GSTR 2000/D21 - Goods and services tax: supplies that are GST-free for tertiary education courses

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There is an Erratum notice for this document.
This document has been finalised.

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

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Preamble

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

What this Ruling is about

1. This Ruling primarily deals with supplies of tertiary courses that are GST-free under Subdivision 38-C of the *A New Tax System (Goods and Services Tax) Act 1999* ('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. When we use the term "you" in this Ruling, we mean you as the supplier of such a courses. Suppliers of such courses include higher education institutions, registered training organisations and any other education institution approved to deliver tertiary courses.

Date of effect

4. When finalised, this Ruling applies from 1 July 2000.

Context of this ruling

5. 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, imports or your commercial operations.

6. Apart from discussions on the GST-free supply of administrative services, course materials, the sale, lease or hire of

curriculum related goods, field trips, excursions and student accommodation, this Ruling also addresses educational related supplies that are not GST-free.

7. This Ruling deals with the application of Subdivision 38-G (non-commercial activities of charitable institutions, etc.) to the extent that it relates to tertiary student accommodation only.

8. The ATO's interpretation of educational related supplies qualifying for GST-free treatment in this Ruling are treated on the same basis as that applying to supplies that are GST-free for pre-school, primary and secondary education courses in Goods and Services Tax Ruling GSTR 2000/30.

Ruling and explanations

9. The supply of an 'education course' is GST-free.[1] 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.[2]

10. The term 'education course' is defined in the GST 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

11. A tertiary course means:

(a) a course of study or instruction that is a tertiary course determined by the Education Minister[3] under subsection 5D(1) of the *Student Assistance Act 1973* for the purposes of that Act; or

(b) any other course of study or instruction that the Education Minister has determined is a tertiary course for the purposes of this Act.[4]

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[1] Section 38-85.
[2] Section 11-5 and section 15-5.
[3] All references to the Education Minister are references to the Commonwealth Education Minister.
[4] Section 195-1.

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

12. A tertiary course includes all tertiary courses covered by the determination issued by the Education Minister under the *Student Assistance Act 1973*.[5] 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.

13. 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.

14. The Education Minister's determination does not cover courses specifically conducted for non-resident students studying in Australia. Consequently, these courses are not tertiary courses, as defined in the GST Act.

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

15. 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.

16. 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.

Definition of a Masters or Doctoral course

17. 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'.[6]

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

[6] Section 195-1.

18. 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*.[7]

19. 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.[8]

Definition of a tertiary residential college course

20. 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'.[9]

21. If the residential fees paid to a university college include a component of tutorial fees in connection with an education course undertaken at the institution where the residential premises are located, the tutorial fees will be GST-free.

Single units/short courses

22. A tertiary, Masters or Doctoral course generally involves protracted study over a period of time, usually a year or more. Students are required to complete a number of components in a course. The student's performance is assessed for each component and completion of that component allows the student to enrol in the next component of that course. These component parts 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.

Single units/short courses formally assessed

23. Where you supply one unit of a tertiary course that is covered by the Education Minister's determination and that unit is formally assessed, the supply of that unit is GST-free. A fee charged for a short course consisting of two or more units from a course that is covered

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[7] Section 195-1.
[8] Section 195-1.
[9] Section 195-1.

by the Education Minister's determination and that is formally assessed, is also GST-free.

24. Similarly, where you supply one or more units of a Masters or Doctoral course and that course is accredited at a Masters or Doctoral level, the supply of one or more formally assessed units is also GST-free.

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

25. *Marc is enrolled with Vaughan University to study an individual unit from the Graduate Diploma in Information Technology, which he hopes will enable him to sharpen his professional knowledge and experience in a particular area relevant to his work.*

26. *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.*

27. *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 formally assessed and is part of a tertiary course covered by the Education Minister's determination.*

Example – A unit from a Masters or Doctoral course

28. *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 comprises 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.*

29. *The Wanneroo University (WU) also offers an MTax degree on a full-fee GST-free basis. The course outline advises potential students that the MTax at WU is made up of sixteen units. Most students study part-time. Part-time study means you study only half a full-time load, so that you can work and study at the same time. You only need to pass eight 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.*

30. *UGB also advertises MTax 'non-award' enrolment. This means a student will study one unit on a formally assessed basis*

rather than studying the extra seven units required to achieve the UGB MTax award. WU also promotes full-fee 'single units' enrolments, which are formally assessed. 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.

