


GSTD 2025/1EC - Compendium

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Public advice and guidance compendium – GSTD 2025/1

❗ Relying on this Compendium

This Compendium of comments provides responses to comments received on the draft Goods and Services Tax Determination GSTD 2024/D3 *Goods and services tax: supplies of food of a kind marketed as a prepared meal*.¹ 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*, unless otherwise indicated.

Issue number	Issue raised	ATO response
1	<p>Improved draft Determination</p> <p>We would like to take this opportunity to commend the ATO in relation to its approach with respect to revising and updating GSTD 2024/D1.</p> <p>External stakeholders provided feedback during the consultation process on GSTD 2024/D1 and it is pleasing to see that this feedback has, for the most part, been incorporated into the draft Determination.</p> <p>Draft Determination GSTD 2024/D3 is a marked improvement and should provide industry with a common framework and set of guidelines against which to assess the GST classification of 'prepared meal' products.</p>	Thank you for your feedback.
2	<p>Broad application</p>	No change has been made to the Determination.

¹ This Compendium also includes responses to comments received on Goods and Services Tax Determination GSTD 2024/D1 *Goods and services tax: supplies of food of a kind marketed as a prepared meal* (withdrawn on 16 October 2024).

Issue number	Issue raised	ATO response
	<p>We are concerned about potential overreach and consider that the final Determination should be applied narrowly, in line with the products directly referenced in the decision of the Federal Court in <i>Simplot Australia Pty Limited v Commissioner of Taxation</i> [2023] FCA 1115 (<i>Simplot</i>).</p>	<p>In <i>Simplot</i>, the court considered the statutory test for determining when a supply of food is not GST-free because it is food of a kind marketed as a prepared meal.²</p> <p>The court's explanation of the principles has relevance beyond the particular products considered in <i>Simplot</i>. The purpose of the Determination is to provide our view on how the principles apply in practice across the broad range of food products marketed and sold in Australia.</p>
3	<p>Date of effect – prospective application</p> <p>The final Determination should apply prospectively only or the ATO should confirm that no compliance resources will be applied to supplies made prior to the date of the final Determination.</p> <p>The ATO should consider a future effective date to allow stakeholders time to review their contracts and make the necessary systems changes.</p> <p>The draft Determination outlines, primarily by reference to <i>Simplot</i>, the attributes that need to be taken into account when determining whether a product is food of a kind marketed as a prepared meal. The draft Determination represents a significant change in approach.</p> <p>The handing down of a Federal Court decision and the subsequent publishing of the ATO response via the draft Determination should be seen as a reasonable basis to adopt a prospective application.</p> <p>Retrospective application is not appropriate given the subjective nature of goods and services tax (GST) classification and in the absence of any previous judicial or ATO guidance.</p> <p>Retrospective application will present difficulties for taxpayers, particularly retailers, who have no opportunity to recover retrospective payments of GST.</p>	<p>As proposed in the draft Determination:</p> <ul style="list-style-type: none"> • the final Determination applies both before and after its date of issue • Goods and Services Tax Industry Issue Food Industry Partnership <i>Prepared food</i> (Issue 5 Prepared Food) has been withdrawn • an addendum to GST Industry Issue GSTII FL1 <i>Detailed Food List</i> (Detailed Food List) has been published and applies both before and after its date of issue. <p>The principles in the final Determination are generally consistent with the way we have previously approached the task of determining whether a product is food of a kind marketed as a prepared meal. As it applies to most products, the final Determination does not represent a change of view.</p> <p>We acknowledge that some of the views set out in the final Determination are not fully aligned with our past practice and public advice and guidance. Appendix 2 of the final Determination outlines a transitional compliance approach for certain categories of product.</p> <p>Your ability to rely on Issue 5 Prepared Food or the pre-addendum wording of the Detailed Food List for past periods is not impacted by the retrospective date of effect of the final Determination or the addendum to the Detailed Food List.</p> <p>The withdrawal of Issue 5 Prepared Food is discussed further in our response to Issue 3.</p> <p>We will continue to act in accordance with Law Administration Practice Statements PS LA 2011/27 <i>Determining whether the ATO's views of the law</i></p>

² The supply of which is not GST-free under paragraph 38-3(1)(c), as it is food of a kind specified in column 3 of table item 4 of clause 1 of Schedule 1 (table item 4).

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	<p>Some taxpayers have previously had their GST classifications of products reviewed by the ATO. These classifications have been carried forward into tax periods after the periods covered by the review. To now apply different criteria would create uncertainty and inequitable positions.</p>	<p><i>should be applied prospectively only</i> and PS LA 2012/2 (GA) <i>GST classification of food and beverage items</i>.</p>
4	<p>Issue 5 Prepared Food – past periods</p> <p>Taxpayers have relied on Issue 5 Prepared Food for many years. The key consideration in Issue 5 Prepared Food is whether a particular food product is ‘marketed’ as a prepared meal.</p> <p>Following previous ATO engagement with industry, there is general consensus among industry that a supply of salad is:</p> <ul style="list-style-type: none"> • taxable – if the salad product is sold as part of a range of products marketed by the seller as a ‘ready to eat’ meal • GST-free – if the salad is sold as part of a range of products that is marketed to be used as a side or as an ‘add-on’ to another dish. <p>Industry has developed what is commonly known as ‘Food for Now’ and ‘Food for Later’ (or equivalent) product ranges to align with these categories.</p> <p>Issue 5 Prepared Food and <i>Simplot</i> both referred to the Further Supplementary Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 (EM). The EM explained, among other things, that the term ‘prepared meal’ is intended to cover a range of food products that ‘directly compete against take-aways and restaurants’.</p> <p><i>Simplot</i> should not change this interpretation. If Issue 5 Prepared Food is withdrawn, the ATO should explain the misalignment and inconsistency between <i>Simplot</i> and Issue 5 Prepared Food and should restate the ‘directly compete</p>	<p>Issue 5 Prepared Food has been withdrawn with effect from the date of its withdrawal, (23 July 2025). This does not impact your ability to rely on it for past periods.</p> <p>Issue 5 Prepared Food paraphrased the EM and provides very high-level explanation only.</p> <p>The principles expressed in Issue 5 Prepared Food were not fully aligned with the principles from <i>Simplot</i> and as further explained in the final Determination. Specifically, Issue 5 Prepared Food:</p> <ul style="list-style-type: none"> • explained how to determine whether a product is itself marketed as a prepared meal, but did not explain how to determine whether a product is ‘of a kind’ marketed as a prepared meal • stated that ‘directly competes with takeaway’ was one of 3 criteria for table item 4. While this does not reflect the legislative provision or the test outlined in <i>Simplot</i>, it will generally apply as a product that has the attributes of ‘food of a kind marketed as a prepared meal’ is the kind of food that directly competes with takeaway. <p>Issue 5 Prepared Food outlined factors that are relevant in determining whether food is marketed as a prepared meal (name of the goods, price, labelling, packaging and so on). These are still relevant in determining how a product is marketed and have been incorporated into our explanation of ‘marketing’ in the final Determination.</p>

