mentioned in paragraph 85 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 paragraph 83.

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[30] The list is not exhaustive. However, these items may be considered facilities. Refer to paragraph 59 of this Ruling.

[31] The Education Textbook Subsidy Scheme was introduced to offset the cost impact of the introduction of the GST on student purchases of textbooks. The retail booksellers are responsible for claiming the subsidy and providing discounts to students. The Department of Education, Science and Training (DEST) administers the Educational Textbook Subsidy Scheme. Information on the scheme can be obtained by telephoning DEST on 1300 139 249 or accessing the following website: www.dest.gov.au.

[32] As a guide, books with an ISBN will be considered textbooks.

87. Where a supply of course materials includes parts which are taxable and other parts which are GST-free or input, you may be required to determine the value of the taxable part. You must use a reasonable method to work out the taxable portion of the supply. What is 'reasonable' will depend on the facts of each case.

Example – Course materials supplied in a binder

88. Randall College of TAFE supplies photocopied notes to their students who are undertaking the Certificate III in Communications. These photocopied notes are supplied to the student in a two ring binder. Because the binder is integral to the supply of the notes it is not necessary for the TAFE to account for GST on this part of the supply.

89. For items to be course materials, the following three requirements must be satisfied:

First requirement - What is the meaning of 'provided' by you to students?

90. Course materials are defined as materials that are provided by you that are necessarily consumed or transformed by the students undertaking the course, for the purpose of the course. This requirement means that the materials must be essential or fundamental to the course **and** the materials must be used up or converted by the students in undertaking the course.

91. 'Provided' is not defined in the Act and therefore takes on its ordinary meaning. 'Provide' is defined to mean 'to furnish or supply'.[33] 'Supply', in this context, takes on its ordinary meaning rather than its GST meaning and is defined to mean 'to furnish a person with what is lacking or requisite' or 'to furnish or provide (something wanting or requisite)'.[34] 'Requisite' is defined to mean 'a necessary thing' or something 'required by circumstances'.[35]

[33] Macquarie Dictionary 1997 3rd Edition Sydney.
[34] Macquarie Dictionary 1997 3rd Edition Sydney.
[35] Macquarie Dictionary 1997 3rd Edition Sydney.

Example – Materials sold by university owned bookshop to a student

92. A university owned bookshop supplies textbooks, general reference books and stationery items to students and the general public. Bernard, a student at the university, purchases a sketchpad and paints from the bookshop. Bernard shows his student ID and a booklist supplied by his lecturer that states that students undertaking a Bachelor of Design require a sketchpad and paints. Bernard is purchasing course materials that are stipulated by the lecturer as being necessary for the purposes of undertaking his course. As the university is the supplier of the course, the university owned bookshop is not required to account for on this supply.

Example – Materials sold by university owned bookshop to the public

93. *Michael, a visiting academic to the university purchases a biro and a notepad from the bookshop at the recommended retail price. As Michael is not undertaking an education course at the university, the bookshop is required to account for GST on supplies of consumable stationery items sold to him.*

94. You may engage a third party to act as your agent (e.g., an independent bookshop not owned by the university) to sell materials to students GST-free. However, where a third party acts as your agent all of the following conditions must be satisfied in order for the course materials to be sold GST-free:

- you retain ownership of the materials that are being sold; and
- your agent can identify the student (by provision of a current student ID); and
- the lecture notes and materials are listed on a booklist as being required by the student to undertake his or her course.

Supplies made by a third party

95. If the student purchases materials (including consumable stationery items) 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.

96. For instance, where a third party prints and binds lecture notes for you as the supplier of a course, the third party owns the goods and is not acting as your agent.[36] Those materials are subject to GST.

[36] Refer to Goods and Services Tax Ruling GSTR 2000/37 on agency relationships and the application of the GST law.

Example – Bookshop not acting as agent for an education institution

97. Smith Pty Ltd is in the business of supplying educational materials, stationery items, printing and binding services. A major component of their business involves supplying printing services and selling educational materials on behalf of education institutions. This involves the printing of lecture notes from a master copy provided by education institutions. The lecture notes are bound by Smith Pty Ltd and are subsequently sold to students undertaking a GST-free education course. In these circumstances, Smith Pty Ltd owns the copies and is acting as a principal in its own right, not as an agent for education institutions.

