

# ***GSTR 2002/D2 - Goods and services tax: supplies that are GST-free as special education courses***

 This cover sheet is provided for information only. It does not form part of *GSTR 2002/D2 - Goods and services tax: supplies that are GST-free as special education courses*

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 as special 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 view of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners. When officially released as a final ruling 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 entity to whom it applies.*

### **What this Ruling is about**

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1. This Ruling explains the definition of the term ‘special education course’ in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The supply of a course that meets the requirements of the definition is an education course that is GST-free under paragraph 38-85(a).
2. This Ruling does not discuss in depth the supply of administrative services, excursions or field trips, course materials or student accommodation.<sup>1</sup> These supplies are explained in GSTR 2000/30.
3. This Ruling does not deal with the application of Subdivision 38-G (non-commercial activities of charitable institutions).
4. Unless otherwise stated, all legislative references in this Ruling are to the GST Act.

### **Date of effect**

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5. This draft Ruling represents the preliminary, though considered, view of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applied from 1 July 2000. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953*

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<sup>1</sup> Paragraph 38-85(b) (administrative services); section 38-90 (excursions or field trips); section 38-95 (course materials); and section 38-105 (accommodation at boarding schools).

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and may be relied upon, after it is issued, by any entity to whom it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

## Background

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6. One of the requirements of GST-free special education courses is that they need to be designed specifically for:

- children with disabilities, regardless of whether they are students; or
- students with disabilities, regardless of their age.

7. Students with disabilities may be educated in the government and private schools systems. Special programs for these students may be either integrated into the curriculum or provided in special classes where the curriculum may be modified to meet the students' particular needs. In special schools, programs are provided only for students with disabilities. In other circumstances, special programs are provided outside the school systems.

8. The definition of education course in section 195-1 lists a number of courses, including a special education course.<sup>2</sup> In turn, each of these listed courses is also defined.<sup>3</sup> If a course meets the requirements of one of the courses listed in the definition, you do not need to use this Ruling to consider whether the course is also a special education course, as all of the listed courses are GST-free under paragraph 38-85(a). However, a special education course cannot be an adult and community education course.<sup>4</sup>

9. All special education courses are GST-free, regardless of who supplies the course or where the supply is made.

10. Whether a course is GST-free will depend on the attributes of the course and not on the status of the provider of the course.

11. If you are not registered for GST (and you are not required to be registered), no GST is payable on a course you supply.<sup>5</sup>

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<sup>2</sup> Paragraphs (a) to (k) of the section 195-1 definition of education course.

<sup>3</sup> See, for example, the section 195-1 definition of pre-school course, primary course and secondary course.

<sup>4</sup> Paragraph 5(2)(a) of the A New Tax System (Goods and Services Tax) (Adult and Community Education Courses) Determination 2000.

<sup>5</sup> This is because the supply you make is not taxable under paragraph 9-5(d).

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## **Ruling and explanation**

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### **Special education course**

12. The term special education course is defined in section 195-1. A course meets the requirements of the definition if:

- it is a course of education;
- it provides special programs; and
- the special programs are designed specifically for children with disabilities or students with disabilities (or both).

13. The expressions that make up the definition of a special education course are not defined in the GST Act, so it is necessary to consider their ordinary meanings.

### **Course of education**

14. Taxation Ruling TR 98/9 states the ATO view on what is a 'course of education':

'In our view, a course of education is a course or program of study involving systematic instruction, training or schooling. 'Education' is to be given its ordinary meaning of 'acquisition of knowledge, skill etc.' (Macquarie Dictionary) and refers to a wide range of knowledge or skill, including sport.'<sup>6</sup>

15. In the context of the definition of a 'special education course' in section 195-1, a course of education should also be given a wide meaning to include systematic instruction, training or schooling in areas of:

- scholastic and academic pursuits;
- vocational skills; or
- personal development.