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	against take-aways and restaurants' requirement in the final Determination.	
5	<p>Bulk products, deli salads, and products requiring assembly – past periods</p> <p>The draft Determination contains changes in the ATO position which are inconsistent with existing industry treatment (particularly for salads and products which require limited assembly).</p> <p>We ask that the Commissioner confirms that the final Determination will be applied prospectively only to salad products, products which require limited assembly and bulk products.</p> <p>Example 15 of the draft Determination, in particular, is inconsistent with industry practice whereby behind the glass supermarket deli salads have been sold GST-free for many years – for example, see attached an image of a Moroccan couscous product which is sold as GST-free.</p> <p>This example is inconsistent with the ATO web guidance which states that salads (including pasta, rice, coleslaw, meat, seafood and green salad) sold from salad bars at supermarkets in either the delicatessen section or from a self-serve bar are GST-free only if they are not marketed as prepared meals.</p> <p>Salad products sold in bulk have previously been treated as GST-free by industry as they are not marketed as prepared meal and are not intended to be consumed as a prepared meal. Rather, they are marketed to be consumed as a side dish.</p>	<p>Appendix 2 of the final Determination outlines a transitional compliance approach for certain categories of product. This includes salads (other than takeaway salads) and products requiring assembly.</p> <p>The transitional compliance approach does not apply to bulk products. As per PS LA 2011/27, we do not consider there is evidence of ATO conduct or publications that could be reasonably seen as conveying a different view of the law in respect of bulk products.</p>
6	<p>Meal components, side dishes and snacks</p> <p>Further guidance is needed on meal components, side dishes and snacks. This is an area where differences in opinion will arise, especially given the 'common sense and common experience' approach.</p>	<p>We have provided further explanation at paragraphs 31 to 32 and 49 of the final Determination to make it clear that determining whether a product is a meal component, side dish or snack will not assist in answering the statutory question, which is whether the product is food of a kind marketed as a prepared meal.</p>

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	<p>If a product is of a kind that is marketed as a meal component, as well as being food of a kind that is marketed as a meal, is the product always going to be taxable?</p> <p>The market views snacks and light meals as 2 distinct and separate categories. If the ATO's view is that a 'snack' could also be a product that is food of a kind marketed as a prepared meal for the purposes of table item 4, this should be clearly stated.</p>	<p>In determining whether a product is food of a kind marketed as a relevant kind, it does not matter whether the product may also be of some other kind. For example, in <i>Simplot</i>, the fact that the products could be described as meal components or side dishes did not mean they could not also be food of a kind that is marketed as a prepared meal.³</p> <p>Paragraph 45 of the final Determination also confirms that, in practice, many meal components and snacks will not possess the necessary attributes that would make them food of a kind marketed as a prepared meal.</p>
7	<p>Meal components – inconsistency</p> <p>The draft Determination expresses conflicting views on meal components. On one hand, it suggests that 'meal components' and 'prepared meals' are not dichotomous concepts and then later says that a product presented as a kind of food that is commonly eaten as a meal component will generally not be food of a kind marketed as a prepared meal.</p>	<p>No change has been made to the final Determination. We do not consider these to be conflicting views.</p> <p>Paragraph 45 of the final Determination confirms, consistent with <i>Simplot</i>, that a product may be food of a kind marketed as a prepared meal while also being food of a kind marketed as a meal component. Paragraph 45 of the final Determination further notes that many meal components will not possess the necessary attributes that would make them food of a kind marketed as a prepared meal.</p> <p>Paragraphs 63 to 64 of the final Determination acknowledge that some products are presented as a kind of food that is commonly eaten as a meal component only. These products are generally not food of a kind marketed as a prepared meal.</p>
8	<p>Marketed as</p> <p>The draft Determination says that '... The Court considered that marketing, in this context, means the activities of sellers in presenting the product to end-consumers.'</p> <p>At a practical level, how broadly does a taxpayer need to look to identify sellers and consider the marketing 'activities of sellers'? In a retail environment, is it sufficient for a supermarket to consider how direct competitors and wholesalers are marketing a product?</p> <p>It would be odd if the marketing of one taxpayer (for example, a small independent retailer) would affect the GST</p>	<p>We have provided further explanation of the marketing test at paragraphs 33 to 42 of the final Determination.</p> <p>In particular, paragraph 36 of the final Determination confirms that:</p> <ul style="list-style-type: none"> • marketing of food products occurs at different points across the supply chain • the activities of all suppliers in the supply chain will be relevant, including the manufacturer, importer, wholesaler and retailer • where there is no change in product across the supply chain, the product will have the same GST treatment under table item 4 (whether sold at the wholesale or retail level).

³ *Simplot* at [130].