98. Because Smith Pty Ltd owns the goods and is not the provider of an education course all of the requirements of a course material have not been satisfied. When Smith Pty Ltd sells the lecture notes the sale will be subject to GST. Supplies of stationery items made directly to students will also be subject to GST on the same basis.

Second requirement - What is meant by 'consumed' or 'transformed'?

99. Course materials must be used up or converted into classwork, such as paintings etc. Hence the effective life of course materials is limited to the duration of the course. 'Consumed and transformed' has a narrow application in that it applies to materials that are provided by you to students in undertaking a subject such as cooking ingredients in a hospitality course, fabric in a dressmaking course or materials used to create models in an architecture course. However, for the purposes of the Act, course materials will also extend to cover things that are also effectively used up in undertaking the course.

100. The term '**consumed**' means destroyed or expended by use; used up. 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. Chemicals that are used to develop photographic film also satisfy the definition of course materials because they are consumed in the process. These chemicals are also GST-free.

101. 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. It has also been defined to mean 'to change in character or condition; to alter in function or nature'. Examples of materials that are changed in form include cooking ingredients in a hospitality course, wood in a cabinet making course or photographic paper in a photography class.

Third requirement - What is the meaning of 'for the purposes of the course'?

102. Course materials are only those materials that are necessarily consumed or transformed by the students undertaking the course for the purpose of the course. 'Purpose' is defined to mean 'the object for which anything exists or is done, made, used, etc' or 'an intended or desired result; end or aim'.[37] For the purposes of the Act, only those materials listed by you as being necessary for a particular course or subject are GST-free. Only those consumable stationery items that are required to undertake the course, that are listed on a book list, are GST-free. Any replacement on a reasonable basis of an item listed on a book list will also be GST-free.

Example - Supply of resource book/study guide - course materials

103. Students of Clinton University who are undertaking 1st year Economics are required to purchase a study guide, as recommended by the lecturer. The study guide is a collection of previously published works from journals and other resource materials and includes the lecturer's contributions and the effective life of the materials is limited to the duration of the course. The study guide has a contents page and is bound. There is no space for the students to write their own notes. The resource book does not have an ISBN.

104. *Because the resource book/study guide is a collation of materials extracted from various textbooks and its useful life is limited to the duration of the course, the study guide is GST-free if supplied by the university*.

[37] Macquarie Dictionary 1997 3rd Edition Sydney.

Example - Photocopied research paper - not course materials

105. Dianne is enrolled in an undergraduate course at Lindon University. As part of a research assignment she completes, Dianne is required to supply four duplicate copies to her lecturer. Dianne goes to the faculty office that offers photocopying services and is charged $4.60 for the photocopying of her assignment.

106. The University has supplied a photocopying service to Dianne to enable her to submit her assignment. The charge for photocopied materials in this instance is subject to GST.

Example – Tracksuit – not course materials

107. Zack is undertaking a physical education course at the Leopold Institute of TAFE. Included in the tuition fees for the semester is a charge for a tracksuit provided by the TAFE.

108. Although the tracksuit was provided by the entity supplying the course, the tracksuit is not consumed or transformed in any way by Zack in undertaking the course and can be used for other purposes. On this basis, the sale of the tracksuit by the TAFE is subject to GST.

Right to receive GST-free education

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

110. Where a fee is charged to a student that creates a right to receive a supply that is GST-free under Subdivision 38-C, that supply is GST-free.

Example - Enrolment fee

111. *Where a fee charged to confirm a student's place at a university creates a right for a student to receive a GST-free education course, that fee is GST-free as it relates to a right to receive a GST-free education course.*

112. Where an agent acting on your behalf charges a fee that legally binds you to provide an education course to a student, that fee is also consideration for a GST-free supply.

