

# ***PCG 2022/D3 (Finalised) - Goods and services tax and residential colleges***

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⚠ There is a Compendium for this document: **PCG 2022/3EC** .  
This document has been finalised by PCG 2022/3.



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## **Draft Practical Compliance Guideline**

# **Goods and services tax and residential colleges**

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### **Relying on this draft Guideline**

This Practical Compliance Guideline is a draft for consultation purposes only. When the final Guideline issues, it will have the following preamble:

*This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.*

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**Your comments**

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### **What this draft Guideline is about**

1. This draft Guideline<sup>1</sup> sets out the Commissioner's compliance approach for universities and residential colleges (collectively 'residential colleges') supplying accommodation, meals, tertiary residential college courses and religious services to resident students and claiming input tax credits. The purpose of the Guideline is to assist residential colleges to determine if supplies of accommodation, meals, tertiary residential college courses and religious services satisfy section 38-250 of the *A New Tax System (Goods and Services Tax) Act 1999* and can be treated as GST-free supplies.
2. All legislative references in this Guideline are to the *A New Tax System (Goods and Services Tax) Act 1999*.

### **Date of effect**

3. This Guideline applies to tax periods starting on and from 1 January 2023.

### **Who this Guideline applies to**

4. This Guideline applies to residential colleges that are endorsed charities in relation to their supply of accommodation, meals, tertiary residential college courses and religious services to resident students.

### **Background**

5. A residential college is an accommodation facility that is generally on, or in close proximity to, a university and is generally fully-furnished. Some residential colleges have religious affiliations. Residential colleges vary in the services that they provide to resident students. All residential colleges provide accommodation and most provide meals but not necessarily all meals. Many residential colleges provide, solely for resident students, pastoral care, sporting or cultural infrastructure and academic support, among other things.
6. For goods and services tax (GST) purposes, an endorsed charity is a charity that has an Australian business number (ABN) and is registered with the Australian Charities and Not-for-profits Commission (ACNC) and endorsed for GST concessions by the Commissioner.<sup>2</sup> The Commissioner must endorse a charity if that charity:
  - has applied to the Commissioner for endorsement
  - is an ACNC-registered charity, and
  - has an ABN.
7. Endorsed charities that are registered for GST can access a range of GST concessions. One of these GST concessions treats certain supplies as GST-free, rather than taxable or input taxed, where the requirements of section 38-250 are satisfied.

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<sup>1</sup> All further references to 'this Guideline' refer to the Guideline as it will read when finalised. Note that this Guideline will not take effect until finalised.

<sup>2</sup> Section 176-1. See also [GST concessions](#).

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8. The Commissioner is aware of the practical difficulties for residential colleges in determining how GST applies to supplies they make under resident student contracts and in determining the amount of input tax credits they can claim.

### **Section 38-250**

9. For endorsed charities, section 38-250 provides that supplies are GST-free if the consideration for:

- a supply of accommodation is less than 75% of the GST-inclusive market value of the supply (accommodation market value test)
- a supply other than a supply of accommodation is less than 50% of the GST-inclusive market value of the supply (non-accommodation market value test)
- a supply of accommodation is less than 75% of the cost to the supplier of providing that accommodation (accommodation cost test), or
- a supply other than a supply of accommodation is less than 75% of the consideration the supplier provided, or was liable to provide, for acquiring the thing supplied (non-accommodation cost test).

10. This Guideline only considers application of the accommodation market value test and the non-accommodation market value test.

### **Applying section 38-250 – residential colleges**

11. Residential colleges may provide a combination of supplies to resident students for a single fee, including accommodation, meals, tertiary residential college courses and religious services. Not all residential colleges will provide all of these supplies. Some residential colleges may offer different contracts to resident students. For example, residential colleges may offer different contracts which provide resident students with a choice of:

- fully catered, partially catered or self-catered meals
- the period of accommodation
- the type of accommodation, and
- different payment schedules.

12. Residential colleges may face practical difficulties applying the GST law, including:

- where a student contract contains multiple supplies (components) for a single fee, determining how that fee is apportioned between the various components
- comparing that apportioned fee for each component to the relevant market value of the relevant supply to determine if section 38-250 is satisfied
- determining the GST classification of each component and any GST payable, and
- where some supplies are input taxed, determining the extent of creditable purpose where an acquisition relates to supplies that are both
  - input taxed, and

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- GST-free or taxable.

13. These difficulties may also result in disproportionate compliance costs to residential colleges, including costs incurred for:

- valuation services
- accounting services, and
- obtaining advice.