31. *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.*

32. 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" as such. However, some PhD courses do contain special assessed components that would be considered to be a unit and may be supplied on a GST-free basis.

33. To be a GST-free supply the student must be subject to formal assessment in that unit. Furthermore, the student's results must be incorporated in the normal results recording mechanism of your institution for Pass/Fail or Satisfactory/Unsatisfactory etc.

Example – A single unit undertaken without formal assessment

34. *Joanne enrols with Taylors 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 formal assessment of the unit. On this basis, Joanne will not be given a credit towards an approved tertiary course. This is often referred to as an 'audit' of the unit.*

35. *A unit undertaken without formal assessment is not considered to be a unit that forms part of an approved tertiary course covered by the Education Minister's determination. The supply of the single unit in 'Financial Planning' to Joanne is a taxable supply and subject to GST.*

36. Single units not from an approved tertiary course are referred to as 'non-accredited units'. Non-accredited units delivered by you will be subject to GST.

37. Similarly, non-accredited units that form part of any course developed by you that comprises 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.

Example – A course comprising accredited and non-accredited units

38. *Gwingana Institute, a registered training organisation (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. 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'.*

39. *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 accredited to provide.*

40. *The three-day course consists of units that are both accredited and non-accredited. The Institute determined the portion of the course based on the time required to conduct each unit. 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.*[10]

Education supplies that are GST-free

41. The supply of an education course is GST-free.[11] In certain circumstances, the following associated supplies are also GST-free:

- administrative services;[12]
- course materials;[13]
- right to receive GST-free education;[14]
- excursion or field trip;[15]

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

Supply of an education course

42. Where you charge a fee for the supply of an education course that consists of tuition and facilities and curriculum related activities,

[10] Section 9-80 requires the supply to be apportioned between its taxable and GST-free components.
[11] Section 38-85.
[12] Paragraph 38-85(b).
[13] Subsection 38-95.
[14] Paragraph 9-30(1)(b).
[15] Section 38-90.

this fee is consideration for a GST-free supply and you are not required to apportion the fee.

43. Where a fee you charge is consideration for a mixed supply, that is a mixture of taxable and GST-free supplies, you must apportion the fee between the GST-free and taxable parts of the supply.[16] This is referred to as 'unbundling' or 'disaggregation' of the fee.

44. You will need to apportion a single fee charged for the supply of an education course if the fee includes membership to a student organisation, the sale of goods (other than course materials) and/or student accommodation as part of an excursion of field trip.

45. You will also be required to apportion a single fee charged for the supply of student accommodation, an excursion or a field trip that includes a supply of food. The Commissioner will accept an apportionment made by you on a reasonable basis. The basis of apportionment should be applied consistently.

46. Where fees or charges are levied under a by-law and specified in the determination of the Treasurer under Division 81 of the GST Act, the payment of the fee or charge is not the provision of consideration and not subject to GST.[17]

Fees charged by Universities

47. 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.

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

Tuition

49. Tuition fees in the tertiary sector are also referred to as Higher Education Contribution Scheme (HECS) fees. Payment of the HECS fees are GST-free.

50. 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

[16] Section 9-80.
[17] Refer to *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No.2).*

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

51. *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. As she withdraws before the HECS census date, she is refunded 75 per cent of the fees in accordance with the Institute's policy. An amount of $400 is retained by the Institute.*

52. *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.*

Example – Taped lectures

53. *Melinda resides 200kms from the Tomlin University of Technology where she is undertaking a Bachelor of Mechanical Engineering. As Melinda is regarded as a remote student, the University makes available lectures and tutorials for subjects undertaken by Melinda in the form of audiotapes at the beginning of the semester. Melinda is charged a tutorial fee, which includes the supply of the audiotapes.*

54. *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 course materials but a supply of tuition and is not regarded as a separate supply. On this basis, the fee charged for both the lectures and the tapes is not subject to GST.*

Facilities

55. The supply of facilities is part of the supply of an education course and is GST-free.

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

57. Facilities[18] include such items as:

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

[18] The list is not exhaustive.

(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;

(e) the provision of sets of textbooks, sporting and musical equipment.

58. Facilities provided must be for the purposes of the students undertaking an education course. For example, payments for the provision of an in-house TV or a recreational library are not part of the supply of an education course and are not GST-free.