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	<p>classification of a product where that taxpayer markets a product in a particular way and the others do not?</p> <p>Is there any difference in the application of the <i>Simplot</i> principles at different points in the supply chain or should the GST character of a prepared food product always be the same regardless of whether it is sold at the wholesale or retail level?</p>	<p>The statutory test requires consideration of the kinds of food that are marketed as a prepared meal. Neither the legislation, nor <i>Simplot</i>, indicates that this inquiry is limited to the marketing of particular types of suppliers within the supply chain.</p> <p>Where a kind of food is sold in different contexts, the marketing by sellers in each context may be relevant. However, as explained in the final Determination, the statutory test requires common sense and common experience. It is not appropriate to have regard to obscure or isolated incidences when determining whether a product is food of a kind marketed as a prepared meal.</p>
9	<p>Marketed as</p> <p>Paragraph 17 of the draft Determination, seeking to rely on <i>Simplot</i> at [195], places an undue restriction on the nature of the marketing to be considered, saying it 'means the activities of sellers in presenting the product to end-consumers.' Subsequent paragraphs of <i>Simplot</i> indicate a broader approach to what marketing is relevant.</p>	<p>We have amended the wording (paragraph 18 of the final Determination) to better reflect <i>Simplot</i> at [195] to state:</p> <p style="padding-left: 40px;">As a result, the Court held that it was necessary to consider the marketing of other products of the same kind. Following <i>Cascade Brewery Co Pty Ltd v Commissioner of Taxation (Cascade)</i>, the Court held that marketing, in this context, looks at the activities of sellers in communicating or conveying messages to the market for the promotion or sale of the product. The actual use by the consumer is not the subject of the examination.</p> <p>Paragraphs 14 to 20 of the final Determination provide a summary of <i>Simplot</i> and should be read with the more detailed explanation in the Determination (including paragraphs 33 to 42 of the final Determination).</p>
10	<p>Marketed as</p> <p>The draft Determination provides conflicting views as to the relevance of a food product's own marketing in determining GST treatment.</p> <p>In particular:</p> <ul style="list-style-type: none"> • paragraph 37 of the draft Determination suggests the relevant test is whether the relevant food product in question is of a kind that is marketed as a prepared meal, and that the marketing of the product itself does not matter • paragraph 38 of the draft Determination states, while not determinative, the marketing of the product remains relevant and is a strong indicator as to 	<p>No change has been made to the final Determination.</p> <p>We do not consider there to be any conflict in the referenced paragraphs. Paragraph 40 of the final Determination confirms, consistent with <i>Simplot</i>, that the statutory question is not whether the product itself is marketed as a prepared meal. This does not mean the marketing of the product itself is irrelevant (as further explained in paragraphs 33 to 42 of the final Determination).</p>

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	whether it will be of a kind marketed as a prepared meal.	
11	<p>Common sense and common experience</p> <p>The phrase ‘common sense and common experience’ is used throughout the draft Determination. We note that <i>Simplot</i> also commented that the phrase ‘prepared meal’ is an ordinary phrase of common usage intelligible by a lay person⁴ and that the phrase is to be accorded its ordinary meaning determined in its context.⁵ Consideration should be given to how this could be incorporated.</p> <p>GST classification decision for products will ultimately be made by an individual (or small group of individuals), therefore presumably the decision will be influenced by the ‘experience’ of those individuals, which could differ from the ‘experience’ of other individuals or ATO audit teams.</p> <p>As food trends and eating habits evolve, the ‘common experience’ may change. Presumably, associated GST consequences will apply on a prospective basis.</p>	<p>We have provided further explanation at paragraphs 24 to 27 of the final Determination about the test of ‘common sense and common experience’. We have also updated paragraph 42 of the final Determination to confirm that <i>Simplot</i> identified that ‘prepared meal’ takes its ordinary meaning in its context.</p> <p>The Determination also explains that, in applying the marketing test, it is not appropriate to have regard to obscure or isolated incidences when determining whether a product is food of a kind marketed as a prepared meal.</p> <p>In relation to the submissions regarding food trends and eating habits, decisions on whether it is appropriate to apply the ATO view of the law prospectively only must be made on the facts and circumstances of each case.</p>
12	<p>Quantity – further guidance</p> <p>Further guidance is needed on the ‘quantity’ attribute. For example, if a product is clearly not big enough to be a meal, will it still be taxable because it could be a meal if it was sold in a larger quantity?</p>	<p>We have provided additional guidance at paragraphs 50 to 53 of the final Determination on when a product will not be of a sufficient quantity to be food of a kind marketed as a prepared meal. This includes our view that, subject to the stated qualifications, products of less than 150 grams in total weight will not be of a sufficient quantity for a meal.</p>
13	<p>Quantity – 150-gram threshold</p> <p>The draft Determination expresses the view that products weighing less than 150 grams in total weight are not of a sufficient quantity for a meal and therefore are not ‘food of a kind marketed as a prepared meal’.</p>	<p>We have noted this submission.</p>

⁴ *Simplot* at [87].

⁵ *Simplot* at [111]

