


GSTR 2001/1A3 - Addendum - Goods and services tax: Goods and services tax: supplies that are GST-free for tertiary education courses

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Addendum

Goods and Services Tax Ruling

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

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2001/1 to:

- reflect the withdrawal and replacement of Goods and Services Tax Ruling GSTR 2000/20 *Goods and services tax: commercial residential premises*;
- reflect amendments made by the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010* in relation to Subdivision 29-C of the *A New Tax System (Goods and Services Tax) Act 1999*;
- reflect changes made by the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* to omit references to 'Masters or Doctoral Course' throughout the GST Act;
- reflect the latest Education Minister's Determination made under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*, the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*; and
- reflect the Education Minister's Determination made under paragraph (b) of the definition of 'tertiary course' in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*, the *A New Tax System (Goods and Services Tax) (Tertiary Courses) Determination 2014*.

The Addendum also makes other minor changes.

GSTR 2001/1 is amended as follows:

1. Paragraph 2

Omit 'Masters, Doctoral, and'.

2. Paragraph 5

In the first sentence, omit: '[to tax periods commencing]'.

3. Paragraph 11

Omit the second dot point.

4. Paragraph 12

- (a) After 'A tertiary course means:', insert footnote:

^{4A} Section 195-1.

- (b) Omit footnote 5; substitute:

⁵ Education Minister means the Minister administering the *Student Assistance Act 1973*. See section 195-1.

- (c) Omit footnote 6; substitute:

⁶ See the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*.

- (d) After paragraph (a); insert:

(aa) a course of study or instruction accredited at Masters or Doctoral level and supplied by a higher education institution or a non-government higher education institution; or

- (e) Omit footnote 7; substitute:

⁷ *A New Tax System (Goods and Services Tax) (Tertiary Courses) Determination 2014*.

5. Footnote 8

Omit the footnote; substitute:

⁸ The *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*.

6. Paragraph 15

- (a) Omit the paragraph; substitute:

15. A course provided under contract, by an entity that is not an education institution specified for that course in the Education Minister's determination, 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.

- (b) After paragraph 15, insert:

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

15A. A tertiary course also includes 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.

15B. A higher education institution means an entity that is a higher education provider as defined in section 16-1 of the *Higher Education Support Act 2003*.^{8A} A non-government higher education institution means an institution that is not a higher education institution and that is either established as a non-government higher education institution under a law of a State or Territory or is registered by a State or Territory higher education recognition authority.^{8B}

7. Paragraph 17

- (a) Omit the paragraph including the footnote; substitute:

17. A determination made by the Education Minister under paragraph (b) requires the unanimous agreement of the Standing Council for Federal Financial Relations under the Intergovernmental Agreement on Federal Financial Relations.⁹

- (b) After paragraph 17, insert:

17A. The Education Minister has made a determination for the purpose of paragraph (b).^{9A} The determination provides that a course of study or instruction that is not full-time is a tertiary course for the purposes of the GST Act, but only if it would, if provided on a full-time basis, meet the requirements of a tertiary course under subsection 5D(1) of the *Student Assistance Act 1973*.^{9B}

17B. The purpose of the determination is to extend the definition of tertiary course to include courses provided on a part-time basis. Such courses are not otherwise covered by the definition because the determination made by the Education Minister under subsection 5D(1) requires that a tertiary course is a full-time course.

17C. The determination applies from the date that the previous determination made by the Education Minister under subsection 5D(1) (*Student Assistance (Education Institutions and Courses) Determination 2009 (No. 1)*) commenced, to ensure that relevant part-time tertiary courses supplied on or after 21 March 2009 are treated as GST-free.

^{8A} Section 195-1.

^{8B} Section 195-1.

⁹ Clause A16 of Schedule A of the Intergovernmental Agreement on Federal Financial Relations provides that a proposal to vary the GST base by way of a Ministerial determination under the GST Act will require the unanimous agreement of the Standing Council. See clauses A3 to A8 of Schedule A concerning the Standing Council for Federal Financial Relations.

^{9A} *A New Tax System (Goods and Services Tax) (Tertiary Courses) Determination 2014*.

^{9B} The requirements are specified in the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*.

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8. Paragraphs 18, 19 and 20

Omit the paragraphs including heading.

9. Paragraph 21

- (a) Omit 'or a Masters or Doctoral course'.
- (b) Omit 'or Masters or Doctoral courses'.