16. The systematic instruction, training or schooling may be delivered to a group of children or students or to an individual child or student and may take the form of:

- a series of lessons or classes; or
- a unit or module that forms part of a larger course.

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<sup>6</sup> Taxation Ruling TR 98/9, paragraph 128. The Ruling explains the deductibility of self education expenses.

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17. To be a course of education, the systematic instruction, training or schooling also needs to have elements of interactive teaching. Factors that indicate interactive teaching include, but are not limited to:

- delivery of educational instruction through an instructor or teacher;
- ongoing support and guidance, for example, staff being available to answer questions;
- assessment of the child or student's progress;
- monitoring or supervision; and
- provision of feedback concerning the student.

18. The mere supply of things such as a self-paced software program without instruction, support, assessment, supervision or feedback, is not the supply of a course of education. Although these things may be used as learning tools, they do not satisfy the requirements of a course of education because they lack elements of interactive teaching.<sup>7</sup>

## Special program

19. A program is a special program if it is:

- designed specifically to meet the special needs of children or students with disabilities;
- designed specifically to reduce or prevent the impact of disabilities for children or students with disabilities; or
- not made available to people generally.<sup>8</sup>

20. Each and every part of the course of education does not have to be 'special'. However, the program, when looked at in its entirety, needs to be recognised as a special program. For example, the course's content may mirror that of an existing curriculum-based course provided in a school, but be delivered in a way that makes it suitable for children or students with disabilities.

21. In some circumstances, where you modify a program that is not a special program, the modified program may become a special program.<sup>9</sup>

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<sup>7</sup> However, these items may be GST-free if they satisfy the requirements of section 38-45 (Medical aids and appliances) and Item 8, Schedule 3 (Software programs specifically designed for people with disabilities).

<sup>8</sup> In *Colyer v. State of Victoria* [1998] 3 VR 759 (*Colyer*), at 770 Kenny JA described similar elements when considering what may be 'special' about special services designed for people with a disability. Kenny JA was considering the matter for the purposes of section 82 of the *Equal Opportunity Act 1995*.

**Designed specifically for children or students with disabilities**

22. You need to consider the whole of the circumstances of the creation and delivery of a program to decide whether it is designed specifically for children or students with disabilities. Relevant matters include:

- evidence of an intention to design the program for children or students with disabilities;
- the character of the program that is provided;
- the intended recipients of the program; and
- any relevant obligations you or others have in providing the program.<sup>10</sup>

*Evidence of intention*

23. An intention to design a program for children or students with disabilities may be demonstrated by material that indicates the program is marketed specifically for children or students with disabilities. For example, marketing material may provide details as to how a particular disability will be addressed.

*Character of the program*

24. The character of a special program may be established by considering its content, the place where it is delivered or how it will be delivered (or a combination of these things). It is these characteristics that will distinguish a program from those that have a character that is not special.

*Recipients of the program*

25. A special program needs to be designed specifically for children or students with disabilities. It is not necessary for people with disabilities to be the actual recipients of the program.

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<sup>9</sup> In *Brown (N.) v. Canada* [1995] C.T.C. 208 (Federal Court, Trial Division), a case dealing with the design of equipment, Simpson J noted that the relevant design or intention may be that of a person who more recently modified an earlier invention.

<sup>10</sup> In *Colyer Kenny JA* considered similar matters were relevant when deciding whether a service provider intended to design special services for people with disabilities.

## *Relevant obligations*

26. A large number of providers of special education operate within a regulatory environment. For example, to obtain government funding for the education of children or students with disabilities, providers are required to substantiate the proper use of the funds through means such as individual education plans. Programs based on these plans are specifically designed for children or students with disabilities. Programs similar to those supplied within the regulatory framework, but for use outside of this environment would also be regarded as special programs.

## **Child or student**

27. As stated at paragraph 6, a GST-free special education course must be designed specifically for:

- children with disabilities, regardless of whether they are students; or
- students with disabilities, regardless of their age.

