



# ***GSTD 2008/D1 - Goods and services tax: are supplies of food known as breakfast bars GST-free?***

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This document has been finalised.

 There is a Compendium for this document: **GSTD 2008/2EC** .



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# Draft Goods and Services Tax Determination

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Goods and services tax: are supplies of food known as breakfast bars GST-free?

## **Preamble**

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way the law applies. It is not a ruling or advice for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. You can rely on this publication to provide you with protection from interest and penalties as follows. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

1. No, supplies of food known as breakfast bars are *not* GST-free and are therefore taxable supplies if all the other requirements of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met.

## **Explanation**

2. The GST Act provides that many supplies of food are GST-free. A supply of food is GST-free<sup>1</sup> if the product is food as defined in the GST Act and the supply is not excluded from being GST-free by the GST Act.<sup>2</sup> As food for human consumption, breakfast bars satisfy the definition of food.<sup>3</sup>

3. However, the GST Act also provides that supplies of certain specified food are not GST-free. That is, food of a kind specified in Schedule 1 to the GST Act<sup>4</sup> is not GST-free.

4. Item 11 of Schedule 1 to the GST Act (item 11) specifies 'food known as muesli bars or health food bars, and similar foodstuffs'. Therefore, supplies of muesli bars, health food bars and foodstuffs of a similar kind are not GST-free.

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<sup>1</sup> Section 38-2 of the GST Act.

<sup>2</sup> Section 38-3 of the GST Act.

<sup>3</sup> Paragraph 38-4(1)(a) of the GST Act.

<sup>4</sup> Paragraph 38-3(1)(c) of the GST Act provides that food of a kind specified in the third column of the table in clause 1 of Schedule 1 to the GST Act is not GST-free.

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5. The use of the words ‘known as’ in item 11 does not indicate a specific marketing test. That is, foodstuffs do not have to be actually labelled ‘muesli bars’ or ‘health food bars’, to be caught by these descriptions. Rather, the wording indicates classes of products with names commonly used by sellers and consumers. Goods similar to these in essential character will also be within the class of foods specified in item 11.

## ***Muesli bars***

6. The term ‘muesli bar’ is not defined in the GST Act, so the ordinary meaning of the term applies. The dictionary definition of muesli bar is ‘a commercially-prepared and packaged snack made from a muesli mixture, usually sweetened and set in a bar shape’.<sup>5</sup> Muesli is defined as ‘a breakfast cereal of various mixed products such as oats, wheat germ, chopped fruit and nuts, etc’.<sup>6</sup>

7. A typical muesli bar contains ingredients similar to those found in muesli breakfast cereals, plus additional sugars and other ingredients necessary to achieve a consistency suitable for presentation in bar form. Some muesli bars contain confectionery pieces such as chocolate chips or chocolate, yoghurt or other flavoured coatings.

## ***Similar foodstuffs***

8. Item 11 specifies ‘foods known as muesli bars or health food bars, and similar foodstuffs’. The ordinary meaning of ‘similar’ is ‘having likeness or resemblance, especially in a general way’.<sup>7</sup> Therefore, foods that resemble muesli bars in a general way are considered to be similar foodstuffs.

9. The characteristics of muesli bars that form a basis for comparison with other products may be categorised as:

- physical presentation; and
- ingredients.

## ***Physical presentation***

10. Muesli bars are shaped in the form of a bar for ease of eating. The size of muesli bars is appropriate for a single serving.

11. The texture of muesli bars varies from chewy to crunchy. Muesli bars are usually individually wrapped when sold, either individually or packaged in boxes.

12. To be similar to a muesli bar, a product would need to have a similar physical presentation.

## ***Ingredients***

13. To be similar to muesli bars, it would be expected that the foodstuff would contain some or all of the ingredients common to muesli bars as described above.

<sup>5</sup> The Macquarie Dictionary, 2001, revised 3rd edition, Macquarie Library Pty Ltd, NSW.

<sup>6</sup> The Macquarie Dictionary, 2001, revised 3rd edition, Macquarie Library Pty Ltd, NSW.

<sup>7</sup> The Macquarie Dictionary, 2001, revised 3rd edition, Macquarie Library Pty Ltd, NSW.

**Breakfast bars**

14. Some products available on the market are known as 'breakfast bars'. The term 'breakfast bar' is not used in the GST Act.

15. Products known as breakfast bars may include the words 'breakfast bars' on their packaging and usually:

- consist predominantly of cereals and sugars and may contain other ingredients such as fruits or nuts; and
- are of a similar size and shape to muesli bars.

16. It is the Commissioner's view that breakfast bars resemble muesli bars in the manner of their physical presentation as they are of similar shape and size, and contain similar ingredients.

17. As breakfast bars are similar in character to muesli bars, they satisfy the description 'similar foodstuffs'. Therefore, breakfast bars are food of a kind specified at item 11. As paragraph 38-3(1)(c) of the GST Act provides that food of a kind specified in Schedule 1 to the GST Act is not GST-free, supplies of breakfast bars are taxable supplies if all the requirements of section 9-5 of the GST Act are met.

18. As breakfast bars are similar to muesli bars, we do not consider it necessary to consider whether they are also similar to health food bars.

**Date of effect**

19. This draft Determination represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Determination is officially released, it will explain our view of the law as it applies both before and after its date of issue.

20. The Commissioner invites comment on what, if any, transitional arrangements are appropriate in implementing the final Determination, including arrangements appropriate to cater for circumstances where an entity needs to make systems or process changes to comply with the views expressed in it.

21. The final Determination will be a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

22. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

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## Your comments

23. We invite you to comment on this draft Goods and Services Tax Determination. Please forward your comments to the contact officer by the due date.

**Due date:** 27 June 2008  
**Contact officer:** Grant Murphy  
**E-mail address:** Grant.Murphy@ato.gov.au  
**Telephone:** (07) 3213 5707  
**Facsimile:** (07) 3213 5055  
**Address:** Terrica Place  
140 Creek Street  
Brisbane QLD 4000

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## Commissioner of Taxation

28 May 2008

### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

GSTR 1999/1

### *Subject references:*

- breakfast bars
- goods and services tax
- GST supply
- GST-food
- GST-free
- health food bars
- muesli bars
- taxable supply

### *Legislative references:*

- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 38-2
- ANTS(GST)A 1999 38-3
- ANTS(GST)A 1999 38-3(1)(c)
- ANTS(GST)A 1999 38-4(1)(a)
- ANTS(GST)A 1999 Sch 1
- TAA 1953 Sch 1 105-60

### *Other references:*

- The Macquarie Dictionary, 2001, revised 3rd edition, Macquarie Library Pty Ltd, NSW

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### ATO references

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