### **Our compliance approach**

14. This Guideline sets out the Commissioner's risk-based approach to GST compliance for residential colleges that act in good faith and where there is otherwise no evidence of avoidance, fraud or evasion.

15. The Commissioner has developed the ATO charity benchmark market values for use by certain charities in specified circumstances for applying section 38-250. These values are not actual market values and are intended to operate as proxies for market value. The purpose of the ATO charity benchmark market values is to:

- reduce compliance costs for relevant charities that would otherwise be required to incur costs on engaging valuers to assist in determining relevant market values, and
- provide assurance that the Commissioner will not allocate compliance resources to review the GST outcomes for accommodation and meals where the ATO charity benchmark market values have been correctly applied.

16. Similarly, this Guideline is designed to give residential colleges confidence that, if they calculate their GST position in accordance with this Guideline, the Commissioner will not allocate compliance resources to review the GST outcomes of the arrangement. However, the Commissioner may make enquiries to determine if a residential college has applied this Guideline correctly where it is relied on.

17. The Commissioner accepts that it may not always be appropriate that a residential college will apply this compliance approach for determining the GST status of all supplies it makes. Therefore, residential colleges can choose to adopt the compliance approach outlined in this Guideline in respect of some types of supplies it makes but not necessarily every type of supply (where appropriate to do so), provided that the residential college:

- does so in a consistent manner in respect of the type of supply, and
- can provide evidence to support the position taken where the compliance approach in this Guideline has not been adopted.

18. Where a residential college does not apply the compliance approach as outlined in this Guideline, this does not necessarily mean that a residential college is not complying with its GST obligations. However, the Commissioner may review a position taken by a residential college which has been determined in a manner that is outside the scope of this Guideline. In these circumstances, residential colleges will need to provide evidence to support the position taken.

### **ATO charity benchmark market values**

19. Residential colleges may, but are not required to, use the ATO charity benchmark market values available to charities to determine if their supplies of accommodation and

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meals are GST-free under section 38-250. A residential college that chooses to use the ATO charity benchmark market values must apply those benchmark market values in accordance with the Commissioner's guidance in *GST and supplies by charities benchmark market values*<sup>3</sup> and cannot apply the benchmark market values in circumstances where that guidance states that the ATO charity benchmark market values cannot be used.

20. For example, if you have a current independent market valuation<sup>4</sup> for your accommodation, generally the Commissioner expects you to use this independent market valuation and you cannot use the ATO charity benchmark market values. Further, if you have a market valuation that is between one and 4 years old, you cannot use the ATO charity benchmark market values and must instead use that independent market valuation (using the table on the Australian Bureau of Statistics website to adjust your valuation by the Consumer Price Index (CPI)) or obtain a new independent market valuation.<sup>5</sup> For completeness, if the property is used to provide accommodation under the National Rental Affordability Scheme (NRAS), you must use the NRAS market value.

21. The relevant ATO charity benchmark market values are those that apply at the time the contract between the relevant student and residential college is entered into.

22. If you had an independent market valuation, but you choose to use the charity benchmark market values instead to determine if your supply is made for nominal consideration, you have a transitional period until 30 June 2023 during which you can continue to use the benchmark values.

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**Example 1 – independent market valuation has been obtained**

23. *St Agatha's residential college obtained an independent market valuation for its student accommodation in January 2025 but not for its student meals. St Agatha's cannot apply the ATO charity benchmark market values to its student accommodation in the 2025 calendar year and must use that independent market valuation. However, St Agatha's may use the ATO charity benchmark market values for its supplies of student meals.*

24. *St Agatha's cannot use the ATO charity benchmark market values for its student accommodation in the 2026 calendar year. As explained in paragraphs 20 to 22 of this Guideline, St Agatha's must either:*

- *use the 2025 independent market valuation, adjusted by CPI*
- *obtain a new market valuation, or*
- *use the NRAS market value.*

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25. Where the residential college can apply the ATO charity benchmark market values<sup>6</sup> and chooses to do so, the residential college must use:

- for accommodation – the accommodation benchmark market value in the Detailed long-term accommodation table in the ATO charity benchmark

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<sup>3</sup> [GST and supplies by charities – benchmark market values](#).

<sup>4</sup> A current independent market valuation is one that is less than 12 months old – see [GST and supplies by charities – benchmark market values – current year valuation](#).

<sup>5</sup> [GST and supplies by charities – benchmark market values](#).

<sup>6</sup> Where the ATO charity benchmark market values refer to amounts for 'incidentals', these amounts are not to be used for the purposes of determining if accommodation or meals are GST-free.