Example – Amenities fees charged by University

59. *Each year, students enrolled in University of New Victoria are required to pay an amenities fees of $420. This compulsory fee does not confer membership of any student organisation but is levied to provide for facilities, services or other activities of direct benefit to the University or students of the University.*

60. *Services provided include capital provisions of plant and equipment, building services, locker services, availability of printing and laminating services, passport photo service, web site service and child care facilities. Apart from provision of these services, every student is given a student photo ID and a photocopy card to the value of $10.*

61. *The amenities fees are allocated to the consolidated revenue account of the University and are expended in providing some or all of the services stipulated. No fixed amounts are budgeted to the services provided and at the beginning of the year it is not known how much the University will spend on providing a particular service.*

62. *The fee of $420 is in respect of a mixed supply of GST-free and taxable components. The component relating to the supply of a right to receive services provided by the University is a GST-free supply.*[19] *The supply of the photocopying card is a taxable supply by the University. The University is required to apportion the fee between the photocopy card that is a taxable supply and the GST-free provision of facilities.*

[19] A supply of a right to receive a supply of facilities that would be GST-free is a GST-free supply pursuant to paragraph 9-30(1)(b).

Example – Miscellaneous Student Activity Fee

63. *Malachi Vincent University (MVU) charges all enrolled students a fee $70 per year. MVU refer 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 concomitant of operation.*
  Personal accident insurance cover for students may be paid from MSAF funds.

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

65. *The MSAF is for the supply of facilities as part of the supply of an education course and is GST-free. Note, the "personal accident cover" referred to in the MSAF guidelines is in respect of insuring students generally against the risk attached to capital and maintenance works taking place with students in close proximity. If the insurance cover provided personal accident cover to individual students on and off campus, the insurance cover would be a taxable supply and the MSAF would need to be apportioned.*

Supply of administrative services

66. The supply of administrative services directly related to the supply of an education course is GST-free under paragraph 38-85(b).

67. The GST Act does not define administrative services however we consider that the supply of administrative services[20] includes:

[20] This list is not exhaustive.

(a) program changes;

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

(c) late issue or replacement of student cards;

(d) examinations 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 charge or late payment charge;

(g) record-keeping;

(h) administration of the library;

(i) administration of a textbook scheme;

(j) administration of the supply of course materials;

(k) graduation certificate;

(l) course reinstatement;

(m) charges or HECS statement.

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

68. Paragraph 67 indicates what are considered administrative services that are directly related to the supply of an education course. "Directly related" is not defined in the GST Act and therefore, takes on its ordinary meaning. The Macquarie Dictionary[21] defines "directly" to mean in a direct line, way or manner; immediately; absolutely. The term "related" means associated; connected or allied by nature.

69. 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'.*

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

[21] Macquarie Dictionary 1997 3rd Edition Sydney.

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

Example – Internet charges

72. *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.*

73. *Access to the Internet insofar as it is used in undertaking an education course is part of the provision of administrative services and is GST-free. In determining whether any GST applies to Internet hours provided to Tori, the TAFE would be required to carry out an objective measurement of use to determine the proportion that is 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.*

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

Administrative services that are not GST-free

74. 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) equipment hire;

(b) student hall application fees;

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

(d) graduation dinner;

(e) hire of academic dress.[22]

Example - Graduation ceremony

75. *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 covers the cost of the academic script,*

[22] This list is not exhaustive.

gown hire, graduation dinner and hire of the hall, is charged to students who attend the ceremony.

76. *The cost of the graduation certificate is an administrative charge directly related to the supply of an education course and is not subject to GST. Associated costs relating to hire of the graduation gown, the provision of a dinner (or coffee and tea) and the hire of the hall are not directly related to the supply of an education course and will be subject to GST.*

77. *Expenses incurred in connection with the holding of the graduation ceremony such as stationery or floral decorations will generally be creditable acquisitions made in supplying the ceremony. As such, you may be entitled to input tax credits for GST paid on these acquisitions.*

Supply of course materials

78. 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 of the GST Act.

79. 'Course materials' is defined in the GST Act 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.[23]

80. 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;

(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.

81. The following are examples of course materials when supplied by the educational institution:[24]

- 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;

[23] Section 195-1.
[24] This list is not exhaustive.