28. For the purposes of this Ruling a child is someone who has not yet attained the age of eighteen. A student is someone who is enrolled, or will enrol, in a course or program of study involving systematic instruction, training or schooling in the areas stated at paragraph 15 of this Ruling. A student can be someone of any age and may be enrolled on a full or part-time basis.

## **Disability**

29. The World Health Organisation (WHO) document titled 'International Classification of Functioning, Disability and Health' (ICIDH-2) aims to provide a unified and standard language, and framework for the description of health, and health-related states. ICIDH-2 advises that 'disability'<sup>11</sup> is an umbrella term for impairments, activity limitations and participation restrictions.

30. An impairment is a deviation or loss of body function or structure. Body functions are the physiological functions of body systems (including psychological functions). Body structures are the anatomical parts of the body such as organs, limbs and their components.

31. A disability exists where an individual has difficulty in executing activities or has problems in being involved in life situations because some body function or structure is impaired.

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<sup>11</sup> Part A in Chapter 1 of the ICIDH-2 from the World Health Organisation (WHO).

32. Children or students with disabilities are those children or students who have a functional or structural impairment that causes them difficulty in executing activities or problems involving life situations. This would include, but is not limited to, conditions that may be diagnosed under the following broad headings:<sup>12</sup>

- learning disabilities/specific learning difficulties (including dyslexia);
- autism spectrum disorder;
- physical disabilities;
- emotional disorders;
- language disorders;
- hearing impairments;
- visual impairments;
- intellectual disabilities.

### **Programs that are not special education courses**

*Programs that are not a course of education and do not form part of a course of education*

33. A special education course is a course of education that provides special programs. That is, the special program must, in itself, be a course of education or form part of a course of education. The program is not a special education course if it:

- does not contain elements of a course of education as described in paragraphs 14 to 17; and
- does not form part of a course of education.

34. For example, a program is not a course of education if it only provides:

- treatment for a medical or physical condition; or
- personal or therapeutic care, support or assistance.<sup>13</sup>

35. However, if such a program is combined with a course of education that is designed specifically for children or students with disabilities, then it forms part of a special education course.

<sup>12</sup> This list is not exhaustive, it is based on criteria used by education authorities in the States and Territories to administer programs for students with disabilities and impairments that are funded under the *States Grants (Primary and Secondary Education Assistance) Act 2000*.

<sup>13</sup> However, these services may be GST-free if they satisfy the requirements of section 38-7 (Medical services) or section 38-10 (Other health services).



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*Programs that are not 'designed specifically' for children or students with disabilities*

36. Children or students with disabilities may participate in programs that are not designed specifically for people with disabilities. For example, they may participate in activities that are designed to help students improve their grades, by way of:

- private tutoring;
- coaching; or
- extension learning programs.

37. If these courses are not designed specifically for children or students with disabilities they are not special education courses, regardless of whether children or students with disabilities are the recipients. However, if these programs have characteristics that demonstrate that they are special programs designed specifically for children or students with disabilities they will satisfy the definition of a special education course.

## **Who can provide a special education course?**

38. Where all of the requirements of the section 195-1 definition of a special education course are satisfied, the course is GST-free, regardless of who provides the course.

39. A special education course is not restricted under the GST Act to programs that are provided by a school,<sup>14</sup> special school, government centre or non-government centre.<sup>15</sup>

40. You may provide a special education course to children or students with disabilities on behalf of a GST-registered third party (for example a school). The supply that you make to that third party is still the supply of a special education course. The subsequent supply from the third party to the children or students is a special education course.

41. Where you supply a special education course to children or students with disabilities you may engage another person (for example, a consultant) to provide services to you. You may engage a consultant to design the contents of your course or to train your staff to deliver the course. However, the supply of the consultant's services to you is not GST-free as a special education course.

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<sup>14</sup> Section 195-1, definition of school.