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market values (Other dwellings 1 bedroom) applicable to the location of the residential college (the accommodation benchmark market value<sup>7</sup>)

- for meals – the meals benchmark market values in the Short-term accommodation and meals table applicable to the location of the residential college (the meals benchmark market value).

26. The Detailed long-term accommodation table (Other dwellings 1 bedroom) will apply whether there are one or more people sharing the bedroom.

### **Tertiary residential college courses**

27. Tertiary residential college courses are GST-free.<sup>8</sup> A tertiary residential college course means ‘a course supplied in connection with a tertiary course at premises that are used to provide accommodation to students undertaking tertiary courses’.<sup>9</sup> A course is a program of study involving systematic instruction, training or schooling.<sup>10</sup>

28. For the purposes of applying the approach set out in this Guideline, the Commissioner considers that a tertiary residential college course must consist of a formal structured tutorial program. A residential college will not be eligible to apply the approach set out in this Guideline for tertiary residential college course tutorials that are not formally structured.

29. Where a residential college:

- provides, on average, at least one tertiary residential college course tutorial for every 20 resident students per week for the academic year, or
- has, on average, at least one tertiary residential college course tutorial attendance for every 10 resident students per week for the academic year,

the Commissioner will not allocate compliance resources to review the amount attributed to tertiary residential college courses where a rate of no more than 2% of the total mandatory charges for each student contract has been attributed.

30. To determine the minimum number of tutorials per year, the formula is:

$$\text{Total number of resident students} \times \frac{\text{total weeks accommodation for the academic year}}{20}$$

31. To determine the minimum number of tutorial attendances per year, the formula is:

$$\text{Total number of resident students} \times \frac{\text{total weeks accommodation for the academic year}}{10}$$

32. The residential college may use its most recent full year information to determine if the minimum requirements are satisfied but must take into account any anticipated change in the level of tutorials or tutorial attendances for the coming calendar year.

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<sup>7</sup> This rate applies to additional weeks outside the general contract period for all students, residential assistants and employees; however, see paragraphs 66 to 69 of this Guideline.

<sup>8</sup> Sections 38-85 and 195-1.

<sup>9</sup> Section 195-1. See also paragraphs 21 and 22 of Goods and Services Tax Ruling GSTR 2001/1 *Goods and services tax: supplies that are GST-free for tertiary education courses*.

<sup>10</sup> See paragraphs 22 and 25 of Goods and Services Tax Ruling GSTR 2003/1 *Goods and services tax: supplies that are GST-free as professional or trade courses*.

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**Example 2 – tertiary residential college course minimum**

33. *St Agatha’s residential college typically has 220 resident students and the student contract provides for 38 weeks accommodation, of which 36 weeks relates to the academic year. St Agatha’s provides tertiary residential college courses to its resident students. On a ‘per resident student’ basis, St Agatha’s provides the same number of tertiary residential college course tutorials and has the same number of tutorial attendances each year and expects these levels to be the same in the coming calendar year.*

34. *St Agatha’s sets its fees for the 2025 calendar year in September 2024. St Agatha’s most recent full-year information for tertiary residential college courses is for the 2023 calendar year, which shows 350 tutorials and 850 tutorial attendances.*

35. *To determine if it meets the minimum threshold for tutorials, St Agatha’s calculates that, for the 2023 calendar year, it was required to have at least 396 tutorials:*

$$220 \text{ (resident students)} \quad \times \quad \frac{36 \text{ (weeks accommodation for the academic year)}}{20}$$

36. *To determine if it meets the minimum threshold for tutorials attendances, St Agatha’s calculates that, for the 2023 calendar year, it was required to have at least 792 tutorial attendances:*

$$220 \text{ (resident students)} \quad \times \quad \frac{36 \text{ (weeks accommodation for the academic year)}}{10}$$

37. *As St Agatha’s only had 350 tertiary residential college course tutorials, it did not meet the minimum threshold (being 396) for the number of tertiary residential college course tutorials required.*

38. *However, as St Agatha’s had 850 tertiary residential college course tutorial attendances, it exceeded the minimum threshold (being 792) for tutorial attendances.*

39. *As St Agatha’s exceeded the minimum threshold for tutorial attendances, it attributes 2% of the total mandatory charges for each student contract to tertiary residential college courses for the 2025 calendar year. Consistent with this Guideline, the Commissioner will not allocate further compliance resources to review the amount attributed to tertiary residential college courses by St Agatha’s for each student contract.*

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40. *Where the residential college attributes more than 2% of the total mandatory charges for each student contract as relating to tertiary residential college courses, the residential college may be required by the Commissioner to provide evidence to support the amount attributed.*

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### **Religious services**

41. Religious services are GST-free.<sup>11</sup> A religious service is a service that is supplied by an ACNC-registered religious institution and is integral to the practice of that religion.<sup>12</sup>
42. Where a residential college satisfies the requirements of a religious service and provides at least one service per week by a minister of that religion, the Commissioner will not allocate further compliance resources to review the amount attributed to religious services where a rate of no more than 2% of the total mandatory charges for each student contract has been attributed.
43. Where the residential college attributes more than 2% of the total mandatory charges for each student contract as relating to religious services, the residential college may be required by the Commissioner to provide evidence to support the amount attributed.

