

GSTR 2000/27 - Goods and services tax: adult and community education courses; meaning of "likely to add to employment related skills".

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



Goods and Services Tax Ruling

Goods and services tax: adult and community education courses; meaning of ‘likely to add to employment related skills’

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Preamble

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

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

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

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

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

What this Ruling is about

1. This Ruling will help you work out which supplies of adult and community education courses 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 only applies to adult and community education courses. When we use the term ‘you’ in this Ruling, we mean you as the supplier of such a course.

3. It is not the intention of this ruling to discuss the Education Minister's Determination or the types of bodies that are required to conduct adult and community education courses.¹
4. This Ruling provides guidelines in respect of the matters that the Commissioner will take into account in determining whether an adult and community education course is likely to add to the employment related skills of persons undertaking the course.
5. This Ruling does not deal with the application of Subdivision 38-G (non-commercial activities of charitable institutions, etc.) to the supplier of an education course.

Date of effect

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

Ruling and explanations

7. The supply of an 'education course' is GST-free.² This means that no GST is payable on the supply and you are entitled to an input tax credit for anything acquired or imported to make that supply.³
8. The term education course, which includes an adult and community education course, is defined in section 195-1.
9. One of the requirements of an adult and community education course is that it is likely to add to the employment related skills of people undertaking the course. Hobby and recreational courses are not likely to add to the employment related skills of people undertaking the courses. These courses are not GST-free (see paragraphs 34-45.

¹ See the definition of adult and community education courses contained in section 195-1 of the GST Act.

² Section 38-85.

³ Section 38-1.

Definition of an adult and community education course

10. An adult and community education course is⁴ ‘a course of study or instruction that is likely to add to the employment related skills of people undertaking the course and:

- (a) is of a kind determined by the Education Minister to be an adult and community education course and is provided by, or on behalf of, a body:
 - (i) that is a higher education institution; or
 - (ii) that is recognised, by a State or Territory authority, as a provider of course of a kind described in the determination; or
 - (iii) that is funded by a State or Territory on the basis that it is a provider of courses or a kind described in the determination; or
- (b) is determined by the Education Minister to be an adult and community education course.’

Requirements specified in paragraph (a) of the definition

11. For a course to be a GST-free adult and community course under paragraph (a), the following three requirements must be satisfied:

- (i) The course must be a course of study or instruction that is likely to add to the employment related skills of people undertaking the course; and
- (ii) The course must be of a kind determined by the Education Minister to be an adult and community education course; and
- (iii) The course must be provided by a body that is either a higher education institution or by a body that is recognised or funded by a State or Territory authority to conduct adult and community education courses as described in the Education Minister’s determination

12. It is important to note that the Education Minister is not responsible for determining whether an adult and community education course is likely to add to the employment related skills of people undertaking the course. This criterion is separate from the Minister’s Determination, and will depend on the facts of each case.

⁴ Section 195-1.

Requirements specified in paragraph (b) of the definition

13. Paragraph (b) of the definition of adult and community education course allows the Education Minister to determine, independently of the requirements set out in paragraph (a) that a course is an adult and community education course as defined in section 195-1. In these circumstances, for such a course to be GST free, it must:

- (i) be determined by the Education Minister to be an adult and community education course;⁵ and
- (ii) be likely to add to the employment related skills of people undertaking the course.

14. As previously mentioned, the Education Minister does not determine that a particular course is likely to add to the employment related skills of people undertaking the course.⁶

What is likely to add to the employment related skills of people undertaking an adult and community education course?

15. The test as to whether an adult and community education course is likely to add to the employment related skills of people undertaking the course is an objective test and not dependent on the subjective intention of the providers of the course or the *recipients*. However we consider a course satisfies the test if the course meets the following requirements:

- (a) It is directed at people who want to add to their employment related skills; and
 - (i) The objectives of the course specify the employment related skills that participants will acquire in undertaking the course; and
 - (ii) The means of imparting the skills to the participants are clearly identified prior to the commencement of the course; and

⁵ Clause 34 of the Intergovernmental Agreement on the Reform of Commonwealth State Financial Relations states that 'A proposal to vary the GST base by way of a Ministerial determination under the GST Act and the GST Transition Act will require the unanimous agreement of the Ministerial Council established under clause 40'. A Ministerial determination is a 'disallowable instrument' for the purposes of sec 46A of the *Acts Interpretation Act 1901*.

⁶ Explanatory Memorandum accompanying the *A New Tax System (Indirect Tax and Consequential Amendments) Act No.1 1999*, Chapter 3.13

- (iii) There is a reasonable expectation that the skills being developed will be used in the course of being an employee, or working in a business, occupation, profession or trade, rather than for recreational, hobby, artistic or cultural endeavours.

16. In addition to the criteria outlined in paragraph 15, you should also consider the following:

- (a) How the course is marketed.

A course that markets the employment related skills that will be acquired by undertaking the course will support your conclusion that the course will, on the balance of probabilities, add to the employment related skills of the participants.

