


GSTD 2008/2EC - Compendium

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Ruling Compendium – GSTD 2008/2

This is a compendium of responses to the issues raised by external parties to draft GSTD 2008/D1 – Goods and services tax: are supplies of food known as breakfast bars GST-free?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1.	The decision to treat Breakfast Bars as taxable should be a prospective. Prospective treatment would ensure consistency with previous decisions of the Tax Office in circumstances where classification decisions on specific foodstuffs or food groups have been unduly protracted. Examples include ‘fish in sauce’ and pita crisps.	<p>The final Determination, and therefore the Tax Office view to treat food known as breakfast bars as taxable, applies before and after the date of its issue.</p> <p>Tax Office will implement the view in the final Determination for transactions that occur on or after the date of issue. See also response to Issue 5 below.</p>
2.	<p>The draft Determination does not adequately address and discuss the relevant provisions of the legislation. Specifically:</p> <ul style="list-style-type: none"> • The Draft Determination should discuss the impact of the phrase ‘of a kind’ in establishing the meaning given to the phrase ‘muesli bars or health food bars, and similar foodstuffs.’ • There should also be some discussion of the possibility that breakfast bars might be a combination of any of the 32 items of food listed in the third column of the table in Schedule 1. • Some discussion should be included to explain how, for example, provisions 182-15 and 182-10 of the GST Act apply to second column headings like ‘confectionary’ and whether they apply or not to the classification of breakfast bars. 	<p>Discussion of the phrase ‘of a kind’ would add little value to the Determination, as the taxable status of food items under Item 11 is based on foods ‘known as’ muesli bars and health food bars and ‘other similar foodstuffs’.</p> <p>The Tax Office does not consider that discussion on the possibility that food known as breakfast bars might be combination of food items in Schedule 1 would add value to the Determination as the relevant item for these products is Item 11. Given that paragraph 38-3(1)(c) contains two alternatives and that the conclusion reached is that food known as breakfast bars fall within Item 11, it is considered unnecessary to discuss whether food known as breakfast bars may be a combination of food that is listed in the table in clause 1 of Schedule 1.</p> <p>The Tax Office does not consider that any discussion of the application of the second column headings would add value to the Determination.</p>

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3.	<p>The Draft Determination does not acknowledge the considerable confusion surrounding the classification of ‘food known as muesli bars or health food bars, and similar foodstuffs’ since the inception of GST. Specifically:</p> <ul style="list-style-type: none"> • An explanation is required to reconcile the Draft Determination’s new position with the previous written view of the Commissioner. • Some items described as breakfast bars are neither member of a class or genus of goods known as muesli bars or health food bars, nor do many breakfast bars contain the same ingredients as goods known as muesli bars. Muesli bars are items that are typically eaten between meals as snacks as opposed the breakfast substitutes, and should therefore not be in the same class as breakfast cereals and breakfast cereal substitutes. The classification approach proposed in the Draft Determination is overly simplistic, and may result in the inappropriate treatment of those breakfast bars that are directly derived from GST-free breakfast cereals. The difficulty with the Commissioner’s approach in the Draft Determination is that he has taken such a broad approach in classification of muesli bars or health food bars, that he has not taken into consideration the nutritional dietary differences between some breakfast bars and some confectionary items that may be marketed as being either muesli bars or health food bars. • A marketing test is more appropriate for determining whether breakfast bars are ‘similar’ to muesli bars (this was the previous position of the Commissioner). 	<p>Determinations are designed to communicate a precedential Tax Office view in relation to a specific interpretative issue. The Tax Office considers that the discussion of the previous views or relevant history on this issue would not add value to the Determination, as this Determination communicates the ATO view and is a public indirect tax ruling.</p> <p>Item 11 of Schedule 1 to the GST Act states ‘and similar foodstuffs’. There is no requirement for food known as breakfast bars to be the ‘same’ or have the ‘same’ characteristics as muesli bars or health food bars. So long as food known as breakfast bars is <i>similar</i> to muesli bars (or health food bars), Item 11 is satisfied. The Determination advises that in the view of the Tax Office they are similar.</p> <p>A marketing test is a subjective test and not itself determinative. In considering the relevance of a marketing test, it was thought its application would result in inconsistent conclusions as to the GST treatment of a product. The terms ‘muesli bar’ and ‘health food bar’ are those ordinarily used by sellers and consumers and in the Commissioner’s view, these terms therefore indicate classes of products. As such the Commissioner considers that the ordinary usage of these terms is more appropriate in determining whether food known as breakfast bars fall within Item 11. Paragraph 5 of GSTD 2008/D1 and the final Determination explain that words ‘known as’ in Item 11 do not indicate a specific marketing test.</p>

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4.	<p>The draft Determination is inconsistent with various Tax Office rulings, and the Tax Office’s online GST Food Guide (NAT 3338-07.2005). Specifically:</p> <ul style="list-style-type: none"> • In coming to the preliminary view contained in the Draft Determination, the Commissioner has applied a different set of criteria to determining the essential character of breakfast bars, and he has not explained why the previously valid criteria used to identify the breakfast bars is no longer appropriate. The Commissioner should explain the different approach taken in the determination. • The Draft Determination contradicts the Tax Office’s published position. The GST Food Guide states that: ‘cereals which have been rolled or flattened into shapes’ are GST free. • Breakfast bars are GST-free as they are specifically excluded from the ‘biscuit goods’ item in table in Schedule 1 of the GST Act. 	<p>This determination has been developed to provide a published precedential Tax Office view on the GST treatment of food known as breakfast bars. The determination will ensure that these products are treated the same in accordance with the published view. As a result, the Determination will eliminate any inconsistencies and confusion that might have existed in relation to the correct GST treatment of food known as breakfast bars.</p> <p>Where the GST Food Guide refers to ‘cereals which have been rolled or flattened into shapes’ it is referring to products such as Weet-Bix and Vita or Oat Brits that are regarded as breakfast cereals that are sold in biscuit shape. Clause 5 in Schedule 1 of the GST Act provides that these forms of biscuit goods are GST-free.</p>
5.	<p>Suppliers should be given six months in which to implement the new ruling which will be viewed by many taxpayers as a change of view.</p> <p>The Tax Office should not seek retrospective adjustments where a supplier has supplied GST-free a product which is covered by a GST-free ruling.</p>	<p>The Tax Office view to treat food known as breakfast bars as taxable applies both before and after the date of issue of the final Determination. However, those entities that have relied on private rulings issued to them will be protected against increased liabilities up until the date of issue of the final Determination.</p> <p>Industry suggested that 60 days is adequate for implementation. The Tax Office will adopt the 60 days implementation time frame as suggested by the industry.</p>