### **Apportionment of fee for components in the student contract**

44. A residential college that chooses to use this Guideline:
- must include all mandatory charges<sup>13</sup> (GST inclusive) for each student contract, including credit card charges, enrolment fees, registration fees and orientation week charges
  - must not include charges which the residential college is collecting as an agent for another entity, such as a levy that is collected on behalf of the student club as an agent for that club and which does not form part of the payment for any supplies made by the residential college, and
  - must not exclude from the mandatory charges an amount for any other supplies or components other than accommodation, meals, tertiary residential college courses and religious services.
45. For the purposes of this Guideline, a residential college may apportion the fee using:
- for accommodation, the accommodation benchmark market value, an independent market valuation, a CPI-adjusted independent market valuation or the NRAS market value, as applicable
  - the meals benchmark market value
  - an amount attributable to tertiary residential college courses where applicable, and
  - an amount attributable to religious services, where applicable.

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<sup>11</sup> Section 38-220.

<sup>12</sup> As defined in section 38-220.

<sup>13</sup> Mandatory charges are the total of all charges that all resident students are required to pay for entry into the resident student contract, including charges imposed based on the method of payment, such as credit card charges and higher amounts if paid in instalments. Mandatory charges do not include payments for voluntary purchases, donations, security deposits/bonds or charges imposed for damage or loss (for example, the cost for a replacement key).

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**Example 3 – apportionment of a student contract fee where the residential college chooses to use the accommodation benchmark market value**

46. St Agatha's residential college is a charity that chooses to use this Guideline, is located in inner Sydney and has a range of student contracts.

47. One contract for the 2022 calendar year provides for accommodation for 38 weeks, breakfast, lunch and dinner each day for those 38 weeks, tertiary residential colleges courses which satisfy the requirements in paragraphs 27 to 29 of this Guideline, and religious services which satisfy the requirements in paragraphs 41 to 42 of this Guideline. The mandatory charges for that student contract total \$27,000.

48. St Agatha's does not have an NRAS market value or an independent market valuation and is not required to use a CPI-adjusted market valuation. St Agatha's chooses to apply the ATO charity benchmark market values to its supplies of accommodation and meals.

49. The following benchmark market values apply<sup>14</sup>:

- accommodation – \$473 per week (\$17,974 for 38 weeks)
- breakfast – \$29.20 per meal (\$7,767.20 for 38 weeks)
- lunch – \$32.85 per meal (\$8,738.10 for 38 weeks)
- dinner – \$56 per meal (\$14,896 for 38 weeks).

50. The total of the benchmark market values for accommodation and meals is \$49,375.30.

51. St Agatha's has attributed 2% of the total mandatory charges to tertiary residential colleges courses (\$540) and 2% to religious services (\$540).

52. St Agatha's chooses to apply the method of apportionment set out in Table 1 of this Guideline for the student contract fee.

53. St Agatha's apportions the student contract fee in the following way:

**Table 1: Step 1 – apportion the student contract fee**

<b>Student contract component</b>	<b>Calculation</b>	<b>Apportioned amount</b>
Accommodation	$(\$27,000 - \$540 - \$540) \times (\$17,974 \div \$49,375.30)$	\$9,435.61
Breakfasts	$(\$27,000 - \$540 - \$540) \times (\$7,767.20 \div \$49,375.30)$	\$4,077.46
Lunches	$(\$27,000 - \$540 - \$540) \times (\$8,738.10 \div \$49,375.30)$	\$4,587.14
Dinners	$(\$27,000 - \$540 - \$540) \times (\$14,896 \div \$49,375.30)$	\$7,819.79
Tertiary residential colleges courses	$2\% \times \$27,000$	\$540
Religious services	$2\% \times \$27,000$	\$540
<b>Total</b>		<b>\$27,000</b>

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<sup>14</sup> These amounts are those shown in the ATO charity benchmark market values for 2022. These amounts will change each year and may be different depending on the location of the residential college.