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

113. Where you charge a fee that merely creates a right to be considered for a position in a higher education institution and it does not guarantee entry to a tertiary, Masters or a Doctoral course, that charge is not consideration for 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 or considering an application for a position in a course.

Example – Application fees

114. The Lincoln Admission Centre (LAC) has been established to facilitate the enrolment of students at various tertiary institutions. LAC charges each student an application fee to process the student's enrolment application. The LAC is a separate entity to the tertiary institutions.

115. The application fee charged to students does not create a right for the student to receive a GST-free education course, as it does not guarantee the applicant a position in a tertiary institution. The fees charged by LAC are non-refundable and are subject to GST. As LAC is not the provider of the course, any services provided by them are not administrative services for the purposes of paragraph 38-85(b).

Supplies that are not GST-free

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

- a supply of membership of a student organisation;[39]
- a supply by way of a sale, lease or hire of goods other than course materials.[40] (See paragraph 82 for the definition of course materials);
- a supply of any food as part of an excursion or field trip;[41]
- a supply of accommodation as part of the excursion or field trip;[42]
- a supply of accommodation to tertiary students; or
- a supply of food as part of accommodation provided to tertiary students.[43]

Each of these supplies is explained in the paragraphs below.

[39] Paragraph 38-100(b).
[40] Paragraph 38-100(a).
[41] Paragraph 38-90(2)(b).
[42] Paragraph 38-90(2)(a).
[43] Subsection 38-105(4).

Membership of a student organisation

117. A supply of membership of a student organisation will be subject to GST.[44]

118. Student organisation is not defined in the Act. However, the *Higher Education Funding Act 1988* provides some guidance as to the meaning of a student organisation.

119. A student organisation means an organisation that has as one of its objects or purposes the furthering of the interests generally of students at an institution and that is:

(a) a financial corporation or trading corporation within the meaning of paragraph 51(xx) of the Constitution; or

(b) an incorporated body or an unincorporated body of any other kind.

120. Examples of student organisations are student unions, student bodies and associations such as the student representative councils and student sports associations.

Example – Newfoundland University Sports Association and its affiliated clubs

121. The Sports Association is an affiliate of the Union that is a body incorporated under the Newfoundland University Act. The Association is incorporated in its own right and has its own board of management. The affiliated clubs charge an annual membership fee to students who join during orientation week.

122. Granting a student membership of a club constitutes a supply under paragraph 9-10(2)(e). If the club is registered for GST, the fee charged for membership is a taxable supply and the club is required to account for GST.

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

123. Where you charge students for goods and services that are not part of the supply of the education course, those charges are subject to GST.

[44] Paragraph 38-100(b).

124. A supply of goods (other than course materials) is subject to GST if it fulfils the requirements in section 9-5 of a taxable supply. A supply of goods, other than course materials, by way of a sale, lease or hire to students is subject to GST.[45]

Supply by way of sale

125. A sale occurs when the transaction involves an act of selling or transfer of property for money, credit or non-monetary consideration to a student undertaking an education course.

Example – Sale of tools

126. *Students undertaking a short course in Mechanics at Ascot TAFE are required to purchase tools to facilitate various mechanical operations required for workshops held twice a week. The tools can be purchased from the bookshop at the TAFE at a discount. The supply of tools by the TAFE is a taxable supply and is subject to GST.*

Supply by way of hire

127. Where you supply anything to a student that does not satisfy the definition of course materials and the supply is in the nature of hire, then the supply will be subject to GST.

128. The supply you make is in the nature of hire when a student pays you a fee to have temporary, but exclusive use of the goods you supply. It does not matter whether the charge is separate or embedded in another fee or charge.

Example – Hire of musical instruments

129. *Jessica is enrolled in a Bachelor of Education course. In second year she chooses to study an elective called 'Music fundamentals' that will enable her to teach music at primary school level. The elective includes practical activities involving a range of instruments. The University agrees to provide Jessica with the use of the instruments for a fee. Jessica uses the instrument in class and is also able to take the instrument home to practise during the semester in which she is studying this elective. The fee charged by the University constitutes a supply by way of hire and is subject to GST.*

[45] Paragraph 38-100(a). It should be noted that these provisions apply to the tertiary sector. The provisions of section 38-97 only apply to the lease or hire of curriculum related goods to students undertaking pre-school, primary and secondary courses.