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	While views may be put forward that a higher or lower amount may be more suitable, it is useful that a specific amount has been included. This provides practical assistance to taxpayers.	
14	<p>Quantity – 150-gram threshold</p> <p>We note that the 150-gram threshold is consistent across all food types (for example, breakfast, salads and so on). This exclusion would only apply to a very limited amount of salad products. While we welcome some limits and parameters, we consider the introduction of one arbitrary limit may give risk to inconsistencies. For example, this rule would result in single-size servings and family-size servings of identical products being treated differently for GST.</p>	<p>No change has been made to the Determination.</p> <p>Consistent with the view in <i>Simplet</i>, determining whether a product is food of a kind marketed as a prepared meal involves consideration of whether the product is of a sufficient quantity.</p> <p>This means that, in some circumstances, products of different overall weights may have different GST treatments, even if they are otherwise very similar. A product that is a ‘single-size serving’ of 150 grams or more of a particular kind of food will have the same GST treatment under table item 4 as a ‘family-size serving’ of the same kind of food.</p>
15	<p>Quantity – 150-gram threshold</p> <p>We consider it difficult to draw a bright line here. On balance, we do not think the 150 grams is unreasonable, but we suggest the marker should be ‘150 grams or less’ rather than ‘less than 150 grams’.</p>	<p>No change has been made to the Determination as we consider the current approach is appropriate. The threshold has been determined based on our review of products currently marketed and sold in Australia, noting that products are generally sold in weights rounded to the nearest 5 or 10 grams.</p>
16	<p>Quantity – food supplied in large quantities</p> <p>The Commissioner’s view in bulk product extends beyond the parameters of <i>Simplet</i>.</p> <p>The view in the draft Determination is not supported by the EM, which explains that the term ‘prepared meal’ is intended to cover a range of food products that (among other things) ‘directly compete against take-aways and restaurants’.</p> <p>Example 1 in the draft Determination (bulk lasagne products) should be distinguished from the VeggieRice Risotto and VeggieRice Fried Rice products considered in <i>Simplet</i>, which were 500-gram products specifying 2 serves per package. These were not large quantities and were easily portioned.</p>	<p>We do not agree. We consider that food that is supplied in large quantities can be food of a kind marketed as a prepared meal.</p> <p>In <i>Simplet</i>, the court held that determining whether a product is food of a kind marketed as a prepared meal involves a consideration of whether the product is of a sufficient quantity for a meal.⁶ The reasoning of the court did not indicate any upper threshold. Nothing in the decision indicates that, to be food of a kind marketed as a prepared meal, a product must:</p> <ul style="list-style-type: none"> • be sold in a size that could be consumed by a single person • be capable of being prepared in a standard home oven. <p>We consider this to be consistent with the explanation in the EM that the term ‘prepared meal’ is intended to cover a range of food products that ‘directly</p>

⁶ *Simplet* at [124].

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	Unlike a 5kg or 10kg lasagne, which must be cooked as a whole, the products in <i>Simplot</i> could be prepared in a standard home kitchen. How can a product compete with takeaway if it cannot be consumed in a home environment?	compete against take-aways and restaurants'. It is not necessary for a product to have the above features for it to be the kind of food that 'directly competes against take-aways and restaurants'.
17	<p>Composition – what is an ‘ingredient’ or ‘element’?</p> <p>The Commissioner’s view as to what constitutes an ‘ingredient’ and an ‘element’ in this context should be explained in more detail.</p> <p>For example, frozen mashed potato products are typically sold with butter and seasonings mixed into the potato. Does the presence of butter or seasoning in mashed potato constitute more than one element?</p>	<p>We have provided further explanation in a footnote at paragraph 55 of the final Determination to explain what ‘ingredient’ and ‘element’ mean in this context.</p> <p>We have also updated Example 3 in the final Determination to make it clear that the presence of butter and seasonings in a frozen mashed potato product would not affect the GST outcome.</p>
18	<p>Presentation – limited further assembly</p> <p>The Commissioner should provide further clarification as to what is meant and understood by ‘assembly’ and ‘limited further assembly’, particularly in light of the proposed updates to the Detailed Food List. This represents a change in view and interpretation that has been relied on by taxpayers for many years.</p> <p>There are references to products with instructions to add water or oil when cooking and references to stirring. These seem to go well beyond the examples in the EM, <i>Simplot</i> and what could be construed as more than limited assembly.</p>	<p>We have provided further explanation in paragraph 59 of the final Determination on determining whether a product is presented as ‘complete’, including what constitutes limited further preparation, assembly, and activity by the consumer.</p> <p>We have also added further explanation in Example 6 of the Determination (a stir-fry kit that is not sufficiently prepared) and a new contrasting example, Example 5 of the Determination (a frozen pasta product that is sufficiently prepared).</p> <p>While our updated explanation of this requirement will not impact the GST classification of most products, there may be products where this represents a change of view. This depends on the facts and circumstances of each case. Refer to our response under Issue 2 of this Compendium.</p>
19	<p>Example 6 of GSTD 2024/D1 (not in the final Determination)</p> <p>This is not a useful example. Can the ATO confirm that the separate elements of the product would not be food of a kind marketed as a prepared meal if sold separately?</p>	<p>In the final Determination, we have replaced this example with new Example 5 (a frozen pasta product that is sufficiently prepared) which can be contrasted with Example 6 (a stir-fry kit that is not sufficiently prepared).</p> <p>The Detailed Food List confirms that frozen fish and chips, sold separately, are not food of a kind marketed as a prepared meal.⁷</p>

⁷ See DFL ID 265 *crumbed fish fillets (not hot)*, DFL ID 1023 *coated fish product (battered, crumbed, etc) supplied fresh or frozen* and DFL ID 195 *chips (deep-fried potato or other vegetables sold frozen)*.

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20	<p>Example 9 of GSTD 2024/D1 (Example 8 of the final Determination)</p> <p>We find it hard to reconcile the GST treatment of the dumpling product in this example with the Commissioner's view that finger foods like dumplings are not generally presented as a prepared meal. It is not clear what makes this particular product 'complete', how it satisfies the <i>Simplot</i> principles and how it can be distinguished from other dumpling products.</p>	<p>We have made minor updates to Example 8 in the final Determination, but the outcome is unchanged.</p> <p>While certain types of products, such as dumplings, are not generally food of a kind marketed as a prepared meal, it is still necessary to consider the attributes of the particular product in making an overall assessment.</p> <p>The dumpling product in Example 8 of the Determination has several specific features that result in the conclusion that it is food of a kind marketed as a prepared meal. It is a sufficient quantity for a meal, contains a mix of ingredients and is presented as being a complete dinner that can be heated and eaten straight from the packaging.</p>
21	<p>Further examples</p> <p>While the examples in the draft Determination are helpful, it would be useful if the Determination could use more 'grey-area' examples, as these provide the most value in practice. The ATO could consider adding images to the examples, as these often assist.</p> <p>We suggest examples covering the following:</p> <ul style="list-style-type: none"> • a prepared curry product (curry only without rice or other accompaniment) • a prepared meatballs-in-sauce product • a fried rice meal • a traditional 'centre of plate' meal component (such as chilled and crumbed parmigiana chicken) • yoghurt with granola. 	<p>The Detailed Food List provides our view on the GST classification of products similar to most of the requested examples.</p> <p>However, we have added Example 5 (frozen pasta in sauce) and Example 7 (meatballs in sauce) and additional salad examples to the final Determination.</p> <p>We encourage taxpayers and advisors seeking certainty for particular products to either seek a private ruling or ATO review of the classification by listing the product on the National Product Catalogue (formerly GS1net).⁸</p>
22	<p>Salad products</p> <p>We request the Commissioner provide further guidance and examples which address the full range of salad products that are currently available on the market (including salad bags,</p>	<p>We have provided additional guidance in the final Determination in relation to salad products. This includes:</p> <ul style="list-style-type: none"> • an explanation of how the principles apply to salad products