<sup>15</sup> For the meanings of special school and government centre or non-government centre see Schedule 9, *States Grants (Primary and Secondary Education Assistance) Act 2000*.

**Education related supplies for a special education course**

42. If you charge for the supply of an administrative service that is directly related to the supply of a special education course, then the supply is GST-free under paragraph 38-85(b). Supplies of administrative services are discussed in GSTR 2000/30.

43. If the fee you charge for the supply of a special education course includes a fee for course materials<sup>16</sup> provided to undertake subjects that form part of a special education course, the supply is GST-free under section 38-95. Supplies of course materials are explained in GSTR 2000/30.

44. If you supply students with an excursion or field trip that is directly related to your curriculum and it is not predominantly recreational in nature, the supply is GST-free.<sup>17</sup> However, if you supply food as part of the excursion or field trip, it is not GST-free.<sup>18</sup> Supplies of excursions and field trips are discussed in GSTR 2000/30.

45. A supply of student accommodation<sup>19</sup> to students undertaking a special education course is GST-free under subsection 38-105(1), if the supply of accommodation is made by you as the supplier of the course. Supplies of student accommodation are also discussed in GSTR 2000/30.

**Examples****Course of education***Example 1*

46. *An organisation designs a program for students with intellectual disabilities. The program provides vocational training in basic hospitality skills. The students attend lessons, conducted by an instructor, three days per week for a period of six months. The instructor is available to assist with the completion of practical work. The instructor also assesses the students regularly and provides them with feedback. Because the students attend a series of lessons involving the interactive teaching of vocational skills this program is a 'course of education'.*

*Example 2*

47. *A company designs intensive language classes for hearing impaired students. A teacher experienced in training hearing impaired*

<sup>16</sup> Section 195-1, definition of course materials.

<sup>17</sup> Subsection 38-90(1).

<sup>18</sup> Paragraph 38-90(2)(b).

<sup>19</sup> Subsection 38-105(3).

*students to lip read conducts these classes for five half days per week for a period of three months. The teacher is available to answer questions. At the end of the course the students are assessed to determine whether they have learned the skills necessary to participate in classes conducted by local schools. The students attend a series of classes involving the acquisition of language skills. These classes also involve elements of interactive teaching. Therefore, these classes satisfy the requirements of a 'course of education'.*

### *Example 3*

48. *A partnership designs behaviour management programs for pre-school aged children with autism, pervasive developmental disorders and related developmental disabilities. These programs consist of sessions conducted daily over a period of months or years. The instructors deliver sessions that address the intellectual and academic needs of the children. The instructors also work with parents and carers to implement strategies designed to improve the childrens' social and emotional behaviour. The children are monitored and supervised. The instructors, parents and carers meet regularly to assess the children's progress. These programs satisfy the requirements of a 'course of education' because personal development sessions involving interactive teaching methods are delivered.*

## **Special program**

### *Example 4*

49. *Simone designs programs for dyslectic students that teach them strategies for recognising letters, numbers and mathematical symbols. Completing Simone's program enables her students to learn more effectively in the classroom. The program is not offered as part of the curriculum at the local schools that Simone's students attend. Simone only makes her program available to students who have been diagnosed as dyslectic and referred to her by an educational psychologist. The programs that Simone designs have the characteristics of a 'special program' because:*

- they are designed to meet the special needs of dyslectic children or students;*
- they are designed to reduce the impact that dyslexia has on the ability of these children and students to participate in the classroom; and*
- they are not made available to children or students generally.*

*Example 5*

50. *An organisation designs a program that is based on the hospitality course supplied by the local TAFE College. However, the organisation has modified the course so that it meets the needs of students with intellectual disabilities who seek to live independently of their carers and/or gain positions in assisted employment. The course of instruction includes vocational training in basic food handling and preparation, laundry duties including washing and ironing, cleaning duties, stock purchasing and control as well as instruction in personal development. The course is not made available to people generally. The modified program satisfies the requirements of a 'special program'.*