130. Where you provide facilities to students for use on your premises or occasional borrowing, with no element of exclusive use, this is not in the nature of a hire.

Example – Supply of books

131. Ian, a final year medical student at Spring University, is required to complete a paper discussing human anatomy. As the deadline for his paper approaches he borrows two books from the library to assist him with his research. The books are supplied to Ian for no consideration in accordance with the normal borrowing rules of the library and must be returned after two weeks. Ian is making use of the University's facilities and this arrangement is not in the nature of a hire.

132. At the same time Ian arranges to hire another textbook for the remainder of the academic year. The Library charges him a fee to have exclusive use of the book for seven months. This arrangement is in the nature of a hire and is subject to GST.

Supply by way of lease

133. Similarly, where you lease property to a student, the fee you charge will include GST.

134. Goods are leased when a contract is entered into that transfers the property from the educational institution to the student for a definite period in return for periodical payments.

Example – Lease of lap top computer

135. Amber needs a lap top computer to assist her with her studies. Amber does not want to buy a computer, instead she decides to lease a computer from the institution at which she is studying. The contract she signs grants her exclusive use of a computer for a period of one year. Amber is required to make monthly payments to the institution as part of the lease agreement. The fee charged by the institution is subject to GST.

Supply of an excursion or field trip

136. You make a supply of an excursion or field trip where you coordinate the various elements for the recipients of the supply. These elements may include entry fees, charges for equipment and activities, transport costs, food and accommodation.

137. If the excursion or field trip you supply to a student is directly related to your curriculum, and it is not predominantly recreational in nature, the supply is GST-free, except for any food or accommodation supplied.[46]

138. 'Predominantly' is not defined in the GST legislation and takes on its ordinary meaning. The Macquarie Dictionary[47] defines predominantly to mean '*to be the stronger or leading element, to be more noticeable or imposing than something else, to dominate or prevail over*'.

139. To determine whether an excursion or field trip is predominantly recreational, all the relevant factors relating to the activities in the excursion or field trip must be considered. For instance, the time, cost or purpose of the excursion or field trip would be relevant in determining whether the activities are predominantly recreational.

Example – Excursion that is predominantly recreational

140. Students who are studying automotive mechanics at Patterson TAFE go on an excursion to a car-racing event. The students are charged $60 each to cover the cost of the excursion. On their arrival at the race venue the students spend an hour in the pits with the pit crews observing and learning about techniques that are used on high performance vehicles. They spend the next four hours watching the car racing before returning to the TAFE. As this trip is predominantly recreational the TAFE is required to account for GST on the supply of the trip.

141. Where you engage a third party to provide all or a part of an excursion or field trip and the third party is registered for GST, its charge to you will include GST. You will be entitled to input tax credits in respect of the amount of GST paid. The subsequent supply to the student by you is GST-free if it is:

- directly related to the curriculum; and
- not predominantly recreational; and
- not a supply of food and/or accommodation.

[46] Paragraph 38-90(2)(a) and paragraph 38-90(2)(b).
[47] Macquarie Dictionary 1997 3rd Edition Sydney.

142. Only you as the provider of the course can supply a GST-free excursion or field trip. It is difficult for a third party to decide whether an activity is directly related to your curriculum or predominantly recreational. Consequently where a third party supplies any part of an excursion or field trip directly to students and/or staff, this supply is a taxable supply.

Supply of food as part of an excursion or field trip

143. Any supply of food as part of the excursion, whether supplied by the supplier of the course or by another supplier, is not GST-free under Subdivision 38-C. It is subject to the GST rules relating to food that are contained in Subdivision 38-A.[48]

Supply of accommodation as part of an excursion or field trip

144. Any supply of accommodation as part of the excursion, whether supplied by the supplier of the course or another supplier, is not GST-free under Subdivision 38-C.[49]

145. If food and accommodation are included in a single charge for an excursion or field trip, the charge must be apportioned in accordance with section 9-80. Refer to paragraph 44 that discusses the GST treatment of mixed supplies.

