



GST (Goods & Services Tax)

The Meaning and Scope of Supply

“Education” is not defined in the CGST Act but as per Apex Court decision in “Loka Shikshana Trust v/s CIT”, education is process of training and developing knowledge, skill and character of students by normal schooling.

Taxing the Education Sector has always been a sensitive issue, as education is seen more as a social activity than a business one. The government has a constitutional obligation to provide free and compulsory elementary education to every child. Thus, to promote education, it would be beneficial if educational services are exempted from tax. However, commercialisation of education is also a reality. The distinction between core and ancillary education is blurring and education is now an organised industry with huge revenues. The GST Act tries to maintain a fine balance whereby core educational services provided and received by educational institutions are exempt and other services are sought to be taxed at the standard rate of 18%.

Classification of Education Services: Education Services are classified in heading 9992 (as per Notification No. 11/2017-Central Tax (Rate)) and are further sub-divided into six groups (as per the Annexure to the same notification) comprising of Pre-primary, primary, secondary, higher, specialised and other educational & support services as below:

Heading & Group	Service Code (Tariff)	Service Description
Heading no. 9992		Education services
Group 99921		Pre-primary education services
	999210	Pre-primary education services
Group 99922		Primary education services
	999220	Primary education services

Group 99923		Secondary Education Services
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Heading & Group	Service Code (Tariff)	Service Description
Group 99924	999231	Secondary Education Services, General
	999232	Secondary Education Services, Technical and Vocational
		Higher Education Services
	999241	Higher Education Services, General
	999242	Higher Education Services, Technical
Group 99925	999243	Higher Education Services, Vocational
	999249	Other higher education services
		Specialised education services
Group 99929	999259	Specialised education services
		Other education & training services and educational support services
	999291	Cultural education services
	999292	Sports and recreation education services
	999293	Commercial training and coaching services
	999294	Other education and training services
	999295	services involving conduct of examination for admission to educational institutions
999299	Other Educational support services	

Rate of GST

The rates of GST on education services (as per Notification No. 11/2017-Central Tax (Rate), Notification No. 11/2017-Central Tax (Rate) and Notification No. 12/2017-Central Tax (Rate) all dated 28.06.2017 as amended) are as below:



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Chapter/ Section/ Heading	Description of Service	Rate / Notification
9992	Education Services	18% (9% Central Tax + 9% State Tax)/ Serial No. 30 of Notification No. 11/2017-Central Tax (Rate) dated 28 th June, 2017
9992	Services provided – (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of, - (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or housekeeping services performed in such educational institution; (iv) A services relating to admission to, or conduct of examination by, such institution; up to higher secondary: Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent	NIL/Serial No. 66 of Notification No. 12/2017- Central Tax (Rate) dated 28 th June, 2017

9992	Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme: - (a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management; (b) fellow programme in Management; (c) five year integrated programme in Management.	NIL / Serial No. 67 of Notification No. 12/2017- Central Tax (Rate) dated 28 th June, 2017
90 or any chapter	Technical aids for education, rehabilitation, vocational training and employment of the blind such as Braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind Braille instruments, paper etc.	5%/ Serial No. 257 of Schedule I of the Notification No. 1/2017-Central Tax (Rate) dated 28 th June, 2017
9023	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for otheruses	28 %/ Serial No. 191 of Schedule IV of the Notification No. 1/2017-Central Tax (Rate) dated 28 th June, 2017

Thus, services provided by an educational institution to students, faculty and staff are exempt. Educational Institution means an institution providing services by way of:

- (i) Pre-school education and education up to higher secondary school or equivalent;
- (ii) Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) Education as a part of an approved vocational education course.

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Within the term “educational institution”, sub-clause (ii) covers institutions providing services by way of **education as a part of curriculum for obtaining a qualification recognised by any law** for the time being in force. This is an area where doubts have persisted as to what would be the meaning of “education as part of curriculum for obtaining qualification recognised by law”. GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 can be gainfully referred to understand the meaning of the term which reads as under;

What is the meaning of ‘education as a part of curriculum for obtaining a qualification recognized by law’?

It means that only such educational services are in the negative list as are related to delivery of education as ‘a part’ of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country covered in the negative list entry?

No. to be covered in the negative list a course should be recognized by an Indian law.

Within the term “educational institution”, sub-clause (iii) covers institutions providing services by way of education as a part of approved vocational course, and institutions providing the above courses will come within the ambit of the term educational institution.

Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017, defines approved vocational education course as under:

An “approved vocational education course” means: -

- (i) A course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or
- (ii) A Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

It is to be noted that only those institutions whose operations conform to the specifics given in the definition of the term “Educational Institution”, would be treated as one and entitled to avail exemptions provided by the law. This would mean that private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

Thus, educational institutions up to Higher Secondary School level do not suffer GST on output services and also on most of the important input services. Some of the input services like canteen, repairs and maintenance etc. provided by private players to educational institutions were subject to service tax in pre-GST era and the same tax treatment has been continued in GST regime.

Thus output services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall therefore, not attract GST.

Similarly, output services related to the specified courses provided by IIM’s would be exempt. Executive Development Programs run by the IIM’s are specifically excluded, hence such courses would be subject to GST.

Regarding, input services, it may be noted that where output services are exempted, the Educational institutions may not be able to avail credit of tax paid on the input side. The four categories of services known as Auxiliary Education services, which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, have been exempted (as per Notification No. 12/2017- Central Tax (Rate)). Auxiliary education services other than what is specified above would not be entitled to any exemption. The exemption also comes with a rider. Such services are exempt only for educational institutions providing services by way of education up to higher secondary or equivalent. (from pre-school to HSC). Thus if such auxiliary education services are provided to educational institutions providing degree or higher education, the same would not be exempt. For instance, the services of conducting admission tests for admission to colleges in case of educational institutions are providing qualification recognized by law for the time being in force shall not be liable to GST.

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Who will pay GST?

Education Services are under forward charge. Therefore, GST shall be paid by the supplier of services.

What will be the Place of Supply of Educational Services where the location of supplier of services and the location of the recipient of services is in India?

As per section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to an educational or any other place and services ancillary thereto, shall be the place where the event is actually held or such other place is located.

As per section 12(7) of the IGST Act, 2017, the place of supply of services provided by way of, — (a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or (b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events: –

- (i) To a registered person, shall be the location of such person;
- (ii) To a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

What will be the Place of supply of Educational Services where the location of the supplier of services or the location of the recipient of services is outside India?

As per section 13(5) of the IGST Act, 2017, the place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

and if the event is held outside India, the place of supply shall be the location of the recipient.

What will be the Place of supply of Educational Services where the location of the supplier of services or the location of the recipient of services is outside India?

As per section 13(5) of the IGST Act, 2017, the place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

Educational Institution run by charitable organizations.

Charitable Trusts running institutions conforming to the definition of Educational Institution as specified in the notification would be entitled to the exemptions discussed above. Apart from the general exemption available to all educational institutions, charitable activities of entities registered under Section 12AA of the Income Tax Act is also exempt. The term charitable activities are also defined in the notification. Thus, if trusts are running schools, colleges or any other educational institutions or performing activities related to advancement of educational programmes specifically for abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years residing in a rural area, activities will be considered as charitable and income from such services will be wholly exempt from GST in terms of Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017.

Composite and Mixed Supply in so far as Education is concerned

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8 of the CGST Act, 2017. Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle. In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

Let's take another example where a course in a college leads to dual qualification only one of which is recognized by law. Would service provided by the college by way of such education be covered by the exemption notification? Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

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If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a supply which is not bundled in the ordinary course of business, it shall be treated as a mixed supply as per provisions contained in section 2(74) read with section 8 of the CGST Act, 2017. The taxability will be determined by the supply which attracts highest rate of GST.

However incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being will be an example of naturally bundled course, and therefore treated as composite supply. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. If extra billing is being done, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course of business, and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration.

The Education guide of 2012 for the purpose of service tax has given the following important clarifications in respect of educational services. The same can be gainfully referred to, for the purpose of clarity under the GST regime:

“The supply of placement services provided to educational institutions for securing job placements for the students shall be liable to service tax. Similarly, educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/ MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to service tax.”

Conclusion

Education is fundamental to the nation building process. Right to Education is now a fundamental right of every child in India. GST Law recognises this and provides exemption to educational institutions, providing education up to higher secondary school or equivalent, from the levy of GST. Auxiliary services received by such educational institutions for the purpose of education up to Higher Secondary level is also exempt from GST. Other services related to education, not covered by the exemption, would be taxed at a standard rate of 18% with full admissibility of ITC for such taxable services in cases where the output service is not exempt. In a nutshell, every attempt is made to ensure that the core educational services are fully exempt from GST.



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