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54. *St Agatha’s determines the GST status of the components and the GST payable in the following way:*

**Table 2: Step 2 – compare apportioned amount to the benchmark market values**

<b>Student contract component</b>	<b>Apportioned amount</b>	<b>Benchmark market value</b>	<b>Comparison to the benchmark market value</b>	<b>GST status</b>	<b>GST payable</b>
<i>Accommodation</i>	\$9,435.61	\$17,974	52.496%	<i>GST-free</i>	\$0
<i>Breakfasts</i>	\$4,077.46	\$7,767.20	52.496%	<i>Taxable</i>	\$370.68
<i>Lunches</i>	\$4,587.14	\$8,738.10	52.496%	<i>Taxable</i>	\$417.01
<i>Dinners</i>	\$7,819.79	\$14,896	52.496%	<i>Taxable</i>	\$710.89
<i>Tertiary residential colleges courses</i>	\$540	<i>Not applicable</i>	<i>Not applicable</i>	<i>GST-free</i>	\$0
<i>Religious services</i>	\$540	<i>Not applicable</i>	<i>Not applicable</i>	<i>GST-free</i>	\$0
<b>Total</b>	<b>\$27,000</b>				<b>\$1,498.58</b>

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55. Where the residential college can use the meals benchmark market value but cannot use the accommodation benchmark market value<sup>15</sup>, the residential college may use the meals benchmark market value to assist with apportioning the fee and determining the GST status of the components.

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**Example 4 – apportionment of a student contract fee where the residential college cannot use the accommodation benchmark market value**

56. *St Zita’s residential college is a charity that chooses to use this Guideline, is located in inner Sydney and has a range of student contracts.*

57. *One contract for the 2022 calendar year provides for accommodation for 38 weeks, breakfast, lunch and dinner each day for those 38 weeks, tertiary residential colleges courses which satisfy the requirements at paragraphs 27 to 29 of this Guideline, and religious services which satisfy the requirements at paragraphs 41 and 42 of this Guideline. The mandatory charges for that student contract total \$27,000.*

58. *St Zita’s has an independent market valuation for the accommodation and therefore cannot use the accommodation benchmark market value. However, St Zita’s chooses to apply the ATO charity benchmark market values to its supplies of meals.*

59. *The independent market valuation for the accommodation is \$450 per week, which is \$17,100 for 38 weeks.*

60. *The following benchmark market values apply:*

- *breakfast – \$29.20 per meal (\$7,767.20 for 38 weeks)*
- *lunch – \$32.85 per meal (\$8,738.10 for 38 weeks)*
- *dinner – \$56 per meal (\$14,896 for 38 weeks).*

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<sup>15</sup> See paragraph 17 of this Guideline.

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61. St Zita's has attributed 2% of the total mandatory charges to tertiary residential colleges courses (\$540) and 2% to religious services (\$540).

62. The total of the independent market valuation for the accommodation and the benchmark market values for meals is \$48,501.30.

63. St Zita's chooses to apply the method of apportionment set out in Table 3 of this Guideline for the student contract fee.

64. St Zita's apportions the student contract fee in the following way:

**Table 3: Step 1 – apportion the student contract fee**

<b>Student contract component</b>	<b>Calculation</b>	<b>Apportioned amount</b>
Accommodation	$(\$27,000 - \$540 - \$540) \times (\$17,100 \div \$48,501.30)$	\$9,138.56
Breakfasts	$(\$27,000 - \$540 - \$540) \times (\$7,767.20 \div \$48,501.30)$	\$4,150.94
Lunches	$(\$27,000 - \$540 - \$540) \times (\$8,738.10 \div \$48,501.30)$	\$4,669.80
Dinners	$(\$27,000 - \$540 - \$540) \times (\$14,896 \div \$48,501.30)$	\$7,960.70
Tertiary residential colleges courses	$2\% \times \$27,000$	\$540
Religious services	$2\% \times \$27,000$	\$540
<b>Total</b>		<b>\$27,000</b>

65. St Zita's determines the GST status of the components and the GST payable in the following way:

**Table 4: Step 2 – compare apportioned amount to the benchmark market values**

<b>Student contract component</b>	<b>Apportioned amount</b>	<b>Valuation/Benchmark market value</b>	<b>Comparison to the benchmark market value</b>	<b>GST status</b>	<b>GST payable</b>
Accommodation	\$9,138.56	\$17,100	53.442%	GST-free	\$0
Breakfasts	\$4,150.94	\$7,767.20	53.442%	Taxable	\$377.36
Lunches	\$4,669.80	\$8,738.10	53.442%	Taxable	\$424.53
Dinners	\$7,960.70	\$14,896	53.442%	Taxable	\$723.70
Tertiary residential colleges courses	\$540	Not applicable	Not applicable	GST-free	\$0
Religious services	\$540	Not applicable	Not applicable	GST-free	\$0
<b>Total</b>	<b>\$27,000</b>				<b>\$1,525.59</b>

