



GST ADDENDUM JUNE 2020

Sources: ATO website, especially at <https://www.ato.gov.au/non-profit/getting-started/getting-endorsed/is-my-organisation-eligible-for-charity-tax-concessions/>

CURRENT as at June 2020

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A WORD OF CAUTION

In discussions with representatives of the ATO it is imperative to be specific in the language used and the detail provided. To refer to a U3A as being an “educational institution” or as providing “educational courses” is problematic. It can create a misleading impression and lead to the provision of advice wrongly premised on what those terms mean in the context of tax law. The meaning of both terms is canvassed in the Guide to GST Law. See also what appears below re concessions available to educational institutions.

Keep in mind that there is nothing simply about the law!

GENERAL

As stated in the GST Guide, a U3A is **not** required to add GST to the fees charged to its members if its annual turnover is below the GST threshold of \$150,000. The drawback is that such a U3A cannot claim GST credits for GST paid by it on its purchases from third parties. **However**, U3A’s

below the said annual turnover have the choice of registering for GST if they wish to claim GST credits on purchases from third parties. Registration for GST requires the imposition of GST on fees etc collected/charged for provision of services and products, and the remittance thereof to the ATO.

AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION (ACNC)

Non-commercial activities

Additional GST concessions are available to Australian Charities and Not-for-profits Commission (ACNC) registered charities that are endorsed by the ATO to access GST charity concessions.

For GST purposes an endorsed charity is a charity that is an ACNC registered charity, has an ABN and is endorsed by the ATO as a charity: <https://www.ato.gov.au/non-profit/your-organisation/gst/gst-concessions/>

The GST concession enjoyed by an endorsed charity is described on the ATO website in the following terms:

Non-commercial activities – where an eligible entity makes sales and the payment it receives in return for the things it sold is less than a certain amount, the sales are GST-free.

However, to be able to take advantage of that GST concession a U3A must not only be an endorsed charity it **must** also be registered for GST with the ATO!

That criteria stated on the ATO website is as follows:

"The commercial activities of an endorsed charity, gift deductible entity or government school are taxable, but the non-commercial activities of these organisations may be GST-free dependent upon whether certain threshold tests are met.

This means that, if it is registered for GST, the endorsed charity, gift deductible entity or government school does not remit GST on the payment it receives for its non-commercial sales, and it can claim GST credits for the GST included in the price of purchases it uses to make these sales."

The ATO website <https://www.ato.gov.au/business/bus/gst-and-supplies-by-charities-for-nominal-consideration--benchmark-market-values/> explains the availability of the concession more specifically, especially the meaning of "nominal consideration" as follows:

"GST-free activities

If you are an endorsed charity, your supplies are GST-free if you provide them for nominal consideration.

An endorsed charity must be registered with the Australian Charities and Not-for-Profits Commission; it must also be endorsed by us to access these GST charity concessions.

Is my organisation eligible for charity tax concessions?

Consideration and nominal consideration

Consideration means all payments, both monetary and non-monetary, made for the supply, regardless of who makes the payments.

An endorsed charity will make a supply for nominal consideration where the consideration received satisfies any of the following tests:

- *less than 75% of the GST-inclusive market value for supplies of accommodation*
- *less than 50% of the GST-inclusive market value for supplies other than accommodation.*

This information enables you to compare the consideration received for a supply against benchmark market values to determine whether your organisation's supplies are made for nominal consideration.”

Less than 50% of the GST-inclusive market value for supplies other than accommodation.

The question becomes: is your U3A providing its services and/or particular courses for less than 50% of the GST-inclusive market value of those services/courses.

The complexity of determining the answer is set out at <https://www.ato.gov.au/business/bus/gst-and-supplies-by-charities-for-nominal-consideration---benchmark-market-values/?anchor=Marketvalueguidelines#Marketvalueguidelines>.

Obtaining a Ruling

Your U3A may apply for a Private Ruling on the aforesaid issue: [https://www.ato.gov.au/General/ato-advice-and-guidance/ato-advice-products-\(rulings\)/private-rulings/applying-for-a-private-ruling/#aboutyourapplication](https://www.ato.gov.au/General/ato-advice-and-guidance/ato-advice-products-(rulings)/private-rulings/applying-for-a-private-ruling/#aboutyourapplication). Relevantly, the ATO website states as follows:

“Your questions

Your questions must be clear so we can identify your issues accurately and fully.

Comment: your U3A must identify the specific fee for which the concession is sought, that is whether it is the membership fee and/or the fee for a specific course.

Facts describing the scheme or circumstance

You must provide us with a description of all the facts relevant to your scheme or circumstance.

Your private ruling will be ineffective if there is any substantial difference between what you actually do, and the scheme or circumstance we describe in your private ruling.

Comment: the relevant service must be described with specificity. It is imperative that the primary features of the services provided by a U3A are specified. They include:

- Membership is available to persons who are retired or semi-retired.
- Courses are provided by unpaid tutors/teachers who may or may not have any qualifications to either teach or teach their particular U3A subject. Some courses require no greater skill than turning on an educational DVD.
- There is no curriculum, that is there are no “*interactive systems of instruction and learning with specific goals, contents, measurements and resources*”.
- Courses are not subject to quality control either in terms of content or the teaching skills of the tutor/teacher.
- There are no exams or assessments, no diplomas or degrees are awarded.
- There is no requirement that members attend all or even a substantial number of their course sessions. Attendance is strictly optional.
- Fees charged are purely a reflection of the need to keep them low as many U3A members are on the pension or otherwise of limited financially means, and the need for the U3A to meet its financial obligations, such as room hire fees.
- None of the U3A courses are authorised by the Student Assistance Minister to be an adult and community education course. That is U3A courses are not ACE courses.

“Educational Institution”

Further if your U3A seeks to claim the concession on the basis of being an ‘educational institution’ it must provide the following documentation to the ATO: <https://www.ato.gov.au/General/ATO->

[advice-and-guidance/In-detail/Private-rulings/Supporting-documents/GST/GST-and-education-courses/](#)

“GST and education courses – supporting information

Here's a list of the documents and information we usually need to process a private ruling request or objection about GST on education courses and related things. If you provide supporting information this will reduce the time it takes us to respond to your request.

If you want to apply for a private ruling about the GST on education, you need to:

- *complete and submit the relevant private ruling application form (for tax professionals or not for tax professionals)*
- *provide the supporting information listed below.*

If you want to lodge an objection about the GST payable on a supply of an education course, you need to:

- *complete and submit the relevant objection form (for taxpayers or tax professionals)*
- *provide the supporting information listed below.*

The information we need for a private ruling or objection about the GST payable on a supply of an education course or related things includes:

- *the entity supplying the education course and their structure*
 - *the education course being supplied, including*
 - i. *how the course is assessed*
 - ii. *the curriculum*
 - iii. *whether it is a type of education course (as defined in the A New Tax System (Goods and Services Tax) Act 1999)*
 - iv. *what type of accreditation the course provider has and how that accreditation applies to the education course supplied*
 - v. *how the education course is provided, including any agreements with other entities to provide the course*
 - vi. *whether any associated items are provided with the supply of the education course, for example accommodation, course materials, excursions, or meals.*
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