Accommodation provided to tertiary students

146. Students undertaking tertiary courses may choose to stay in university colleges and halls, university-sponsored flats, hostels or off campus residential rental accommodation.

147. This Ruling deals with the GST implications of accommodation provided to students staying at university colleges and halls or university sponsored flats. Student accommodation is a term that is defined in section 38-105. However, this definition relates specifically to a supply of student accommodation to students undertaking a primary course, a secondary course or a special education course and has no relevance to a supply of accommodation to a student who is undertaking a tertiary course.

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

[49] Paragraph 38-90(2)(a) provides that a supply of accommodation as part of an excursion or field trip undertaken by a student enrolled in a tertiary course, Masters or Doctoral course, tertiary residential college course or a professional or trade must be treated differently from a similar supply to a student undertaking a pre-school course, primary school course or secondary course.

148. A supply of accommodation to tertiary students provided at university colleges and halls or university sponsored flats is a supply of non-commercial residential accommodation, because it is specifically excluded from the definition of commercial residential premises.

149. Section 195-1 states that the definition of commercial residential premises does not include premises to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school.

Determining whether a supply is 'in connection with an education institution that is not a school'

150. Some of the factors to be considered in determining whether a supply is in connection with an education institution that is not a school include:

- Whether the education institution has any input in the running of the accommodation facility including the setting of rental charges and determining the relationship between the supplier of the accommodation and the occupier. The input may be made through a third party.
- Whether there is any specific or implied requirement that preference must be given to students of the education institution.
- Whether the housing facility is constructed on land owned by the education institution.
- Whether the land has been acquired or utilised by the education institution for the purpose of entering into agreements for the construction and running of the housing facility.
- Whether the facility is in fact to be occupied by students of the education institution during the academic year or at other times.
- Whether the education institution has any interest in the entity that is providing the accommodation. The interest may not always be directly reflected.
- How the housing facility is marketed.
- The identity of the operator and the nature of their business (is their business the supply of accommodation to students).

- The intention of the education institution in entering into any arrangements and any relevant agreements relating to the housing facility.
- Whether the provision of the facility reflects an education institution's charter or other governing instruments.

151. A decision should not be based on any of these factors on its own. They must be considered together, along with any other factors relevant to the particular case. Written agreements are also relevant in deciding the question at issue, as are the full actions and intentions of all of the parties concerned.

Accommodation provided to tertiary students is an input taxed supply

152. Therefore accommodation provided to tertiary students is an input taxed supply in accordance with subsection 40-35(1). Subsection 40-35(1) states:

> A supply of premises that is by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) is input taxed if:
>
> (a) the supply is of residential premises (other than commercial residential premises); or
>
> (b) the supply is of commercial accommodation and Division 87 (which is about long-term accommodation in commercial premises) would apply to the supply but for a choice made by the supplier under section 87-25.

153. Accordingly, no GST will be payable on the supply of accommodation provided to tertiary students and you will not be entitled to input tax credits for any acquisitions that relate to the supply.

154. Where accommodation is provided to a tertiary student for the duration of his/her course all of that accommodation will be treated as being accommodation provided to a student in connection with an education institution that is not a school. This includes accommodation that is supplied between semesters or academic years, provided the student is a continuing student.

155. Where the right to occupy premises includes any of the following:

- cleaning and maintenance;
- electricity, gas, air conditioning or heating; or
- access to a telephone line or data port,

the supply of these services will be input taxed regardless of whether the students are charged separately for these services.

156. However, charges for telephone calls, connections with an Internet Service Provider and Internet use are not considered to fall into the categories listed at paragraph 155. Charges made for these services are taxable.

157. If accommodation, that is usually provided to tertiary students, is made available to a person who is not a student, the accommodation will not be treated as accommodation in connection with an education institution that is not a school. This accommodation will be treated as short term or long term residential accommodation[50] if it satisfies the definition of a hotel, motel, inn, hostel or boarding house.[51]

Application of Subdivision 38-G (Non-commercial activities of charitable institutions etc.) to accommodation provided to tertiary students.