⁸ For an explanation of our administrative approach in respect of GS1net, see PS LA 2012/2 (GA).

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	salad kits and delicatessen salads sold from behind the glass).	<ul style="list-style-type: none"> • a 4-step method, including a compliance approach in Step 3, to assist taxpayers in determining whether a salad product is likely to be food of a kind marketed as a prepared meal • new Examples 9 to 15, illustrating how the 4-step method applies in practice. <p>We have also updated the Detailed Food List by adding a number of new entries covering certain salad products.</p>
23	<p>Salad products</p> <p><i>Simplot</i> is not applicable to salads that are sold as a side and not sold as a meal.</p> <p>We understand that GST is applicable for a salad product that is marketed as a meal, such as ‘grab-and-go’ salads and salad bowls with various ingredients with a sachet of dressing.</p> <p>However, common sense confirms that a salad with no added protein, sold as a 1.3 kg or 800, 600, 500 or 250-gram tub size, is not going to be eaten as a meal on its own.</p> <p>Salad products sold in takeaway environments, served into a container and taken home as a side for an evening meal, are GST-free. The same salad, pre-packaged and sold in the same container in a supermarket, may or may not have GST added. This is not ‘common sense’.</p>	<p>We have provided additional guidance in the final Determination in relation to salad products (summarised in our response to Issue 21 of this Compendium).</p> <p><i>Simplot</i> considered the statutory test for determining when a supply of food is not GST-free under table item 4. The court’s explanation of the principles has relevance beyond the particular facts of <i>Simplot</i>.</p> <p>In <i>Simplot</i>, the fact that the products were represented as meal components or side dishes in their marketing did not mean they were not food of a kind marketed as a prepared meal. Similarly, a salad product that is represented as a side salad in its marketing may still be food of a kind marketed as a prepared meal.</p> <p>For clarity, we note that:</p> <ul style="list-style-type: none"> • the supply of a takeaway salad product is taxable under the final Determination table item 4 if it is food of a kind marketed as a prepared meal • the GST classification of a takeaway salad product does not change because the consumer intends to use the salad as a side dish for their evening meal.
24	<p>Salad products – compliance approach</p> <p>We welcome the addition of the compliance approach to assist taxpayers in determining whether certain salad products are likely to be food of a kind marketed as a prepared meal.</p> <p>We note that queries and observations on the application of the compliance approach are likely to arise once</p>	<p>No change has been made to the Determination.</p> <p>We will conduct a post-implementation review of the compliance approach and welcome ongoing engagement and feedback from industry.</p>

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	stakeholders start applying it on a regular basis. We suggest further engagement with industry at an appropriate time after the effective date of the draft Determination, to seek feedback as to the practical application of the compliance approach.	
25	<p>Salad products – compliance approach</p> <p>We welcome the additional guidance but note that it could result in unintended outcomes. One such concern is that making a salad healthier is more likely to result in the salad being taxable, while making a salad unhealthier is more likely to result in the salad being GST-free. This is at odds with the original policy intent.</p>	<p>No change has been made to the Determination.</p> <p>The role of the Determination, including the compliance approach, is to provide guidance on the operation of the law. The law does not make a distinction between healthy or unhealthy salads – the question is whether a product is food of a kind marketed as a prepared meal.</p> <p>The GST classification of food 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.</p>
26	<p>Salads – compliance approach</p> <p>We do not consider the 4-step method and compliance approach to be fit for purpose.</p> <p>The compliance approach is burdensome to apply and is at odds with the existing commonsense approach adopted by industry.</p> <p>The compliance approach requires taxpayers to undertake a separate objective assessment of each individual salad product against each of the relevant threshold tests. This is an impractical exercise that will require an intensive resource commitment and will result in undue compliance costs to the business.</p> <p>This will be an ongoing exercise that will need to be undertaken prospectively in respect of any new salad products developed, as well as existing salad products for which the recipe may change for creative, scientific or regulatory reasons.</p> <p>We recommend removing Steps 1 to 3 and to instead determine the GST treatment of salad products based on a</p>	<p>No change has been made to the Determination.</p> <p>The 4-step method in the Appendix to the Determination is intended to provide a safe harbour to assist taxpayers in determining whether or not certain salad products are likely to be food of a kind marketed as a prepared meal.</p> <p>The compliance approach in Step 3 provides practical tests to help taxpayers identify products that are ‘low risk’. It is not mandatory and it does not replace GST law.</p> <p>It is GST law, not the compliance approach, which requires a separate objective assessment to be made of individual products to determine their GST classification.</p> <p>The Determination includes an explanation of the law, including how the relevant principles apply to salad products (see paragraphs 67 to 74).</p> <p>The table at paragraph 74 of the Determination identifies common attributes that can indicate whether or not a salad product is food of a kind marketed as a prepared meal. One of the listed attributes that indicates that a salad product is food of a kind marketed as a prepared meal is where it ‘contains a more than insignificant meat or seafood component’.</p>

