



Goods and Services Tax Determination compendium – GSTD 2026/1

❗ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Goods and Services Tax Determination GSTD 2025/D1 *Goods and services tax: supplies of formula products*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

All legislative references in this Compendium are to the *A New Tax System (Goods and Services Tax) Act 1999* and all references to a table item are to the table in clause 1 of Schedule 2 of that Act, unless otherwise indicated.

Issue number	Issue raised	ATO response
1	We strongly agree with the ATO view that toddler milk is subject to GST, while infant formula is GST-free.	This agreement is noted.
2	Manufacturers of ingredients used to make formula products often supply these ingredients to companies that produce and sell Stage 1, 2, 3, and 4 formula products. When they supply ingredients, they have no way of knowing what kind of final formula product the ingredient will be used to make (that is, which stage). The final Determination should specify that if the ingredient is marketed as being only for Stage 3 or 4 then GST should be charged. If the ingredient is marketed as being for Stages 1, 2, 3 or 4 then the ingredients are GST-free.	While the Determination is not intended to cover products that are precursor ingredients used to make formula products (formula product ingredients) as distinct from formula products in their final form (whether powdered or ready-to-drink), paragraphs 44 to 48 of the final Determination provide further explanation of how the 'marketed principally' test in table item 13 applies. This includes clarifying that the test does not depend on how the purchaser actually uses, or intends to use, the product. If a formula product ingredient is marketed as being for any type of formula product (across Stages 1 to 4), our view is that it is not GST-free under table item 13 because it is not of a kind marketed 'principally' for infants. We have also updated the GST Industry Issue GSTII FL1 <i>Detailed Food List</i> to provide specific guidance on when a formula product ingredient will be GST-free under table item 13.

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3	The proposed transitional compliance approach is too generous given that the policy intent to tax toddler formula has been clear since the introduction of GST and this was previously made clear by ATO guidance to industry. The ATO should take all necessary steps to recover unpaid GST from businesses that have not met their obligations, both prior to and following the publication of the Determination.	We apply our view of the law when undertaking compliance activities and in providing advice and guidance to taxpayers. However, in some cases, it is appropriate for us to decide not to take action to apply our view retrospectively. In coming to such a decision, we apply a consistent set of criteria as outlined in Law Administration Practice Statement PS LA 2011/27 <i>Determining whether the ATO's views of the law should be applied prospectively only</i>. The GST classification of toddler formula is a long-standing issue and we have acknowledged that the ATO has given inconsistent advice in the past. In these circumstances, it is appropriate for us not to devote compliance resources to impacted products until the draft Determination is finalised and, following this, to allow a reasonable transitional period for businesses to implement any required changes.
4	Will the ATO apply a strong compliance approach including regular audit of manufacturers (including exporter) to ensure that the correct amount of GST is applied to toddler milk formula products and to ingredients for these products? This would seem appropriate both on taxation policy grounds as well as public health policy reasons.	This issue is outside the scope of the consultation and is a matter for the ATO to determine in its administration of the tax laws.
5	The ATO should work with Treasury, the Australian Competition and Consumer Commission, the Department of Health, Disability and Ageing and Food Standards Australia New Zealand to develop a new policy from 2030 of fully taxing all commercial milk formula products, which target children under 5 years on public health grounds (allowing, instead, a consumer rebate of the GST amount paid on infant formula products).	This issue is outside the scope of the consultation. The GST classification of food and beverage products is an outcome of the legislative provisions. Whether the law ought to be changed is a matter of policy for government. Treasury has been made aware of these concerns.