

GSTD 2024/D3 - Goods and services tax: supplies of food of a kind marketed as a prepared meal

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Draft Goods and Services Tax Determination

Goods and services tax: supplies of food of a kind marketed as a prepared meal

❗ Relying on this draft Determination

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What this draft Determination is about

1. This draft Determination¹ explains our view on the circumstances in which products are food of a kind 'marketed as a prepared meal, but not including soup'.
2. The supply of food of this kind is not GST-free under paragraph 38-3(1)(c) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) as it is food of a kind specified in column 3 of table item 4 of clause 1 of Schedule 1 to the GST Act (table item 4).
3. This Determination considers what products are food of a kind marketed as a prepared meal primarily by reference to the decision of the Federal Court in *Simplot Australia Pty Limited v Commissioner of Taxation* [2023] FCA 1115 (*Simplot*).
4. This Determination should be read in conjunction with GST Industry Issue GSTII FL1 *Detailed Food List* (Detailed Food List). The Detailed Food List is a public ruling that provides our view on the GST classification of many food and beverage product lines including under table item 4.
5. The Appendix to this Determination sets out a method statement and compliance approach to assist taxpayers in determining whether or not certain salad products are likely to be food of a kind marketed as a prepared meal.
6. All legislative references in this Determination are to the GST Act, unless otherwise indicated.

Legislative context

7. Paragraph 38-3(1)(c) provides that a supply of food is not GST-free if it is food 'of a kind' specified in column 3 of the table of clause 1 of Schedule 1.
8. Within the category of 'Prepared food', column 3 of table item 4 specifies 'food marketed as a prepared meal, but not including soup'.

¹ For readability, all further references to 'this Determination' refer to the Determination as it will read when finalised. Note that this Determination will not take effect until finalised.

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9. Clauses 2 and 3 of Schedule 1 provide:

2 Prepared food, bakery products and biscuit goods

For the purpose of determining whether particular food is covered by any of the items in the table relating to the category of prepared food, bakery products or biscuit goods, it does not matter whether it is supplied hot or cold, or requires cooking, heating, thawing, or chilling prior to consumption.

3 Prepared meals

Item 4 in the table only applies to food that requires refrigeration or freezing for its storage.

10. The effect of clause 2 of Schedule 1 is that a food product can be food of a kind marketed as a prepared meal regardless of ‘whether it is supplied hot or cold, or requires cooking, heating, thawing or chilling prior to consumption’.

11. The effect of clause 3 of Schedule 1 is that food products that are not required to be stored in a refrigerator or freezer prior to opening (also known as shelf-stable products) cannot be taxable under table item 4. This applies regardless of whether they are food of a kind marketed as a prepared meal. For example, table item 4 does not apply to tins or jars of baby food, baked beans, or spaghetti that, in their unopened state, do not require refrigeration or freezing.

The decision in *Simplot*

12. In *Simplot*, the Federal Court considered the GST treatment of a range of frozen food products supplied or imported by Simplot Australia Pty Limited (Simplot Australia). The products each contained a mix of vegetables along with spices or seasonings, and some also included grains. Some products were labelled as ‘sides’ and some provided express or implied serving suggestions, including through pictures that displayed the products served with added protein (for example, chicken or pork).

13. The Court found that all the products were food of a kind marketed as a prepared meal (other than soup) and therefore they were not GST-free.²

14. The Court held that the statutory test was to be approached as a single composite question, that being whether the products were food of a kind marketed as a prepared meal.³

15. Consistent with previous decisions on the meaning of ‘food of a kind’ in the context of GST, sales tax, and customs law, the Court said that the inclusion of these words required consideration of whether the products fell within a class or genus of food that was marketed as a prepared meal.⁴

16. As a result, the Court held that it was necessary to consider the marketing of other products of the same kind. Following *Cascade Brewery Co Pty Ltd v Commissioner of Taxation*⁵ (*Cascade*), the Court considered that marketing, in this context, means the activities of sellers in presenting the product to end-consumers.⁶

² *Simplot* at [134–141].

³ *Simplot* at [101], applying *Clean Investments Pty Ltd v Commissioner of Taxation* [2001] FCA 80 at [91–93].

⁴ *Simplot* at [103] and [108].

⁵ [2006] FCA 821.

⁶ *Simplot* at [105].

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17. On the meaning of prepared meal, the Court in *Simplot* said at [124-125]:

... the attributes of a “prepared meal” are to be discerned from common experience. Those attributes include:

- (a) quantity — a meal connotes a quantity of substance, even if it may be termed a small meal;
- (b) composition — a prepared meal connotes food consisting of more than one ingredient or element. Whether a combination of foods constitutes a meal is a question of fact and degree. A dish comprised solely of vegetables can be a meal. However a serving of a mix of vegetables (eg, peas and corn) may not be a meal
- (c) presentation — a prepared meal connotes a combination of foods that is complete. Matters such as seasoning, sauces and flavourings may all be relevant in determining whether foods are of a kind marketed as a prepared meal.