158. Section 38-250 applies when a supply is made for nominal consideration. In determining whether the supply of accommodation[52] provided to tertiary students will be GST-free in accordance with section 38-250, the following requirements must be satisfied:

- you must be a charitable institution, a trustee of a charitable fund, a gift-deductible entity or a government school; and
- accommodation provided by you must be supplied for consideration that is less than 75% of the GST inclusive market value of the supply; or
- accommodation provided by you must be supplied for consideration that is less than 75% of the cost to you of providing the accommodation.

[50] Division 87 discusses long-term residential accommodation in commercial residential premises.

[51] Refer to Goods and Services Tax Ruling GSTR 2000/20 on commercial residential premises.

[52] For the purpose of applying section 38-250 a supply of accommodation provided to a tertiary student is taken to include the services at paragraph 155. A supply of accommodation provided to a tertiary student may include a supply of food, for example catered colleges. However, for the purposes of applying section 38-250, the accommodation and the food are to be treated as separate supplies. Refer to paragraph 166.

First requirement

159. Whether you are a charitable institution, a charitable fund, a gift deductible entity or a government school will depend on the nature and activities of your entity. It is not the intention of this Ruling to discuss which entities are eligible to receive charitable status. Further guidance is provided in the 'Charity Pack'.[53]

Second requirement

160. The accommodation provided by you must be provided at a non-commercial rate, that is, it has to be:

- less than 75% of the GST inclusive market value of the supply; or
- less than 75% of the cost to you of providing the accommodation.

161. In establishing a market value for accommodation, assistance is provided in the 'Market Value Guidelines'.[54] This document provides guidance in establishing market values for the purpose of section 38-250.

162. In establishing the cost of providing accommodation, only costs incurred in providing the accommodation can be included. This would not include imputed costs for things like labour, donations and rent where the organisation has not actually provided any consideration or incurred any real costs.

163. Where depreciable assets form part of the cost of supplying accommodation, the organisation should use the depreciation amount for the asset rather than the whole cost of the asset. This is to ensure that the cost of the entire item is not attributed to the first supply of the accommodation with no ability to attribute the cost of the asset to subsequent supplies.

164. Where you satisfy the requirement at paragraph 159 and either of the two tests specified at paragraph 160, the supply of accommodation provided to tertiary students will be GST-free under section 38-250.

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[53] The 'Charity Pack' can be downloaded from our website www.ato.gov.au (under Booklets and publications).

[54] The 'Market Value Guidelines' can be downloaded from our website www.ato.gov.au (under For Non-Profit Organisations, Committees and Forums, Charities Consultative Committee, Charities Consultative Committee Resolved Issues Document, Non-Commercial Activities of Charities, Part 3 - Cost of Supply and Market Value Tests).

Supply of food as part of accommodation provided to tertiary students

165. Where you supply food to students staying at accommodation provided to tertiary students, the supply is subject to the GST rules relating to food that are contained in Subdivision 38-A.

166. If you charge students an all-inclusive residential fee that includes food and accommodation, section 9-80 requires that the charge be apportioned between GST-free, input taxed supplies and taxable supplies. You are required to identify the fee charged for each of the supplies for the purpose of determining the GST on the taxable component.

167. The Commissioner will accept an apportionment on a reasonable basis between the cost of the accommodation, the supply of the food and any other incidental supplies. The basis chosen by you should be applied consistently and appropriate records retained. For example you may analyse historical data to determine the proportions that apply to the various supplies. If these proportions do not vary significantly from year to year the Commissioner will accept that this method forms a reasonable basis by which you may determine your GST liabilities.

Application of Subdivision 38-G (Non-commercial activities of charitable institutions etc.) to a supply of food as part of accommodation provided to tertiary students.