- (b) Whether the course is similar to an accredited vocational education and training (VET) program.⁷

If you can clearly demonstrate that a majority of the course content is the same as part or all of a recognised VET program, this factor will support your contention that the course is likely to add to employment related skills of people undertaking the course.

- (c) The outcomes of the course.

If you can present evidence that the majority of people undertaking your course are gaining employment relevant to the skills they have acquired in the course, this would also demonstrate that the course is likely to add to the employment related skills of people undertaking the course. There must be a reasonable expectation that the course is going to 'add to the employment related skills of people undertaking the course'.

17. A course will 'add' to the employment related skills if the intended outcome of the course is to develop, increase, advance or improve the employment related skills of the people undertaking the course. This includes gaining basic skills such as literacy and numeracy, building upon existing skills and developing skills in new areas.

⁷ The Education Minister's Determination of education institutions and courses under subsection 3(1) and 5D(1) of the *Student Assistance Act 1973* defines 'vocational education and training program' to mean:

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

What are employment related skills?

18. 'Employment related skills' is not defined in the GST Act. However, the phrase 'employment related skill' is defined in the *Training Guarantee (Administration) Act 1990*.

19. An 'employment related skill' includes a skill used, or that may be used, by a person in the course of:

- holding any office or appointment, performing any functions or duties engaging in any work, or doing anything, that results in the person's being an employee; and
- any business, occupation, profession or trade carried out by the person otherwise than as an employee.⁸

We are of the view that the above definition can be applied in the interpretation of the same words used in the GST Act. The definition is not meant to be an exhaustive one. An employment related skill' would include basic skills such as pure literacy and numeracy skills.

What is the meaning of 'likely' to add employment related skills?

20. An adult and community education course must be 'likely' to achieve the defined result, i.e., add to the employment related skills of people undertaking the course'.⁹

21. 'Likely' is not defined in the GST Act and therefore, takes on its ordinary meaning. The Macquarie Dictionary defines 'likely' to mean '1. probably or apparently going or destined (to do, be, etc.); likely to happen'. This is an objective measurement.

22. Whether an adult and community education course achieves its objectives and attracts its targeted participants will depend on the nature and content of the course, not on the actual prospects of individual persons undertaking the course. On the balance of probability there must be a reasonable expectation that the course will add to the employment related skills of people undertaking the course. There must be a reasonable expectation that the course will develop skills that can be used by participants in employment, or in a business, occupation, profession or trade.

⁸ *Training Guarantee (Administration) Act 1990*, Section 4 Interpretation – definitions.

⁹ Where a course satisfies this condition it will also be necessary to consider whether it satisfies the conditions in either paragraph (a) or (b) of the definition in section 195-1 before concluding that it is GST-free.

Example of courses likely to add to employment related skills*Example – Occupational Preparatory Course*

23. The Elizabeth TAFE College offers a course titled 'Occupational Preparatory Course'. The course is aimed at people who are intending to apply for careers in the Police, Armed Services, Fire Brigade etc. The course covers the areas assessed in selection tests for these services. These include: English skills such as spelling, punctuation, grammar and essay writing, reasoning ability (IQ tests); practice and strategies; problem solving skills and practice for mathematical sections of tests; and workplace awareness.

24. There is a reasonable expectation that people undertaking this course will have a better understanding of the selection requirements necessary to enter the Police, Armed Services and Fire Brigade and the course will also improve their skills to successfully complete the entrance exams etc. Consequently the course is a GST-free adult and community education course.

Example: Basic Literacy Course

25. A community centre offers a course in 'Spoken and Written English'. It is designed to assist adult learners with their oral and written skills in speaking, listening and pronunciation; reading sentences and short texts; writing, spelling, grammar, connected sentences and paragraphs. The course is GST-free as it is considered to be adding to participants employment related skills.

Examples of adult and community education courses that are GST-free.

26. In the examples following it has been assumed that the course is of a kind determined by the Education Minister to be an adult and community education course and that it is being provided by, or on behalf of, a body described at paragraph (a) of the definition of adult and community education course contained in section 195-1.

Example: Computer Course

27. The Dawes TAFE College offers a course titled 'Introduction to Computers'. The course is described as an ideal beginner's course.

28. The course outline states that it is designed to provide participants with a basic hands-on awareness of computers and computer terminology. Topics include Windows, E-mail and the Internet.