- 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 developing chemicals;
- consumable art supplies such as paint, sketch pads, chalk;
- ingredients used in a hospitality course, wood used in courses such as fine arts, architecture, 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 used by medical students in surgical operations that can not be resharpened.

Materials that are subject to GST

82. The following are examples of materials that are not course materials:[25]

- textbooks;[26]
- textbooks, written by lecturers at the university that are sold on and off campus;[27]
- binders used for assignments/theses
- musical instruments;
- computers;
- calculators;
- sporting equipment;
- scissors used in a hairdressing course; and

[25] The list is not exhaustive and these items may be considered facilities. Refer to paragraph 56 of this Ruling.

[26] Educational Textbook Subsidy to offset the cost impact of the introduction of the GST on student purchases of textbooks. The retail booksellers will be responsible for claiming the subsidy and providing discounts to students. Commonwealth Department of Education, Training and Youth Affairs (DETYA) will be responsible to administer this subsidy scheme. Anyone requiring further information can telephone the hotline on 1300 139 249 or alternatively by accessing the web site; http://www.detya.gov.au/textbooksubsidy.

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

- Knives used by hospitality students.

83. Although the items mentioned in paragraph 82 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 81.

84. 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?

85. 'Provided' is not defined in the GST Act and therefore takes on its general meaning. 'Provide' is defined to mean 'to furnish or supply'.[28] '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)'.[29] A 'requisite' is defined to mean 'a necessary thing' or something 'required by circumstances'.[30]

86. Course materials are defined as materials that you supply that are **necessarily** consumed or transformed by the students undertaking the course, for the purpose of the course. This requirement means that the materials must be essential or fundamental for the student to use up or convert in undertaking the course. If the student purchases materials (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.

87. Course materials are materials or items provided by you to students. Supplies of consumable stationery items will be GST-free if provided by the university directly or a university owned bookshop.

Example – Materials sold by university owned bookshop to the public

88. *A university owned bookshop supplies textbooks, general reference books and stationery items to students and the general public. 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 charge GST on supplies of consumable stationery items sold to him.*

89. Where you engage a third party as an agent (e.g., an independent bookshop not owned by the university) to sell materials

[28] Macquarie Dictionary 1997 3rd Edition Sydney.
[29] Macquarie Dictionary 1997 3rd Edition Sydney.
[30] Macquarie Dictionary 1997 3rd Edition Sydney

to students, the supply of those materials will be subject to GST unless the 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.

90. In any case if the student purchases materials directly from a third party, the supply is not a supply of course materials and GST will apply to those materials accordingly. Where a third party prints and binds the lecture notes and an agency relationship does not exist,[31] those materials will be subject to GST.

Example – Bookshop not acting as agent for an education institution

91. *Smith Pty Ltd is in the business of supplying educational materials, stationery items and 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.*

92. *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. In view that the first requirement – 'the materials must be provided by the entity supplying the course' has not been satisfied, the lecture notes will be subject to GST when sold by Smith Pty Ltd, notwithstanding the materials are consumed and used for the purposes of the course by the students undertaking a GST-free education course. Supplies of stationery items made directly to students will also be subject to GST as Smith Pty Ltd owns the goods and is not the provider of the education course.*

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

93. 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

[31] Refer to Goods and Services Tax Ruling GSTR 2000/D20 on agency relationships and the application of GST law.

provided by you to students in undertaking a subject such as cooking ingredients in a cooking class, cotton in a textiles class etc. However for the purposes of the GST Act, course materials will also extend to cover things that are also effectively used up in undertaking the course.

94. 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.

95. 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 home economics class, or wood in a manual arts class, or chemicals in a chemistry class.

96. The course materials are required by the student in undertaking a course such as chemicals used in a chemistry class or wood used by an apprentice during a cabinet making course etc. However it is envisaged that course materials could extend to cover things that are also effectively used up in undertaking the course.

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

97. 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'.[32] For the purposes of the GST 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.

[32] Macquarie Dictionary 1997 3rd Edition Sydney.