**Designed specifically for children or students with disabilities***Example 6*

51. *A company designs programs for children and students who cannot use a standard keyboard to operate a computer because of their physical disabilities. Marketing statements indicate that these programs are intended for children and students who do not have upper limbs or do not have full use of their upper limbs. These programs are designed to teach children and students computing skills using prosthetic or orthotic aids, modified keyboards and/or voice activated software applications. They are designed specifically for children and students with disabilities because:*

- *marketing material confirms the supplier's intention to provide the programs to children and students with disabilities; and*
- *the programs' content and method of delivery confirms their character as programs designed for children and students with disabilities.*

**Programs that are not special education courses***Example 7*

52. *An academy of education designs programs for children and students who are behind in their studies. The academy also designs courses for students who want to excel in their studies to gain scholarships or placements at selective schools.*

53. *Gemma is dyslectic and her parents have enrolled her at the academy. One of the academy's tutors works with Gemma, through a coaching program. This program is not modified in any way to suit Gemma. Although the program is delivered to a child or student with*

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*disabilities, it does not satisfy the definition of a special education course because it has not been designed specifically for children or students with disabilities.*

## Example 8

54. *George provides tutoring services to students who do not have disabilities, but are having trouble keeping up with their schoolwork. The programs that George supplies are not special programs because they are not designed specifically for children or students with disabilities. Therefore, George is not supplying a special education course.*

## Example 9

55. *A coaching college specialises in coaching intellectually gifted students to higher levels of academic excellence. The coaching college guarantees to lift academic performance to a point where students will be graded in the top five percent of students. A program designed to improve academic ability in this way does not satisfy the requirements of a special program because it is not designed for children or students with disabilities. The college is not supplying special education.*

## Your comments

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56. If you wish to comment on this draft Ruling, please send your comments promptly by 26 April 2002 to:

**Contact Officers:** Tracey Gaffney  
**Telephone:** (03) 9215 3784  
**Facsimile:** (03) 9215 3463  
**E-mail:** [tracey.gaffney@ato.gov.au](mailto:tracey.gaffney@ato.gov.au)  
**Address:** GST – Education Industry Team  
PO Box 9990  
DANDENONG VIC 3175

or

**Contact Officer:** Peter Grimes  
**Telephone:** (03) 9215 3655  
**Facsimile:** (03) 9215 3463  
**E-mail:** [peter.grimes@ato.gov.au](mailto:peter.grimes@ato.gov.au)

**Address:** GST – Education Industry Team  
**PO Box 9990**  
**DANDENONG VIC 3175**

## **Detailed contents list**

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**Commissioner of Taxation**

13 March 2002

*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*GSTR 1999/1; GSTR 2000/30;  
TR 98/9*Subject references:*

- accommodation at boarding schools
- children
- course of education
- course materials
- designed specifically for
- disability
- education course
- excursions or field trips
- GST
- special education course
- special program
- students
- student accommodation

*Legislative references:*

- TAA 1953 37
- ANTS(GST)A99 9-5(d)
- ANTS(GST)A99 38-7
- ANTS(GST)A99 38-10
- ANTS(GST)A99 38-45
- ANTS(GST)A99 38-85(a)
- ANTS(GST)A99 38-85(b)
- ANTS(GST)A99 38-90

- ANTS(GST)A99 38-90(1)
- ANTS(GST)A99 38-90(2)(b)
- ANTS(GST)A99 38-95
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- ANTS(GST)A99 38-105(1)
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- ANTS(GST)A99 195-1(k)
- ANTS(GST)A99 Sch.3, Item 8
- Equal Opportunity Act 1995 82
- States Grants (Primary and Secondary Education Assistance) Act 2000 Sch.9
- ANTS(GST) (Adult and Community Education Courses) Determination 2000 5(2)(a)

*Case references*

- Colyer v. State of Victoria [1998] 3 VR 759

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- Brown (N.) v. Canada [1995]  
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