10. Paragraph 22

Omit ' or Masters or Doctoral course'; substitute ', '.

11. Paragraph 23

Omit ', Masters or Doctoral'.

12. Paragraph 26

Omit the first occurrence of 'Masters or Doctoral'; substitute: 'tertiary'.

13. Paragraph 27

After 'Doctoral'; insert: 'level tertiary'.

14. Paragraph 29

At the end of the sentence insert a full stop.

15. Paragraph 32 Heading

After 'Doctoral'; insert 'level tertiary'.

16. Footnote 16

Omit the footnote; substitute:

¹⁶ Registered Training Organisation (RTO) is not defined in the GST Act. However, the term is defined in the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)* as meaning a training organisation that is registered on the National Register as a registered training organisation. The National Register is the register referred to in section 3 of the *National Vocational Education and Training Regulator Act 2011*.

17. Paragraph 47

Omit the paragraph; substitute:

47. If you are an Australian Government Agency, there are limited circumstances in which a fee you charge may be treated as not being consideration for a supply. This includes certain payments of a regulatory nature and certain payments concerning information and record-keeping. For further information see Division 81 of the GST Act and Division 81 of the GST Regulations.²³

18. Footnote 31

Omit the footnote.

19. Paragraph 113

Omit ‘, Masters or a Doctoral’.

20. Footnote 49

- (a) Omit ‘Masters or a Doctoral course,’.
- (b) After ‘or trade’; insert ‘course’.

21. Paragraph 148

Omit the paragraph; substitute:

148. A supply of accommodation to tertiary students provided at university colleges and halls or university sponsored flats is not a supply of accommodation in commercial residential premises. This is because it is specifically excluded from the definition of commercial residential premises.

22. Paragraph 149

At the end of the paragraph; insert footnote 49A:

^{49A} See Goods and Services Tax Ruling GSTR 2012/6 *Goods and services tax: commercial residential premises* at paragraphs 215 to 216.

²³ See also Law Administration Practice Statement (General Administration) PS LA 2013/2 (GA) *GST treatment of Australian taxes, fees and charges under Division 81 of the A New Tax System (Goods and Services Tax) Act 1999*, which applies on and from 1 July 2013.

23. Paragraph 152

(a) After the first sentence; insert footnote 49B:

^{49B} The Commissioner's views on the operation of section 40-35 to supplies of residential premises are set out in Goods and Services Tax Ruling GSTR 2012/5 *Goods and services tax: residential premises*.

(b) Omit '(other than commercial residential premises)'; substitute:

(other than a supply of commercial residential premises or a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises)

24. Paragraph 157

Omit the second sentence including footnotes; substitute:

If the premises used to provide accommodation to students are, or are sufficiently similar to, a hotel, motel, inn, hostel or boarding house, then accommodation provided in the premises to persons who are not students is a supply of accommodation in commercial residential premises.⁵⁰ A supply of long-term accommodation to non-students in the premises may be subject to concessional treatment or input taxed.⁵¹

25. Paragraph 159

Omit the last sentence including footnote 53; substitute:

Further guidance is provided in the *Tax basics for non-profit organisations*.⁵³

26. Paragraph 161

Omit the first sentence including footnote 54; substitute:

In establishing a market value for accommodation, assistance is provided in the *Market Value Guidelines*.⁵⁴

⁵⁰ Refer to Goods and Services Tax Ruling GSTR 2012/6 *Goods and services tax: commercial residential premises*.

⁵¹ See Division 87. See also Goods and Services Tax Ruling GSTR 2012/7 *Goods and Services Tax: long-term accommodation in commercial residential premises*.

⁵³ The *Tax basics for non-profit organisations* (NAT 7966) can be accessed at www.ato.gov.au.

⁵⁴ The *Market Value Guidelines* can be accessed at www.ato.gov.au. See Part 3, Issue 1, Section G of '*Charities consultative committee resolved issues document*' located on the website.

