GSTD 2000/D3 - Goods and Services Tax: when is the supply of food packaging GST-free in terms of section 38-6 of the A New Tax System (Goods and Services Tax) Act 1999?

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Draft Goods and Services Tax Determination

Goods and Services Tax: when is the supply of food packaging GST-free in terms of section 38-6 of the *A New Tax System (Goods and Services Tax) Act 1999*?

Preamble

Draft Goods and Services Tax Determinations (DGSTDs) present the preliminary, though considered, views of the Australian Taxation Office. DGSTDs should not be relied on; only final Goods and Services Tax Determinations represent authoritative statements by the Australian Taxation Office.

1. A supply of food packaging will be GST-free to the extent that it is necessary for the supply of GST-free food, and it is of a kind in which the food is normally supplied.

2. Where the purpose of the packaging is simply to contain, protect and promote the food within, it will be a normal and necessary part of the supply of the food. For individual items, normal and necessary packaging includes tins, bottles, jars and boxes. For a group of items, normal and necessary packaging includes the carton or box that contains a number of individual items.

3. Also, if packaging usually includes items of relatively small value compared to the food to assist purchasers prepare or consume the food (for example, a disposable thermometer with a turkey or a straw with a fruit juice tetra pack), it will be normal and necessary. However, straws, spoons or similar things that are usually supplied separately, rather than being packaged with the food, are not normal and necessary packaging (for example, straws are usually supplied separately with bottled water). Although such items are a separate supply, they are often provided for no consideration. If such items are provided for no consideration to help purchasers prepare or consume the food, and the items have no lasting value, there is no GST liability on their supply.

4. Special promotional packaging of food, for example a rack for spices, is not normal and necessary. Also, promotional items which accompany the food and packaging are not normal and necessary. Examples of accompanying promotional items are drink containers and recipe cards.

5. Where the packaging of food is not normal and necessary, the packaging component of the supply is taxable. If the food component is GST-free and the packaging component is taxable, the supply is a mixed supply.

6. However, a *de minimis* rule will be adopted in circumstances where GST-free food is contained in packaging that might not otherwise be considered normal and necessary. If the cost

price of such packaging is relatively low and is below the *de minimis* threshold, we will accept that the packaging is normal and necessary and the supply of the packaging is GST-free. Note that the *de minimis* rule only applies to packaging in which food is contained. Promotional items accompanying the food and packaging, and items that are usually supplied separately, are not covered by the *de minimis* rule.

7. The *de minimis* rule will apply when packaging of GST-free food is not charged at a separate price and the cost price of the packaging is the lesser of:

- $3 (excluding GST); or
- 20% of the wholesale value of the total supply.

8. The *de minimis* rule is applied by the supplier who packages the food, as it is this supplier who knows the value of the packaging. The supplier who does the packaging will often be the manufacturer or wholesaler. This supplier must decide whether the packaging passes the *de minimis* rule and whether the supply of packaging is GST-free or taxable. Suppliers further down the distribution chain (for example, retailers), who rely on the supplier's *de minimis* calculation for treating packages as GST-free, will be accepted by the ATO as having met their obligations.

9. Where the packaging is clearly designed as more than normal and necessary to the supply of food and it fails to satisfy the *de minimis* rule, or where promotional items accompany the food and packaging, there is a mixed supply. The total price must be apportioned under section 9-80 of the *A New Tax System (Goods and Services Tax) Act 1999* between the taxable and GST-free components to calculate the amount of GST due.

10. Where an additional charge is raised to cover the loan, hire or use of a container, this constitutes a separate supply and the charge is subject to GST.

Example 1

11. A breakfast cereal is supplied in a plastic container, rather than in the usual cardboard box. Provided the value of the plastic container satisfies the de minimis rule (that is, it is not charged for separately and costs the lesser of $3 or 20% of the wholesale value of the total supply), the supply of the container will be GST-free.

Example 2

12. A coffee mug is sold with a jar of coffee. The coffee mug is additional to the coffee and its packaging. The supply is a mixed supply. The supply of the coffee mug is taxable where as the supply of the coffee and jar is GST-free. The total price must be apportioned between the GST-free and taxable components to calculate the amount of GST.

Example 3

13. Megagroceries, a national supermarket chain, purchases jam from the manufacturer. The manufacturer packs 150 jam jars in each carton and it invoices Megagroceries for the cartons of jam purchased. Both the jars and the cartons are normal and necessary packaging and will be supplied GST-free.

Your comments

14. We invite you to comment on this Draft GST Determination. We are allowing 2 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date: **24 May 2000**
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Commissioner of Taxation
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Subject references:
- de minimis rule
- food
- goods & services tax
- GST food
- GST-free food
- GST supply
- mixed supply
- packaging of food
- promotional packaging
- supplier
- supply
- taxable supply

Legislative references:
- ANTS(GST)A99 9-80
- ANTS(GST)A99 38-6

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