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

98. *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 work 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.*

99. *In view that the resource book/study guide is a collation of materials extracted from various textbooks and it is 'consumed' for the purposes of the course, the study guide will be GST-free if supplied by the university.*

Example - Photocopied research paper - not course materials

100. *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 provides them with an identity card as proof of enrolment in the university. Dianne is charged $4.60 for the photocopying of her assignment.*

101. *The photocopied materials specifically relate to the course undertaken by Dianne however the University has not provided them. The charge for photocopied materials in this instance is subject to GST.*

Example – Tracksuit – not course materials

102. *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.*

103. *Although the tracksuit was provided by the entity supplying the course and is used for the purposes of 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 will subject to GST.*

Right to receive GST-free education

104. The supply of a right to receive a supply that would be GST-free under Subdivision 38-C is also GST-free.[33]

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

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

106. 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.

107. 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.

Example – Application fees

108. *The Lincoln Admission Centre (LAC) has been established to facilitate the enrolment* of *students in various universities. LAC charges each student an application fee to process the student's enrolment application. The LAC is a separate entity to the universities.*

109. *The application fee charged to students does not create a right for the student to receive a GST-free education course and it does not guarantee the applicant to a position in a university. 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).*

Example - Enrolment fee

110. *Where you charge a fee to confirm a student's place at a university it creates a right for a student to receive an education course offered by you. That fee is GST-free as it relates to a right to receive a GST-free education course.*

Supplies that are not GST-free

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

- a supply of membership to a student organisation;[34]

[34] Paragraph 38-100(b).

- supply by way of a sale of goods other than course materials.[35] (See paragraph 79 for the definition of course materials);
- supply of any food as part of an excursion or field trip;[36]
- supply of accommodation as part of the excursion or field trip;[37] and
- supply of food as part of student accommodation.[38]

Each of these supplies is explained in the paragraphs below.

Membership of a student organisation

112. A supply of membership of a student organisation will be subject to GST.[39]

113. Student organisation is not defined in the GST Act. However, the *Higher Education Funding Act 1988* can provide some guidance as to the meaning of student organisation.

114. 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.

115. 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

116. *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 Association obtains funds from a grant allocated from the student union fees which is then allocated to the various*

[35] Paragraph 38-100(a).
[36] Paragraph 38-90(2)(b).
[37] Paragraph 38-90(2)(a).
[38] Subsection 38-105(4).
[39] Paragraph 38-100(b).

affiliated clubs for purchase of equipment, etc. Apart from the grant, the affiliated clubs charge an annual membership fee to students who join during orientation week.

117. *Granting a student membership of a club constitutes a supply under paragraph 9-10(2)(e). Where the club is registered for GST, the fees charged for membership would be a taxable supply and the club would be required to charge GST.*

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

118. 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.

119. The GST Act provides that the supply of goods and services (other than course materials) will be subject to GST if it fulfils the requirements in section 9-5 as taxable supplies. Where you make supplies in the nature of a sale, lease or hire to students, other than course materials they will be subject to GST.[40]

Supply by way of sale

120. We consider a supply is by way of sale 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

121. *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

122. Where you supply anything to a student which is not course material and the supply is in the nature of hire, then the supply will be subject to GST.

[40] Paragraph 38-100(a).

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

124. 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 – Hire of medical instruments

125. *Final year medical students at Spring Valley University are required to hire various medical instruments to assist with anatomical dissections. The University agrees to provide students with the temporary use of the instruments for a fee. The fee charged by the University constitutes a supply by way of hire and is subject to GST.*

Supply by way of lease

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

127. 'Lease' has its ordinary meaning for the purposes of paragraph 38-100(a). For example, the supply of a computer by way of lease for a student to use attracts GST.

Supply of an excursion or field trip

128. If you supply to students excursions or field trips that are directly related to your curriculum and, if they are not predominantly recreational in nature, the supply is GST-free, except for any food or accommodation supplied.[41]

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

130. 'Predominantly' is not defined in the GST legislation and takes on its ordinary meaning. The Macquarie Dictionary[42] defines predominantly to mean '*to be the stronger or leading element, to be more noticeable or imposing that something else, to dominate or prevail over'*.

131. 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

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

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

132. *New students of Fernwood University are invited to participate in a day trip as part of their orientation week. The University arranges a visit to the University's other campuses and organises for various sporting activities during the rest of the day. The activities organised are not considered curriculum related. As the trip is predominantly recreational the University is required to charge GST on the supply of the trip.*

Supply of food as part of an excursion or field trip

133. 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.[43]

Supply of accommodation as part of an excursion or field trip

134. 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.[44]

135. 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 will be subject to GST.