27. Paragraph 163

Omit the first sentence; substitute:

Where depreciable assets form part of the cost of supplying accommodation, the organisation should use any reasonable methodology that reflects the proportion of the consideration provided to acquire the depreciable assets that relates to each supply of accommodation made.^{54A}

28. Paragraph 169

Omit the last sentence including footnote 55; substitute:

Further guidance is provided in the *Tax basics for non-profit organisations*.⁵⁵

29. Paragraph 171

Omit the first sentence including footnote 56; substitute:

In establishing a market value for food, assistance is provided in the '*Market Value Guidelines*'.⁵⁶

30. Paragraph 173

After the paragraph; insert:

173A. Where capital assets that diminish in value over time are utilised in making a supply of food, the consideration provided by the supplier to acquire those assets can be taken into account in determining whether the supply is GST-free under subparagraph 38-250(2)(b)(ii).^{56A} Any reasonable methodology that reflects the proportion of the consideration provided to acquire the depreciable assets that relates to each supply of food made may be used.

^{54A} This position is consistent with the views set out in Goods and Services Tax Determination GSTD 2013/4 *Goods and services tax: where capital assets that diminish in value over time are utilised in making a supply, can the consideration provided by the supplier to acquire those assets be taken into account in determining whether the supply is GST-free under subparagraph 38-250(2)(b)(ii) of A New Tax System (Goods and Services Tax) Act 1999?* Consistent with the view set out in paragraph 26 of GSTD 2013/4, the cost to acquire land is not included as part of the cost of supplying accommodation as land does not decline in value over time.

⁵⁵ The Tax basics for non-profit organisations (NAT 7966) can be accessed at www.ato.gov.au.

⁵⁶ The Market Value Guidelines can be accessed at www.ato.gov.au. See Part 3, Issue 1, Section G of '*Charities consultative committee resolved issues document*' located on the website.

^{56A} See GSTD 2013/4.

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31. Paragraph 179

Omit the paragraph; substitute:

179. You must provide a tax invoice for taxable supplies you make within 28 days of being requested to do so by the recipient of the supply.⁵⁷

32. Paragraph 180

Omit the paragraph and footnote; substitute:

180. The tax invoice you issue must satisfy the information requirements of subsection 29-70(1), including that it contains enough information to clearly ascertain the extent to which each supply is a taxable supply and the amount of GST payable in relation to each supply. These requirements apply to all tax invoices including when you make a mixed supply consisting of taxable, input taxed and GST-free components.⁵⁸

33. Footnote 59

Omit the footnote; substitute:

⁵⁹ Refer to paragraph 20 of GSTR 2013/1.

34. Detailed contents list

(a) Omit:

Definition of a Masters or Doctoral course 18

(b) Insert:

Requirements specified in paragraph (aa) of a 'tertiary course' as defined in the Act 15A

35. Related rulings/determinations

(a) Omit:

GSTR 2011/D1

(b) Insert:

GSTR 2012/5; GSTR 2012/6; GSTR 2012/7; GSTR 2013/1;
GSTD 2013/4

⁵⁷ Subsection 29-70(2).

⁵⁸ For more information on the tax invoice requirements see Goods and Services Tax Ruling GSTR 2013/1 *Goods and services tax: tax invoices*.

36. Legislative references**(a) Omit:**

- ANTS(GST)A99 9-15(3)(b)
- ANTS(GST)R99 29-70.01
- ANTS(GST)R99 29-70.01(6)
- Higher Education Funding Act 1988 4
- Higher Education Funding Act 1988 34(4)(b)
- Higher Education Funding Act 1988 34(4)(f)
- Higher Education Funding Act 1988 34(4)(h)
- Acts Interpretation Act 1901 46A

(b) Insert:

- ANTS(GST)A99 29-70(1)
- ANTS(GST)A99 29-70(2)
- ANTS(GST)A99 38-250(2)(b)(ii)
- ANTS(GST)A99 Div 81
- ANTS(GST)A99 81-10
- ANTS(GST)A99 81-15
- ANTS(GST)R99 81-15.01(1)(h)
- A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)
- A New Tax System (Goods and Services Tax) (Tertiary Courses) Determination 2014
- Higher Education Funding Act 1988
- Higher Education Support Act 2003 16-1
- National Vocational Education and Training Regulator Act 2011 3
- Student Assistance (Education Institutions and Courses) Determination 2009 (No. 1)
- Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)

37. Other references**Insert:***Other References*

- Charities consultative committee resolved issues document
- Intergovernmental Agreement on Federal Financial Relations
- PS LA 2013/2 (GA)
- Tax basics for non-profit organisations

This Addendum applies both before and after its date of issue, subject to the commencement and application provisions of each amending Act, Regulation or Legislative Determination to which it refers.

Commissioner of Taxation

8 October 2014

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ATO references

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