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	common sense and common experience approach, consistent with current industry practice.	
27	<p>Salads – compliance approach</p> <p>The proposed compliance approach places little to no regard on the marketing of a particular salad product.</p> <p>This approach to prepared meals appears to be at odds with the approach being adopted by the ATO with respect to the GST classification of sunscreen products. That is, the recently released guidance on sunscreen products is focused on the way in which a product is marketed, which fits squarely within the current legislative framework. The proposed compliance approach for salads, which is directed at product composition instead of the way in which a product is marketed, is an entirely different direction and is at odds with the legislative test.</p> <p>We recognise <i>Simplot</i> has caused the ATO to revisit its existing approach to the phrase ‘marketed as’. However, the marketing of a particular salad product should remain a relevant consideration.</p> <p>‘Salad meals’ have multiple layered deposits, garnishes or a form of protein. Multiple components in salad meals make them fresher with a more neutral PH. They therefore have a shorter shelf life of 5 to 8 days. ‘Side of plate salads’ have a lower PH dressing (PH of 2.5-4.5) and a longer shelf life of 10 to 20 days.</p> <p>Suppliers across the industry are very intentional in the marketing, packaging and presentation of ‘salad meals’.</p> <p>By way of example, we agree that Caesar salads and Greek salads are generally considered to be prepared meals where</p>	<p>No change has been made to the Determination.</p> <p><i>Simplot</i> confirms that the statutory question is not whether the product itself is marketed as a prepared meal, but whether the product is a member of a class or genus of foods that are marketed as prepared meals.⁹</p> <p>Draft Goods and Services Tax Determination GSTD 2024/D2 <i>Goods and services tax: supplies of sunscreen</i> similarly confirms that determining whether a product is ‘of a kind’ involves identifying the attributes of the kind that are required by the relevant provision, followed by an assessment of whether the product in question is a product of that kind.¹⁰ Any differences in practical application arise due to differences in the specific provisions and in the nature of the products being classified.</p>

⁹ *Simplot* at [99], [103] and [108].

¹⁰ See paragraph 10 of GSTD 2024/D2.

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	<p>they are packaged for consumption as a meal and are sold as such.</p> <p>However, certain variants of Caesar and Greek salads may be marketed primarily as side salads (for example, where sold in a 2 or 2.5kg bag to be consumed at a party).</p>	
28	<p>Salads –total product weight</p> <p>For Step 1 (determining whether a product is a sufficient quantity for a meal) and the 60% and 70% tests in Step 3, it is unclear whether the ‘total product weight’ should include the weight of dressing or seasoning used in the salad (noting these ingredients have been specifically excluded as part of the third test in Step 3). Dressing and seasoning can vary in weight.</p>	<p>We have updated paragraph 52 of the final Determination to make it clear that it is the total weight of the product, as outlined on its label, that is relevant for these purposes. This includes any dressing, seasoning or water.</p>
29	<p>Salads – categories of ingredient</p> <p>We ask the ATO to consider providing further guidance on the concept of ‘categories of ingredient’.</p> <p>While we realise that the ATO cannot provide an exhaustive list, this step in the compliance approach may allow for different GST classification outcomes based on the subjective opinion of taxpayers.</p> <p>Can the ATO provide the following clarifications?</p> <ul style="list-style-type: none"> • Confirm that our understanding is correct that leafy greens, raw grated carrot or beetroot, and cabbage would (all together) be treated as a single category of ingredient? • A basic salad may include thin slices of celery or spring onion or radish. Are these ingredients in the same ‘category’? • Would the following ‘salad mix’ included in a salad be considered one category of ingredient? Salad Mix (80%) [Iceberg Lettuce (35%), White Cabbage (20%), 	<p>We have updated the final Determination at paragraph 121 to provide further clarification on when ingredients can be treated as being the same ‘category of ingredient’.</p> <p>Specifically, we have:</p> <ul style="list-style-type: none"> • broadened certain groupings (for example, all pulses) • clarified that leafy greens, raw root vegetables and alliums are treated (all together) as a single ‘category of ingredient’. <p>We have not:</p> <ul style="list-style-type: none"> • grouped all legumes together; this category would be too broad and would have the effect that all pulses (for example, kidney beans, black-eyed beans, chickpeas, lentils) would be grouped with things like green beans, soybeans and peanuts • grouped all fruits and vegetables up to a limit of 25% of the product weight; this would be practically difficult to administer and would not produce outcomes that we consider to be generally consistent with application of general principles.

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	<p>Zucchini (13%), Mizuna (9%), Broccoli (9%), Celery (8%), Spring Onion (5%)</p> <p>The categories of ingredients appear to be drafted in a very restrictive manner. We request the ATO consider the following suggestions:</p> <ul style="list-style-type: none"> • Grouping all pulses or all legumes as a category of ingredient category (similar to mixed beans). • Grouping all fruits and vegetables up to a limit of 25% of the product weight. We understand this would not be appropriate for the purposes of the 60% threshold, but consider it would avoid anomalous and unintended outcomes for the '3 or fewer ingredients' test. 	
30	<p>Salads – seasonal variations to ingredients</p> <p>The GST classification of a product is generally determined by taxpayers when a product is onboarded. While the GST classification Master List will be reviewed on a regular basis, if there are no subsequent changes to the GST legislation, Detailed Food List, private rulings etc then there should be no reason for the GST classification to change.</p> <p>It is common for the ingredients and percentages of salad products to vary slightly due to seasonal and processing variability.</p> <p>We acknowledge that if the composition of a product is completely 'reworked' then the GST classification should be reviewed as part of that process.</p> <p>Can the ATO confirm that the GST classification of a product by reference to the compliance approach will not be disturbed by subsequent adjustments to the product as a result of seasonal or processing variability? To have any other approach would potentially be unworkable in practice.</p> <p>If an ingredient is exchanged for another ingredient, is it reasonable to conclude that they would be in the same 'category of ingredients'?</p>	<p>We have provided additional explanation at paragraphs 123 to 128 of the final Determination of the application of the compliance approach criteria to products with seasonal variations to ingredients. We have also explained our governance and record-keeping expectations in relation to the compliance approach.</p> <p>The final Determination provides an explanation of what we mean by 'category of ingredient'. It should not be assumed that if an ingredient is exchanged for another ingredient, the 2 ingredients in question would belong to the same 'category of ingredient'.</p>