168. Section 38-250 applies when a supply is made for nominal consideration. In determining whether the supply of food as part of accommodation provided to tertiary students will be GST-free in accordance with section 38-250, the following requirements must be satisfied:

- you must be a charitable institution, a trustee of a charitable fund, a gift-deductible entity or a government school; and
- food provided by you must be supplied for consideration that is less than 50% of the GST inclusive market value of the supply; or
- food provided by you must be supplied for consideration that is less than 75% of the consideration you provided, or were liable to provide, for acquiring the food supplied.

First requirement

169. Whether you are a charitable institution, a charitable fund, a gift deductible entity or a government school will depend on the nature and activities of your entity. It is not the intention of this Ruling to discuss which entities are eligible to receive charitable status. Further guidance is provided in the 'Charity Pack'.[55]

Second requirement

170. The food provided by you must be provided at a non-commercial rate, that is, it has to be:

- less than 50% of the GST inclusive market value of the supply; or
- less than 75% of the consideration you provided, or were liable to provide, for acquiring the food supplied.

171. In establishing a market value for food, assistance is provided in the 'Market Value Guidelines'.[56] This document provides guidance in establishing market values for the purpose of section 38-250.

172. In establishing the cost of providing food, only those amounts paid or payable by you may be included in the calculation. This is due to the wording of the second limb of the subsection that states that it is the 'consideration the supplier provided or was liable to provide for acquiring the thing supplied'.

173. The following things cannot be included because they do not involve an actual outlay by you:

- depreciation of assets; and
- imputed costs for things like labour, donations and rent where you have not actually provided any consideration or incurred any real costs.

174. Where you satisfy the requirement at paragraph 169 and either of the two tests specified at paragraph 170, the supply of food as part of accommodation provided to tertiary students will be GST-free under section 38-250.

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[55] The 'Charity Pack' can be downloaded from our website www.ato.gov.au (under Booklets and publications).

[56] The 'Market Value Guidelines' can be downloaded from our website www.ato.gov.au (under For Non-Profit Organisations, Committees and Forums, Charities Consultative Committee, Charities Consultative Committee Resolved Issues Document, Non-Commercial Activities of Charities, Part 3 - Cost of Supply and Market Value Tests).

Education courses purchased by employers

175. The test as to whether GST applies when an employer engages a course provider to deliver an education course to employees is an objective test and would depend on the following criteria:

(a) Terms of engagement

The provider of the course should look at the terms of their engagement and decide whether the engagement is a contract to develop and deliver a customised course or is it a contract to deliver a GST-free course;

(b) The education course

As long as the course retains its accredited status, the supply of the course to the employees at the request of the employer is GST-free.

176. Where the provider modifies the unit or course to suit the needs of the entity, to the point that the course loses its accredited status, the supply of the course will be subject to GST.

Example – Employer-purchased course

177. A government department engages ABC Business Writing Consultants to deliver a course titled 'Business Writing for the New Millennium' to their staff. ABC Business Writing Consultants is a registered training organisation and they are registered to deliver a number of vocational education and training programmes that focus on business writing skills.

178. The course delivered by ABC Business Writing Consultants is an accredited course that is covered by the Education Minister's determination. The course is slightly modified to suit the needs of the government agency, but the course retains its accredited status and is not subject to GST.

Tax Invoices

179. 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.[57]

180. You are required to clearly identify each taxable supply and show the total amount of GST payable when you make a mixed supply consisting of taxable, input taxed and GST-free components.[58]

[57] Refer to Goods and Services Tax Ruling GSTR 2000/17 on tax invoices.

181. An invoice can be generated for a GST-free supply. A supplier may issue a document for a non-taxable supply that is headed with the words 'tax invoice' if the document clearly shows that the supply does not include GST.[59]

Attributing GST payable, input tax credits and adjustments

182. You will attribute any GST payable on the taxable supplies that you make in accordance with the general attribution rules under section 29-5.