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### **Division 87 – employees and conference accommodation**

66. Residential accommodation is normally input taxed. However, supplies of accommodation in ‘commercial residential premises’<sup>16</sup> are treated differently. The supply of accommodation in commercial residential premises is a taxable supply subject to GST, with concessions available under Division 87 for supplies of long-term accommodation.<sup>17</sup> The supplier may also be eligible for input tax credits for creditable acquisitions that it makes for a creditable purpose.<sup>18</sup>

67. Residential colleges that are operated so as to fall within paragraph (a) or (f) of the definition of ‘commercial residential premises’ in section 195-1 will not supply accommodation in commercial residential premises to the extent that the premises is used to provide accommodation to students in an educational institution that is not a school.<sup>19</sup> This exclusion does not apply to supplies of accommodation made by a residential college to non-students.<sup>20</sup>

68. Accordingly, where residential colleges satisfy the definition of commercial residential premises, Division 87 will apply to the extent that the premises are used to provide long-term accommodation to persons who are not students. This could include, for example, supplies of accommodation associated with conferences held outside term time and accommodation for employees (other than residential assistants). Supplies of accommodation in commercial residential premises that are of 27 days or less are taxable supplies or may be GST-free supplies where the requirements of section 38-250 are met.

69. However, the residential college may choose not to apply the concession under section 87-25 and make all supplies of long-term accommodation input taxed supplies under paragraph 40-35(1)(b). If this choice is made, acquisitions that relate to the supply of the input taxed accommodation will not be creditable acquisitions<sup>21</sup> and the residential college will therefore not be eligible for input tax credits in respect to these acquisitions.<sup>22</sup>

### **Other student contract matters**

#### **Division 129**

70. This Guideline cannot be used retrospectively to amend an activity statement or in calculating an adjustment for a change in use of an acquisition in a prior tax period when the residential college is not eligible to use this Guideline. The use of this Guideline does not affect the operation of Division 129. If the GST outcomes for supplies of accommodation differs to the GST outcome for the same supply for a previous year, the residential college will need to examine the change in the extent of creditable purpose for relevant prior year acquisitions in accordance with Division 129.

71. The residential college may be required to make an increasing or decreasing adjustment in relation to GST credits claimed for those acquisitions that are still within the

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<sup>16</sup> As defined in section 195-1. Residential colleges that are operated so as to fall within paragraph (a) or (f) of the definition of ‘commercial residential premises’ will not supply accommodation in commercial residential premises to the extent that the premises is used to provide accommodation to students in an educational institution that is not a school. See paragraph 215 of Goods and Services Tax Ruling GSTR 2012/6 *Goods and services tax: commercial residential premises* and paragraphs 150 and 151 of GSTR 2001/1.

<sup>17</sup> See Goods and Services Tax Ruling GSTR 2012/7 *Goods and services tax: long-term accommodation in commercial residential premises*. For stays in excess of 28 days, the value of the supply is reduced for the purposes of determining the extent of GST payable. However, a supply of long-term accommodation may be input taxed where the supplier makes a choice under section 87-25. See also paragraph 40-35(1)(b).

<sup>18</sup> See Division 11.

<sup>19</sup> See paragraph 215 of GSTR 2012/6 and paragraphs 150 and 151 of GSTR 2001/1.

<sup>20</sup> See paragraph 216 of GSTR 2012/6.

<sup>21</sup> See section 11-5.

<sup>22</sup> See sections 11-20, 11-25 and 11-30.

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scope of Division 129, in accordance with relevant goods and services tax rulings, determinations, fact sheets and guides.<sup>23</sup>

#### ***Credit card fees***

72. Credit card fees (that is, administration charges payable by a resident student when the contract fee is paid using a credit card) form part of the consideration for the supplies under the student contract. Credit card fees must be taken into account in apportioning the student contract fee and calculating the GST payable on a contract.<sup>24</sup> However, for the purposes of this Guideline and to reduce the administrative and practical difficulties of apportioning credit card surcharges to the supplies made under a student contract, the Commissioner will accept that credit card fees are not included for the purpose of determining the GST status of the supply under section 38-250.

#### ***Different payment schedules***

73. Residential colleges often permit resident students to pay their fees according to certain permitted schedules and different payment methods. If a residential college is required to separately assess each student contract based on the method of payment and the payment frequency or schedule to determine the GST status of the supplies made (GST-free, input taxed or taxable), the resulting number of assessments would be very high.