29. *The course has been developed with the intention that it will increase and improve the computer skills of people undertaking the course. Computer skills are employment related skills and the course provider targets office workers and people retired from the workforce who want to expand their knowledge of computer programs. The course is GST-free to all participants, regardless of the fact that some of the participants may not be currently employed.*

Example – Job Seeking Skills

30. *The Salvation Army offers a course titled ‘Job Seeking Skills’. This program is designed to assist participants to effectively and concisely market their skills, knowledge, achievements and qualifications to employers. Interview skills are covered, including how to project confidence, professionalism and enthusiasm. This course is directed at people wanting to improve their skills and gain employment. This course is GST-free.*

Example – Computer Course

31. *The Tahmero University offers a course titled ‘Excel 2000 – Advanced’. The course outline states that the applicants must have completed Excel – Intermediate or equivalent. The course is designed to teach the more advanced features of Excel 2000. An intermediate knowledge of Excel is a stated pre-requisite. The course objectives demonstrate that it is a course designed to add to the employment related skills of people undertaking the course and it is GST-free.*

Example – Occupational Rehabilitation for Return to Work Co-ordinators

32. *The Randall TAFE college offers a course titled ‘Occupational Rehabilitation for Return to Work Coordinators’. The course is targeted at both experienced and inexperienced Return to Work Coordinators, Work Cover Claims Officers, Managers, Supervisors and Human Resource Managers in small or large organisations.*

33. *This course is aimed at participants already involved in the workforce and completion of this course will enhance their employment related skills. This course is GST-free.*

Adult and community education courses that are subject to GST***Recreational and Hobby Courses***

34. Adult and community education courses cover a variety of activities directed at providing programs which reflect adult learner's desires for hobby and recreational outcomes together with employment and income generating outcomes.¹⁰

35. Consequently not all adult and community education courses are GST-free. Where a course is predominantly recreational or in the nature of a hobby, it is considered that the course of study or instruction is not likely to add to the employment related skills of the people undertaking the course.

36. In the following examples it has been assumed that the course provider is registered under the GST Act.¹¹

Example of adult and community education courses that are subject to GST***Example - Belly dancing***

37. *A belly dancing course is offered by the JAG Community Centre. The course is promoted and targeted at people who want to undertake a leisure type of activity and the aims of the course do not list any skills that relate to participants gaining or using the skills in any form of employment.*

38. *As the course is not directed at people who want to add to their employment related skills and the aim of the course is to teach people to belly dance for recreational purposes, the course is a hobby course and subject to GST.*

39. *Tania recently completed the belly dancing course and has obtained employment as a belly dancer at the local Turkish restaurant. It is irrelevant that a participant gained employment after completing the course. The course is a recreational course and the intended outcome of the course was not to develop employment related skills in this area.*

40. *The community centre also offers an intermediate belly dancing course. The course is promoted in exactly the same way as the introductory course. The only distinction that is made is that the course guide states that intermediate participants will learn more involved steps/movements.*

¹⁰ Ministerial Council on Education, Employment, Training and Youth Affairs 'National Policy Adult Community Education 1997' Strategic Objective 4, Goal 2.

¹¹ Division 23

41. *Tania returns to complete the intermediate belly dancing course. Tania is working as a belly dancer. From the course provider's perspective, it is irrelevant that one participant might use the skills acquired from the course in their employment. The provider must determine prior to offering the course and setting a price for the course, whether the course is going to add to the employment related skills of people undertaking the course. The intermediate course is again targeted at participants wanting to undertake a leisure activity. The aims, objectives and course content are not structured at participants attaining skills that could be used in any employment situation. The course is offered and promoted as a recreational course and is subject to GST.*

Example – Cooking Class

42. *The Fisher Community Centre offers a course titled 'Dinner Parties'. The course is marketed at people who enjoy entertaining at home, but are short on time. The course is designed to help participants create delicious dinners by adding creative touches to ready prepared basics purchased from the supermarket. The objectives of this course are to enhance the social activities of the participants not to add to employment related skills. This course is subject to GST.*

Example – Introduction to Environmental Issues

43. *The community house run by St Agnes' Parish Church offers a course entitled 'Introduction to Environmental Issues'. 'Introduction to Environmental Issues' is promoted as a course for people who are concerned about the hole in the ozone layer, the greenhouse effect and how global warming may affect them. This course is structured as a discussion group aimed at increasing awareness of environmental issues and it is unlikely to add to the employment related skills of people undertaking the course. Consequently the course is subject to GST.*

Example – Picture Framing

44. *The Aspen Secondary School Parents and Citizens Association offers a course titled 'Picture Framing – Beginners'. The course covers the basics of picture framing and how to create one's own framing combinations of colour and style. The intended outcome of the course is that participants will use it to frame their own photos, prints or artwork. The objectives of this course are recreational and the course is subject to GST.*

Example - Personal Investment and Financial Planning

45. The Springfield TAFE offers a course titled 'Personal Investment and Financial Planning'. The course is aimed at people who are interested in starting an investment portfolio and planning their future financial security. The course is not intended to give participants the skills to gain employment as Financial Planners or Investment Advisers. It is only intended to give participants sufficient knowledge to manage their own investments. The course is a recreational course and is subject to GST.

Detailed contents list

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- ANTS(GST)A99 Div 23
- ANTS(GST)A99 38-1
- ANTS(GST)A99 Subdiv 38-C
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