



**ASSOCIATION OF  
AUSTRALIAN EDUCATION  
REPRESENTATIVE IN INDIA**  
Registered under Societies Registration Act XXI 1860  
Registration No. S-31213 of 1997

**Mailing Address:**  
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Ahmedabad: 380 013, India.  
Tel: + 91 9925027940, +917927582566  
Web: www.aaeri.in  
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**9 November 2017**

**To,**  
**Shri Arun Jaitley**  
**Union Finance Minister and Chairman, GST Council**  
**Department of Revenue, Ministry of Finance**  
**North Block,**  
**New Delhi – 110 001.**

**Sub: Representation on non-applicability of GST in relation to admission related services provided to foreign universities**

Sir,

Association of Australian Education Representatives in India ('AAERI' or 'the Association'), is an association formed in the year 1996 and currently has around 400 members across India and overseas. AAERI's members are engaged in assisting students in India to seek admission in Australian universities.

AAERI wholeheartedly welcomes Government's tremendous efforts to introduce the most transformational fiscal reform in the country since independence i.e. Goods and Services Tax from July 01, 2017 and is excited to partner with the Government in its smooth implementation.

However, with the release of GST tax rates by GST Council, the Association is extremely anxious about the additional tax burden that is bound to weigh heavily on students in attaining quality higher education. The GST charged by members of the Association on their services will become a cost to foreign universities which would ultimately be recovered from the students and consequently result in increase in the education course fees. It is pertinent to note here that for providing these admission related services the members receive a percentage of tuition fees in the form of remuneration (basis their level of efforts) from foreign universities only in foreign exchange.

This Government has been at the forefront of encouraging and propagating the significance of good quality higher education by various means including setting up and expansion of schools and universities. However, it is well recognized that we still have an acute shortage of quality higher education institutions. It is in recognition of this fact that the Government also helps students with lower interest rates on loans taken for pursuing higher education overseas, so as to afford to the Indian students an option and equally an opportunity to be exposed to the best educational institutions in the world.

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**Other Executive Members**

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Evidently, applicability of GST on professional fees charged by AAERI members to foreign universities for providing counseling to prospective students and providing placement/recruitment services nullifies the very objective of subsidizing and making affordable the loans taken by students to pay for foreign university education. There is no gainsaying that GST on such recruitment services is eventually recovered from Indian students in the form of higher fees charged by foreign universities.

It would be pertinent to point out that there is a specific exemption for services relating to admission to education institute, under GST, however the said exemption is **restricted only up to higher secondary school education and does not cover college education for under graduate/ masters/ doctorate degrees**. Indubitably, access and availability of quality higher education for our budding youngsters plays a pivotal role in strengthening the social and economic fabric of India. Further, we would like to focus on the fact that increasingly Indian youth is seeking to avail of this wonderful opportunity of studying in the best universities overseas. Undoubtedly, it is not mere the increase in the literacy rate which is important but equally and more ,the quality of that literacy enhances the ability of Indian students to participate and become pivotal in the rapid enhancement of India's economic growth. Indian students opting for overseas universities are being exposed to the best and the latest global advancements in the field of science and management. Irrespective of whether they remain overseas or they return to India, the spin offs to the Indian economy from this exposure to Indian students of cutting edge developments in specific fields of study, especially science, cannot be over emphasized. It is thus imperative that, access to such education should not be made more expensive by subjecting it to indirect taxes.

Accordingly we urge that the said GST exemptions should not be confined only upto higher secondary education but should be extended to cover graduation/post-graduation education, whether pursued from India or abroad. One of India's key strategy in its economic development pursuit is to leverage it's favorable demographics. A pre-condition for this is to extend to Indian youth access to good and quality education including higher studies.

Levy of GST on university admission related services which are critical for education, in effect results in taxing education itself and is completely counter-productive and defeats the very objective of Government's education policy. The education policy by no means intends to make good quality higher education subject to tax and hence burden the Indian students, who in any case invariably seek loans to study overseas. It may be germane to mention here that AIU (Association of Indian Universities) has instituted checks, and is the nodal authority that notifies and extends accreditation of foreign university degrees in India (**Annexure A**)

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We have provided the relevant extract of legal framework with respect to the GST applicability on education services in **Annexure B**.

Typically, levy of GST on services of recruitment provided to foreign universities turns upside down the basic VAT principle that of VAT being a destination based consumption tax. Typically such recruitment services provided to foreign universities are entirely for the beneficial enjoyment of the foreign universities and thus such services are consumed outside India and as such should be treated as exported services and not be subjected to GST.

However, the recruitment services provided by AAERI members are sought to be classified as intermediary services under GST Law. For intermediary services the place of provision of service is prescribed to be the location of supplier of service as against the default rule under which the place of supply is the location of the recipient of service. The IGST Act on this subject is inconsistent with the fundamental VAT principles practiced and prevalent in mature VAT regimes like European Union, Canada, Australia, New Zealand, Singapore, South Africa and Malaysia, wherein such services are classified under the default rule of place of supply.