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31	<p>Salads – 60% and 70% thresholds</p> <p>It would be useful to understand the reasoning behind the different 60% and 70% thresholds.</p> <p>We ask that the Commissioner consider making both thresholds 60%. We have reviewed products across the market and are not aware of any pasta, rice or other grain-based salads that reach this threshold.</p> <p>Example 12 and Example 13 of the draft Determination concern variations on a Mediterranean salad kit. In Example 13, an additional ingredient (olives) is added which changes the percentage allocation of the salad kit ingredients so that the mixed leafy greens fall below 60% (45%). This suggests that the more ingredients the salad kit has, the more likely it is to be taxable.</p>	<p>The different 60% and 70% thresholds have been retained in the final Determination. This reflects our review of products currently marketed and sold in Australia as we have observed that products with pasta, rice or other grain as the main ingredient are often marketed as a prepared meal.</p>
32	<p>Salads – 3 or fewer ingredients</p> <p>We consider the 3 or fewer ingredients test is too restrictive and ask the ATO to consider the following suggestions:</p> <ul style="list-style-type: none"> • Increase to 5 or fewer ingredients – the existing limit is incredibly restrictive and does not reasonably reflect the nature and composition of basic salad products. • Broaden the exclusion of minor ingredient from ingredients that are 1% or less of the total weight to those that are 5%. These ingredients should be considered insignificant and not of sufficient quantity to change the character of the product. • Broaden the scope of excluded ingredients to include a number of ‘sleeper’ ingredients that are commonly included in salads that do not impact the character of a salad – for example, small amounts of onion, shallots, or chives. One possible approach could be to exclude the allium family of vegetables (for example, onion, spring onion, garlic, shallots and chives). 	<p>We have updated the final Determination to make the ‘3 or fewer ingredients’ test clearer and easier to apply in practice.</p> <p>We have provided a broader and more comprehensive list of the types of ingredients that can be excluded. This includes broadening the exclusion for dried herbs to also include fresh herbs.</p> <p>As a result of these changes, we have removed the exclusion for ingredients that are 1% or less of the total weight of the product. Many ingredients that are 1% or less will be excluded anyway, particularly as we have broadened the list of excluded ingredients.</p> <p>These changes together will:</p> <ul style="list-style-type: none"> • make the test easier to apply based on the list of ingredients on the label of the product (which does not always show the percentage of minor ingredients) • provide greater consistency in the application of the compliance approach.

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	<ul style="list-style-type: none"> • Broaden the current exclusion for dried herbs to also include fresh herbs. 	
33	<p>Salads – Example 15</p> <p>Example 15 of the draft Determination says that Steps 2, 3 and 4 apply in the same way as in Example 14.</p> <p>This is not correct:</p> <ul style="list-style-type: none"> • The product in Example 14 was a single-serve salad bowl. It therefore had 2 of the relevant attributes at Step 3. • The salad product in Example 15 is sold from a deli counter and is presumably not sold in a container from which it is designed to be eaten. It only has one of the Step 3 attributes. <p>Can the Commissioner please confirm for completeness in the Determination that products bought from a deli counter (that is, behind the glass) irrespective of size will not be considered to be ‘a single serving in a bowl or similar container from which it is designed to be eaten’?</p>	<p>We have updated the final Determination to make it clear that the product in Example 15 only has one of the relevant attributes. The outcome is unchanged, as the presence of any one of these attributes means that the compliance approach in Step 3 does not apply to the product.</p> <p>We have also updated paragraph 119 of the Determination to make it clear that it applies to products sold as a single serving (according to its label) in a prepackaged container. This would not generally apply to salad products sold from behind a deli counter at a supermarket.</p>
34	<p>Detailed Food List – new GST-free entries</p> <p>We ask that the Commissioner provides flexibility for each of the new GST-free salad Detailed Food List entries to include additional ingredients (in the event these products evolve) and still retain a GST-free status provided the additional ingredients do not disturb or change the character of the product.</p> <p>The new Detailed Food List entry for coleslaw will only cover a coleslaw product that is limited to the ingredients specified. Some coleslaw products have minor additional ingredients that do not change the character of the product, such as celery, capsicum or onion.</p> <p>The new Detailed Food List entry for creamy potato salad will only cover a potato salad product that is limited to the ingredients specified. Some potato salad products have</p>	<p>An addendum to the Detailed Food List has been made adding these new entries. We have made changes to the GST-free entries to take into account this feedback, but only to the extent that we considered it would not impact the GST-free classification.</p>

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	<p>minor additional ingredients that do not change the character of the product, such as celery, capsicum, onion, corn or cheese.</p> <p>The new Detailed Food List entry for creamy pasta salad will only cover a pasta salad product that is limited to the ingredients specified. Some creamy pasta salad products have minor additional ingredients that do not change the character of the product, such as celery, capsicum, onion, corn or cheese. Could this entry be broadened to include these additional ingredients or to include 'dressing' rather than specifically 'mayonnaise'?</p>	
35	<p>Detailed Food List – new GST-free entries</p> <p>There does not appear to be a clear policy basis for the new salad entries on the Detailed Food List. We find it difficult to understand the policy or other basis for identifying only seafood salad, creamy pasta salad, creamy potato salad, coleslaw and tabbouleh as the specifically-named GST-free salad products.</p>	<p>The GST classification of food products is an outcome of the legislative provisions. Whether the law ought to be changed is a matter of policy for government.</p> <p>No change has been made to the addendum to the Detailed Food List (other than minor changes unrelated to this submission).</p> <p>The role of the Determination and new entries to the Detailed Food List is to provide our view of how the law applies to certain readily recognisable categories of salad products.</p>
36	<p>Detailed Food List – Caesar salad</p> <p>The proposed new Detailed Food List entry for a taxable Caesar salad is as follows:</p> <p style="padding-left: 40px;"><i>salad – Caesar salad, containing lettuce, croutons, parmesan cheese, bacon, and Caesar dressing. May also contain chicken or egg.</i></p> <p>Our interpretation of this and other similar entries is that all the ingredients listed (that is, lettuce, croutons, parmesan cheese, bacon and Caesar dressing) must be included for the product to come within the taxable entry. That is, were a salad to exclude bacon, then it would not meet the definition of Caesar salad under the Detailed Food List and the salad may potentially meet the requirements under the compliance approach.</p>	<p>An addendum to the Detailed Food List has been made adding this new entry. We have made minor changes to clarify that it is not necessary for all listed ingredients to be present in order for a 'Caesar salad' to be food of a kind marketed as a prepared meal.</p> <p>Where a salad product is covered by the Detailed Food List, you cannot apply the compliance approach in Step 3 to that product. It is irrelevant whether the salad product would otherwise meet the requirements of the compliance approach.</p>