74. Students may typically select their payment frequency or schedule from one of the following options:

- annually in advance
- semester in advance
- term in advance
- monthly in advance
- fortnightly in advance, or
- weekly in advance.

75. For simplicity and to reduce the number of assessments that need to be completed, the methodology contained in this Guideline permits all different payment frequencies and payment methods for the same room to be treated on the basis of a 'semester in advance' payment frequency and a 'direct debit' payment method for the purpose determining the GST status under section 38-250. However, residential colleges must apply this concessionary approach consistently across all student contracts for a particular type of room.

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#### ***Example 5 – payment schedules and methods***

76. *St Benedict's residential college has 15 different contracts, offering 3 different payment types (with different credit card charges for American Express, MasterCard and Visa and no additional charge for direct debit) and 4 different payment frequencies. If St Benedict's is required to assess each student contract type separately based on*

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<sup>23</sup> Further guidance on making adjustments can be found in Goods and Services Tax Ruling GSTR 2000/24 *Goods and services tax: Division 129 – making adjustments for changes in extent of creditable purpose*.

<sup>24</sup> *Waverley Council and Commissioner of Taxation* [2009] AATA 442 and the Commissioner's corresponding Decision impact statement.

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*payment type and frequency, 180 potential assessments would be required. By allowing St Benedict's to adopt the concessionary approach based on the payment frequency of 'semester in advance' and 'direct debit' payment method across all student contracts, the number of assessments reduces to 15.*

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#### **Orientation week**

77. Where a residential college charges a higher fee for students undertaking orientation week, the residential college must examine these contracts separately from contracts for resident students who are not undertaking orientation week.

78. For example, if the total amount payable excluding orientation week is \$27,000 but the amount payable including orientation week is \$28,000, the contracts must be examined separately to determine if the requirements of section 38-250 are satisfied.

#### **Residential assistants**

79. Residential assistants are generally resident students who provide services to the residential college, often through providing pastoral support or tutoring of fellow resident students.<sup>25</sup> Residential assistants may be compensated in the form of reduced fees or better accommodation (for example, a room with an ensuite rather than use of communal bathrooms).

80. The non-monetary consideration rules<sup>26</sup> require the market value of residential assistants' services provided to the residential college to be taken into account in determining the amount of the consideration received by the residential college for the supplies under the contract with the residential assistant. For residential assistants, the value of the non-monetary consideration they provide would be the difference between the market value of the accommodation provided to the residential assistant by the residential college and the amount that the residential assistant pays to the college under the student contract. This would mean that the total consideration provided by the residential assistant, including both monetary and non-monetary consideration, would be the full market value. As a result, the accommodation and meals supplied to residential assistants could never be GST-free under subsection 38-250(1). The supplies of accommodation would be input taxed and the supplies of meals would be taxable.<sup>27</sup>

81. However, if the residential assistant is occupying the 'same standard' of room as other resident students and is receiving meals of the same quantity and standard as other resident students, the non-monetary consideration for the recognition of the residential assistants' services is the difference between the amount that the residential assistant pays and the amount that other students pay. The result is that the total of the monetary and non-monetary consideration provided by the residential assistant will be the same as for other students who only provide monetary consideration for the same accommodation and meals. Therefore, the accommodation and meals provided to residential assistants will be GST-free if the accommodation to other students in the same standard of room is GST-free and the same quantity and standard of meals is GST-free.

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<sup>25</sup> It is acknowledged that there may be cases where residential assistants are engaged by a residential college as an employee.

<sup>26</sup> Subsection 9-75(1). See also Goods and Services Tax Ruling GSTR 2001/6 *Goods and services tax: non-monetary consideration*.

<sup>27</sup> This assumes that subsection 38-250(2) does not apply.

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82. The 'same standard' means that the room occupied by the residential assistant is essentially identical to the rooms occupied by other students who are not residential assistants. For example, the room should be the same size and have the same fit out and inclusions. It should also be occupied on essentially the same terms as for the standard student contract. For example, a room occupied by a residential assistant cannot be compared to a twin room offered to other resident students.