As stated above, export status for such services is globally a well-established VAT principle based on the edifice of VAT being a destination based consumption tax (refer **Annexure C**).

The dichotomy in the law becomes more evident when it is seen that for such admission related services, being treated as 'intermediary services' when provided domestically, the place of supply would be the location of the service recipient while for the very same 'intermediary service' provided to an overseas educational institution, the place of supply rule is surprisingly, the location of the supplier of service.

The inequity of this becomes all the more evident when it emerges that levy of GST on such admission related educational service results in double taxation, in as much as these services are subject to a reverse charge VAT in the location of the recipient of such services, for example, in European Union.

In light of the above, we humbly request the government to consider that education, being a top most priority for our young generation, should get complete exemption from levy of GST without any restrictions along with the ancillary services which are provided in relation to education. It may be emphasized that Indian students going abroad for studies have contributed immensely in promoting India's reputation and culture globally and even when these students return to India they bring back and introduce the good practices followed globally in India.

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It is our humble plea that –

(i) exemption from GST to services relating to admission to schools and colleges and universities, be extended to graduate and post graduate education, whether pursued in India or overseas, and not be restricted only up to school education; or

(ii) Clarification be issued that recruitment services provided to foreign universities do not fall within the ambit of “intermediary services” under the GST law;

We hope that our representation would be considered favorably. Further, we wish to be granted an opportunity of meeting with you in person to make our submissions and providing a better perspective on our above request.

Yours truly,  
Authorized Signatory

For **Association of Australian Education Representatives in India**

**President: Rahul Gandhi**

Encl: As above

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## Annexure B

The Government of India has issued a list services on which no GST will be levied vide notification no. 12/2017-Central Tax (Rate) dated 28 June 2017

At sl. No. 66 of the said notification the below mentioned service in relation to education has been mentioned

### 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 house-keeping services performed in such educational Institution;
  - (iv) **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

The definition of educational institution has also been provided for in the above notification, which states the following:

"Educational institution" means an institution providing service 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 recognized by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;

In point (iv) to part 'b' of the exemption above it is mentioned that services relating to admission to and examination up to higher secondary education are exempt under GST. However, the exemption in relation to admission related services clearly provides that such exemption is available **only** for admission up to higher secondary education.

We believe that education is a crucial parameter for measuring a country's growth and such a partial approach in providing GST exemption only towards the primary and higher secondary education and excluding graduation/ post-graduation/ masters courses is not in the interest of the country. As the students availing higher education have to bear the additional burden of GST which raises the cost of education for such candidates.

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## Annexure C

**VAT/GST rules in EU, Canada, Australia and New Zealand for determining applicability of VAT/ GST on services of commission agent who provides in-country sales support services to overseas supplier of goods/services**

### 1. EUROPEAN UNION

**The applicable provision in the European Union's COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax is Article 44, which reads as under**

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"The place of supply of services to a taxable person\* acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides."

(\*taxable person is defined under Article 9 to mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity)

**Thus, as per Article 44, the place of supply of services of a commission agent in UK (who renders services of sales support) to a non-resident goods manufacturer in India, would be India. In other words, as per Place of supply rules in the EU, the place of provision of a service of such a commission agent (intermediary) who provides services to an overseas service recipient would be the location of the service recipient and not the location of service provider (intermediary).**

**Hence, a commission agent in UK who promotes the goods of the Indian manufacturer in UK would not be liable to VAT (in UK) on the invoice raised by him on the Indian manufacturer for sales support and promotional activities in UK.**

### 2. CANADA

**The applicable provision under Canadian GST law is contained in Schedule VI (Zero-rated Supplies), Part 5 (Exports), Section 5 of the Excise Tax Act, R.S.C. 1985 which reads as under**

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"A supply made to a non-resident person of a service of acting as an agent of the person or of arranging for, procuring or soliciting orders for supplies by or to the person, where the service is in respect of

(a) a supply to the person that is included in any other section of this Part; or

(b) a supply made outside Canada by or to the person"

**The above provision contained in Excise Tax Act has been explained in a publication of Revenue Canada – "GST/HST Memoranda Series 4.5.3, -Exports – Services and Intellectual Property, June 1998 in Part One - Services, Rule 8 " as under -**

"Services of agents or representatives

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8. A supply made to a non-resident person of a service of acting as an agent or representative of that person or of arranging for, procuring or soliciting orders for supplies by or to the person is zero-rated to the extent that the service is in respect of a supply that is

- (a) a zero-rated export to the non-resident under Part V of Schedule VI to the Act, or
- (b) a supply made outside Canada by or to the non-resident person.