Student accommodation

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

137. This Ruling deals with the GST implications of accommodation (referred to as 'student accommodation') provided to students staying at university colleges and halls. Student accommodation is a term that is defined in section 38-105.

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[43] Paragraph 38-90(2)(b).
[44] Paragraph 38-90(2)(a).

138. The supply of student accommodation includes:

- the right to occupy the premises;

and any of the following if they are provided as part of that right;

- cleaning and maintenance; or
- electricity, gas, air-conditioning or heating; or
- telephone, television, radio or any other similar thing.

139. Tertiary student accommodation will have equivalent treatment with students living off campus. That is, the supply of student accommodation provided at tertiary institutions such as university colleges and halls is akin to a supply of non-commercial residential accommodation and as such will be input taxed in accordance with subsection 40-35(1).

140. Subsection 40-35(1) of the GST Act 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.

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

142. Ancillary supplies such as maintenance, electricity and heating provided as part of right to occupy the premises are input taxed regardless of whether the students are charged separately for these services.

143. If student accommodation is provided to a person who is not undertaking a GST-free education course, the accommodation will be treated on the same basis as that applying to ordinary short term or long term residential accommodation.

144. Similarly, student accommodation provided at university colleges and halls beyond the academic year will be treated as accommodation not in connection with an education institution.

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

145. In determining whether the supply of student accommodation will be GST-free in accordance with Subdivision 38-G of the GST Act, 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.

First requirement

146. 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 'Charity Pack'.[45]

Second requirement

147. 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.

148. In establishing a market value for accommodation, assistance is provided in the 'Market Value Guidelines'.[46] This document provides guidance to charities in establishing market values with respect to section 38-250 of the GST Act.

149. If the two requirements are satisfied, the supply of student accommodation will be GST-free pursuant to subsection 38-250 of the GST Act.

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[45] The 'Charity Pack' can be downloaded from our website http://www.taxreform.ato.gov.au (under business, industry partners, charities and non-profit organisations, published material).

[46] The paper arose as a result of discussions with the Charities Consultative Committee seeking clear guidelines when determining market values of supplies.

Supply of food as part of student accommodation

150. Where you supply food to students staying at student accommodation, the supply is subject to the GST rules relating to food that are contained in Subdivision 38-A of the GST Act.

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

152. 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 administrative purposes.

Education courses purchased by employers

153. The test as to whether GST applies when an employer sponsors employees to undertake an education course 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 provide services or is it a contract to deliver a GST-free course;

(b) The education course

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

Where the units or course are modified to suit the needs of the entity to the point that the course loses its accreditation status, the supply of the course by the provider will be subject to GST.

Example – Employer-sponsored course

154. *Whyalla University wins a contract with a government agency to design and deliver a comprehensive tax program of study. The University develops a program comprising 10 individual units which leads to the attainment of a Bachelor of Taxation. The individual units of the degree program are recognised by the University's academic board as being accredited. The program is also offered to the general public.*

155. The course delivered by the University is an accredited course which 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 accreditation status and is not subject to GST.

Tax Invoices

156. 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.[47]

157. Subregulation 29-70.01(6) of the GST Regulation requires you to clearly identify each taxable supply and show the total amount of GST payable when you make a mixed supply consisting of taxable and GST-free components.[48]

158. 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.[49]

Attributing GST payable, input tax credits and adjustments

159. If you use a non-cash basis of accounting, you will attribute any GST payable on the taxable supplies you make to the earlier of the tax periods in which you either receive any of the consideration for the supply or an invoice is issued relating to the supply. If you use the cash basis, GST will be attributable in the tax period in which the consideration is received.[50]

160. 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 of the Act.[51]

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[47] Refer to Goods and Services Tax Ruling GSTR 2000/17 on tax invoices.
[48] Regulation 29-70.01 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).
[49] Refer to Goods and Services Tax Ruling GSTR 2000/17 on tax invoices.
[50] Section 29-5.
[51] 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.

Detailed contents list

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Your comments

162. If you wish to comment on this draft Ruling, please send your comments promptly by **25 October 2000** to:

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Commissioner of Taxation
11 October 2000

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

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

Legislative references:
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- ANTS(GST)A99 9-30(1)(b)
- ANTS(GST)A99 Subdiv 38-A
- ANTS(GST)A99 Subdiv 38-C
- ANTS(GST)A99 Subdiv 38-G
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