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**Example 6 – residential assistants**

83. *Charlotte is a residential assistant at St Agatha's residential college. She is also a student and not engaged as an employee. While Charlotte occupies the same standard of room and receives the same meals as other resident students who are not residential assistants, she receives a 10% discount on her fees for being a residential assistant, in recognition of the services she supplies to the residential college.*

84. *As Charlotte occupies the same standard of room and receives the same meals as other resident students who are not residential assistants, the non-monetary consideration provided for the supplies under her student contract is the 10% discount that she receives on the student fees she pays. The supplies of meals and accommodation by the residential college to Charlotte will be GST-free if the supplies of meals and accommodation are GST-free to other resident students who are not residential assistants and who enter the same contract. Essentially, Charlotte is receiving supplies of meals and accommodation of the same value as the supplies of meals and accommodation to other students but is paying less in recognition of the residential assistant services she provides to the residential college. It is the total monetary and non-monetary consideration provided which is the essential element in determining the GST status of the supplies under her contract.*

85. *Emma is also a residential assistant on a student contract, not engaged as an employee and pays 10% less than other resident students who enter into a standard student contract. However, Emma occupies a better standard of room that is only available for selected residential assistants.*

86. *As Emma does not occupy the same standard of room as any other resident students who are not residential assistants, the non-monetary consideration provided for the supplies under her student contract is the difference between the full market value for those supplies made to other students and the amount she pays under her contract. The total of the monetary consideration and the non-monetary consideration is the full market value of those supplies. The result is that the supplies of meals by the residential college to Emma will be taxable and the supplies of accommodation will be input taxed because the tests in subsection 38-250(1) are not satisfied.<sup>28</sup>*

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<sup>28</sup> As the consideration would be the full market value of the supplies, the supplies of meals and accommodation would not be GST-free under subsection 38-250(1). The example also assumes that subsection 38-250(2) does not apply.

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### **Claiming input tax credits**

87. A residential college can claim input tax credits for their creditable acquisitions.<sup>29</sup>

88. One of the requirements for a creditable acquisition is that the acquisition be for a creditable purpose. An acquisition will not be for a creditable purpose where<sup>30</sup>:

- the acquisition relates to the making of supplies that would be input taxed, or
- the acquisition is of a private or domestic nature.

89. If the residential college does not have any input taxed accommodation, all acquisitions will be creditable acquisitions. However, an acquisition will not be for a creditable purpose where it would relate to accommodation that is input taxed.

90. Some acquisitions may relate to supplies that are both:

- input taxed, and
- GST-free or taxable.

91. These acquisitions are partially creditable acquisitions<sup>31</sup> and only the part which does not relate to input taxed supplies creates an entitlement to an input tax credit.

92. Where an acquisition is partially creditable, the residential college may use any method of apportionment that is fair and reasonable.

93. For the purposes of this Guideline, the residential college may use the turnover attributable to input taxed supplies as a percentage of the relevant total turnover, with this percentage representing the extent to which the acquisition is not made for a creditable purpose. Each acquisition must be analysed separately to determine the extent of creditable purpose. For example:

- if an acquisition relates solely to the supply of input taxed student accommodation, the acquisition will not be made for a creditable purpose to any extent
- if an acquisition relates to the supply of student accommodation only, the extent of creditable purpose will be 100% less the total turnover for input taxed student accommodation as a percentage of total student accommodation turnover
- if an acquisition relates to the supply of accommodation generally, the extent of creditable purpose will be 100% less the total turnover for supplies of input taxed accommodation as a percentage of total accommodation turnover, and
- if an acquisition relates to the general activities of the residential college (for example, accounting services), the extent of creditable purpose will be 100% less the total turnover for supplies of input taxed accommodation as a percentage of total turnover.

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**Commissioner of Taxation**

14 September 2022

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<sup>29</sup> Section 11-5.

<sup>30</sup> Section 11-15.

<sup>31</sup> Section 11-30.

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## Your comments

94. You are invited to comment on this draft Guideline, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

95. A compendium of comments is prepared when finalising this Guideline and an edited version (names and identifying information removed) may be published to the Legal database on ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** **30 September 2022**

Contact officer details have been removed following publication of the final guideline.

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## References

### *Related Rulings/Determinations:*

GSTR 2000/24; GSTR 2001/1; GSTR 2001/6;  
GSTR 2003/1; GSTR 2012/6; GSTR 2012/7

ANTS(GST)A 1999 176-1

ANTS(GST)A 1999 195-1

### *Legislative references:*

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ANTS(GST)A 1999 Div 11  
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ANTS(GST)A 1999 38-250(2)  
ANTS(GST)A 1999 40-35(1)(b)  
ANTS(GST)A 1999 Div 87  
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### *Cases relied on:*

Waverley Council and Commissioner  
of Taxation [2009] AATA 442

### *Other references:*

Decision impact statement for  
Waverley Council and Commissioner  
of Taxation [2009] AATA 442

[GST and supplies by charities –  
benchmark market values](#)

[GST and supplies by charities –  
benchmark market values – current  
year valuation](#)

[GST concessions](#)

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### ATO references

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