Example - An unregistered non-resident corporation located in the United States (USCo) contracts with a Canadian sales representative to promote USCo's products in a specific geographic area, i.e., Manitoba and Saskatchewan. The solicitation is done by mail, telephone, door-to-door, including the provision of product information (e.g., advertising brochures), and participation in trade shows where product information is provided, free samples are distributed and demonstration of the products is given. The sales representative may also assist customers with the completion of purchase orders. However, purchase orders are accepted by USCo in the United States. The sales representative is paid a fee (i.e., commission) for her services, based on 5% of the value of the sales of USCo's products in Manitoba and Saskatchewan. The supply of the service provided by the sales representative is zero-rated."

**Thus, as per Schedule VI, Part 5, Section 5 of the Excise Tax Act, 1985 and further explained in the above mentioned example by Revenue Canada, the services of a sales agent/ representative in Canada who renders services of sales support to a non-resident goods manufacturer would be zero-rated.**

**In other words, supply of sales support services by an agent in Canada (who promotes the goods/services of a non-resident) would not be liable to GST in Canada, as the place of provision of such services is not in Canada.**

### 3. AUSTRALIA

**The applicable provision in the New Tax System (Goods and Services Tax) Act 1999 is contained in Division 38 (GST-Free supplies), under Sub-division 38E (Exports and other supplies for consumption outside Australia), sub-section 38190(1), reads as under –**

**"Supplies of things, other than goods or real property, for consumption outside Australia**

- (1) The third column of this table sets out supplies that are **GST-free** (except to the extent that they are supplies of goods or real property):

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**Supplies of things, other than goods or real property, for consumption outside Australia**

Item	Topic	These supplies are GST-free (except to the extent that they are supplies of goods or real property)...
2	Supply to non-resident outside Australia.	a supply that is made to a non-resident who is not in Australia when the thing supplied is done, and:  (a) the supply is neither a supply of work physically performed on goods situated in Australia when the work is done nor a supply directly connected with real property situated in Australia; or  (b) the non-resident acquires the thing in carrying on the non-resident's enterprise, but is not registered or required to be registered.
3	Supplies used or enjoyed outside Australia	a supply:  (a) that is made to a recipient who is not in Australia when the thing supplied is done; and  (b) the effective use or enjoyment of which takes place outside Australia;  other than a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia."  ----- -----

**Thus, a plain reading of Sub Division 38-190(1), Item 2, of the New Tax System (Goods and Services Tax) Act, 1999, would imply that services of a commission agent in Australia of providing sales support to a non-resident goods manufacturer (service recipient who is located outside Australia), would be GST-free in Australia. Again, the place of supply of such services is considered to be the location of the non-resident recipient which is outside Australia.**

**4. NEW ZEALAND**

**The applicable provision under New Zealand GST law is contained in Section 11A (Zero-rating of services), of the Goods and Services Tax Act, 1985, which reads as under –**

"Section 11A - Zero rating of services

(1) A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:

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(k) subject to subsection (2), the services are supplied to a person who is a non-resident and who is outside New Zealand at the time the services are performed, not being services which are—

(i) supplied directly in connection with—

(A) land situated in New Zealand or any improvement to the land; or

(B) moveable personal property, other than choses in action or goods to which paragraph (h) or (i) applies, situated in New Zealand at the time the services are performed; or

(ii) the acceptance of an obligation to refrain from carrying on a taxable activity, to the extent that the activity would have occurred within New Zealand; or”

(2) Subsection (1)(k) and (1)(l) do not apply to a supply of services under an agreement that is entered into, whether directly or indirectly, with a person (person A) who is a non-resident if—

(a) the performance of the services is, or it is reasonably foreseeable at the time the agreement is entered into that the performance of the services will be, received in New Zealand by another person (person B), including—

- (i) an employee of person A; or
- (ii) if person A is a company, a director of the company; and

(b) it is reasonably foreseeable, at the time the agreement is entered into, that person B will not receive the performance of the services in the course of making taxable or exempt supplies.

**Thus, as per Section 11(A)(1)(k) of the Goods and Services Act, 1985 a commission agent in New Zealand who renders services of sales support to a non-resident goods manufacturer, would be zero-rated. In other words, sales support services provided by an agent in New Zealand to promote the goods of a non-resident would not be liable to GST in New Zealand based on the principle of VAT being applicable only at place of consumption of such services. As such services are consumed by the non-resident (and not in New Zealand), the same are zero rated for GST purposes.**

## 5. REVERSE CHARGE VAT APPLICABILITY UNDER EU VAT LAW

**The applicable provision in the European Union’s COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax is Article 196, which reads as under -**

“VAT shall be payable by any taxable person, or non-taxable legal person identified for VAT purposes, to whom the services referred to in Article 44 are supplied, if the services are supplied by a taxable person not established within the territory of the Member State”.

**Per Article 196, it is evident that sales support/ sourcing services provided in India by a commission agent located in India (and non-resident in EU) to an EU company would be subject to reverse charge VAT in European Union**

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