183. Where the acquisition that you make is creditable, you are entitled to an input tax credit for GST payable on the acquisition. As with the attribution of GST on taxable supplies, the tax period to which an input tax credit for the acquisition is to be attributed for GST purposes will be in accordance with the general attribution rules under section 29-10.[60]

Detailed contents list

184. Below is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	**1**
Date of effect	**5**
Context of this ruling	**6**
Ruling and explanations	**10**
Definition of a tertiary course	12
Requirements specified in paragraph (a) of a 'tertiary course' as defined in the Act	13
Requirements specified in paragraph (b) of a 'tertiary course' of the Act – separate determination	16
Definition of a Masters or Doctoral course	18
Definition of a tertiary residential college course	21
Single units	23

[58] Subregulation 29-70.01(6) of A New Tax System (Goods and Services Tax) Regulations 1999 – Information that must be contained in a tax invoice (other than a recipient created tax invoice).
[59] Refer to Goods and Services Tax Ruling GSTR 2000/17 on tax invoices.
[60] Refer to Goods and Services Tax Ruling GSTR 2000/29 on attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25.

Example – Single unit from an award tertiary course undertaken at a University 29
Example – A unit from a Masters or Doctoral course 32
Example – A single unit undertaken without assessment 36
Non-accredited units 37
Example – A course comprising accredited and non-accredited units 39
Education supplies that are GST-free 42
Supply of an education course 43
Fees charged by Universities 48
Tuition 50
Example – Withdrawal from a course 52
Example – Taped lectures 54
Example – Activities not considered part of course 56
Facilities 57
Example – Amenities fees charged by University 61
Example – Miscellaneous Student Activity Fee 67
Supply of administrative services 70
What is the meaning of 'directly related' to the supply of an education course? 71
Example – Internet charges 76
Administrative services that are not GST-free 78
Example – Graduation ceremony 80
Supply of course materials 81
Materials that are taxable 85
Example – Course material supplies in a binder 88
First requirement – What is the meaning of 'provided' by you to students? 90
Example – Materials sold by university owned bookshop to a student 92
Example – Materials sold by university owned bookshop to the public 93
Supplies made by a third party 95

Example – Bookshop not acting as agent for an education institution 97

Second requirement – What is meant by 'consumed' or transformed' 99

Third requirement – What is the meaning of 'for the purposes of the course'? 102

Example – Supply of resource book/study guide – course materials 103

Example – Photocopied research paper – not course materials 105

Example – Tracksuit – not course materials 107

Right to receive GST-free education 109

Example – Enrolment fee 111

Example – Application fees 114

Supplies that are not GST-free 116

Membership of a student organisation 117

Example – Newfoundland University Sports Association and its affiliated clubs 121

Supply by way of sale, lease or hire of goods other than course materials 123

Supply by way of sale 125

Example – Sale of tools 126

Supply by way of hire 127

Example – Hire of musical instruments 129

Example – Supply of books 131

Supply by way of lease 133

Example – Lease of lap top computer 135

Supply of an excursion or field trip 136

Example – Excursion that is predominantly recreational 140

Supply of food as part of an excursion or field trip 143

Supply of accommodation as part of an excursion or field trip 144

Accommodation provided to tertiary students 146

Determining whether a supply is 'in connection with an education institution that is not a school' 150

Accommodation provided to tertiary students is an input taxed supply 152

Application of Subdivision 38G (Non-commercial activities of charitable institutions etc.) to tertiary accommodation provided to tertiary students 158

First requirement 159

Second requirement 160

Supply of food as part of accommodation provided to tertiary students 165

Application of Subdivision 38G (Non-commercial activities of charitable institutions etc.) to a supply of food as part of accommodation provided to tertiary students 168

First requirement 169

Second requirement 170

Education courses purchased by employers 175

Example – Employer-purchased course 177

Tax Invoices 179

Attributing GST payable, input tax credits and adjustments 182

Detailed contents list **184**

Commissioner of Taxation
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Previous Ruling:
Previously released in draft from as GSTR 2000/D21

Related Rulings/Determinations:
GSTR 2000/17; GSTR 2000/29; GSTR 2000/30; GSTR 2000/37

Subject references:
- administrative services
- course materials
- deposits
- education
- education course
- education Minister
- excursions or field trips
- food
- GST-free supplies
- input taxed supplies
- tertiary course
- Masters or Doctoral course
- tertiary residential college course
- student accommodation
- taxable supplies

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