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37	<p>Detailed Food List – Greek salad</p> <p>We disagree with this entry. These salads are not marketed as prepared meals. Applying common sense and common experience, Greek salads are not food of a kind marketed as a prepared meal. There is a clear distinction between a traditional meal component salad like a Greek salad and a more substantial Caesar salad.</p> <p>We understand the ATO has previously accepted Greek salad products as GST-free. The new entry for Greek salad represents a change in view. It should have prospective only application and a deferred start date to allow taxpayers time to implement the GST changes.</p>	<p>An addendum to the Detailed Food List has been made adding this new entry with minor changes only.</p> <p>The impact of the retrospective start date of the addendum to the Detailed Food List for past periods is discussed further in our response to Issue 2 of this Compendium.</p>
38	<p>Detailed Food List – pasta product</p> <p>We disagree with the inclusion of this entry. It is not clear what this entry covers and how it is meant to interact with the existing Detailed Food List entries for pasta dishes, pasta side dishes, pasta meals, TV dinners and so on.</p> <p>We do not agree that these pasta products are a readily recognisable category of salad similar to coleslaw, seafood salad and so on.</p> <p>There are pasta salads with tomato-based dressings that are not marketed as prepared meals by supermarkets, grocery stores, food courts, takeaway outlets, cafes or restaurants. Common experience and common sense would also suggest that this product is not a prepared meal. These products do not directly compete with take aways or restaurants.</p> <p>It is difficult to understand the basis for identifying these particular pasta products as being taxable or a reasonable policy basis for this outcome.</p> <p>When compared with the proposed GST-free entry for 'creamy pasta salad', it appears the 2 key differences between these products appear to be:</p> <ul style="list-style-type: none"> • the type of dressing, and 	<p>An addendum to the Detailed Food List has been made adding a revised version of this new entry.</p> <p>We have clarified that this entry covers cooked pasta products that contains instructions for heating (even if heating is optional). In our view, these products are food of a kind marketed as a prepared meal. The note to the entry includes examples such as macaroni and cheese, pesto and tomato-based sauce with cooked pasta.</p>

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	<ul style="list-style-type: none"> whether the product can be served cold or hot. <p>Further, it is not clear how the phrase ‘served cold or hot’ should be interpreted. Does this mean that the entry only covered salad products that can be served either hot or cold, and therefore excludes salad products that can only be served hot or can only be cold?</p>	
39	<p>Detailed Food List – updates to existing entries</p> <p>We note that the ATO proposes to update various entries in the Detailed Food List.</p> <p>With reference to the following entries:</p> <ul style="list-style-type: none"> prepared product that requires assembling before consumption vegetarian meal that requires assembling before consumption, <p>the notes section to these entries include examples of products that require further assembly and cooking activity. However, they also include examples of products that are not complete meals and include serving suggestions that they be served with additional components (for example, a curry with a serving suggestion to add rice or a casserole with a serving suggestion to add mashed potato).</p> <p>Our understanding is that the update will be in respect first category of examples only, but clarity would be welcome on this aspect.</p>	<p>An addendum to the Detailed Food List has been made to ensure consistency with the principles in the Determination.</p> <p>The 2 identified Detailed Food List entries were not fully aligned with the principles in the Determination and required updates to:</p> <ul style="list-style-type: none"> make it clear that products requiring only limited further assembly and cooking activity can be food of a kind marketed as a prepared meal clarify that a serving suggestion on the packaging of a product is not determinative of whether it is sufficiently complete for the purpose of table item 4 (we have also made this clear in paragraph 62 of the final Determination). <p>The impact of the retrospective start date of the addendum to the Detailed Food List for past periods is discussed further in our responses to Issue 2 of this Compendium.</p>
40	<p>Legislative framework</p> <p>We request that the Commissioner address the concerns raised by Hesper J in [141] of <i>Simplot</i>:</p> <p>The legislative scheme with its arbitrary exemptions is not productive of cohesive outcomes. It has left the Court in the unsatisfactory position of having to determine whether to assign novel food products to a category drafted on the premise of unarticulated preconceptions and notions of a “prepared meal”. It may be doubted whether this is a</p>	<p>Given these are matters of policy, Treasury has been made aware of the <i>Simplot</i> judgment and those raised by stakeholders in this process.</p>

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	<p>satisfactory basis on which taxation liabilities ought to be determined.</p> <p>These comments are consistent with the sector’s long-held position that the legislation lacks clarity and consistency, and places an unfair burden on businesses.</p> <p>The reliance on subjective evaluation of a product’s attributes (quantity, composition and presentation) remains a complex compliance issue. The current process requires businesses to assess whether a product is within a ‘class or genus’ of products marketed as prepared meals, which demands a subjective comparison across similar products sold by other entities.</p> <p>We urge the ATO to make a recommendation to Treasury to amend the relevant provisions. A clearer legislative framework would reduce interpretive ambiguity, benefiting both the ATO and the food industry by simplifying the classification of prepared meals.</p> <p>While we appreciate that the role of the ATO is to administer and implement the tax system, we also note that the ATO is tasked with providing practical insights to the Treasury about the operation of the tax system.</p>	