Foods of a kind marketed as a prepared meal therefore refers to foods of a sufficient quantity, mix and seasonings as to be regarded by the ordinary person as being of a kind that are marketed as a prepared meal.

18. Considering each of the products in this light, the Court found that in each case the products displayed attributes that made the products food of a kind marketed as a prepared meal.⁷

Ruling

19. In determining whether a product is food of a kind marketed as a prepared meal, the statutory question is a ‘single composite question’ – that being, *is the product food of a kind that is marketed as a prepared meal?*⁸

20. Answering the statutory question requires considering what is meant by food being food of a kind marketed as a prepared meal, followed by an assessment of whether the product in question falls within that class or genus.

21. The 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 This means it is necessary to consider the kinds of food that are marketed as a prepared meal.

22. The attributes of a prepared meal and the kinds of food that are marketed as a prepared meal are to be determined by common sense and common experience.¹⁰ This is to be determined objectively by considering the attributes of products that are marketed as prepared meals, including quantity, composition and presentation.

23. Whether a particular product falls within the class or genus of foods that are marketed as prepared meals cannot be determined by viewing individual attributes in isolation or without context. The test is how the product as a whole is perceived objectively, informed by common sense and common experience, and an overall consideration of its attributes.¹¹

⁷ *Simplot* at [134–141].

⁸ *Simplot* at [101], applying *Clean Investments Pty Ltd v Commissioner of Taxation* [2001] FCA 80 at [91–93].

⁹ *Simplot* at [99], [103] and [108].

¹⁰ *Simplot* at [104], [124], [138] and [140]. See also *Lansell House Pty Ltd v Commissioner of Taxation* [2010] FCA 329 at [50], [57].

¹¹ *Simplot* at [124] and [125].

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24. The test of ‘common sense and common experience’ is a composite objective judgment to be made against what is understood and observed by people generally. Application of the test depends on how reasonable people are taken to understand the attributes of the class or genus as well as the attributes of the particular product in question. The test is not concerned with narrow perceptions or fringe views.

25. Whether the product in question is ‘food of a kind marketed as a prepared meal’ requires an overall assessment of how that product and similar ones are marketed across the food industry.¹² As a matter of common sense and common experience, how are products of that kind marketed? What do the facts and evidence tell people generally about how products of this kind are marketed by entities in the food industry, including supermarkets, grocery stores, food courts, takeaway outlets, cafes, and restaurants?

Of a kind

26. The words ‘of a kind’ are words of expansion rather than limitation. They have the effect that the question is not whether the product is the particular item of food specified in column 3 of the table in Schedule 1, but whether the product is a member of a class or genus of food of the item specified.¹³ In this case, the question is whether the product is a member of a class or genus of foods that are marketed as prepared meals.

27. A product may be of a kind marketed as a prepared meal even if it does not share all of the attributes of food of that kind. For example, in *Simplot*, the Court found that the use of cauliflower as a substitute for rice did not prevent the relevant ‘VeggieRice’ products from having the character of fried rice or risotto.¹⁴

28. Equally, a product is not of a kind marketed as a prepared meal merely because it is an ingredient or component of food of that kind. For example, many prepared meals include peas, but frozen peas, on their own, are not food of a kind marketed as a prepared meal. Being of the same kind requires more than just having a common ingredient.

29. In determining whether a product is of a kind marketed as a prepared meal, it does not matter whether the product may also be of some other kind.¹⁵ For example, in *Simplot*, the fact that the products could be described as food marketed as a meal component or side dish did not mean they could not also be food of a kind that is marketed as a prepared meal.¹⁶

30. Similarly, the fact that a product is marketed as a snack does not mean it could not also be food of a kind marketed as a prepared meal. Determining whether a product is a side dish, meal component 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.

¹² This reflects comments in the Further Supplementary Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 at [1.19] that food included in the category of prepared food:

... includes some types of food that would be sold by take-away outlets (eg. sandwiches) as well as food that is essentially the same as that sold by take-away outlets (eg. frozen pizzas). It also includes frozen meals which are sold in a form that just requires heating for consumption (eg. a TV dinner or a low fat dietary meal).

and [1.31] that:

[t]he category of prepared food as listed in *new Schedule 1A* is intended to cover a range of food products that directly compete against take-aways and restaurants.

¹³ *Simplot* at [98–99], applying *Cascade* at [16] and *Lansell House Pty Ltd v Commissioner of Taxation* [2011] FCAFC 6 at [30].

¹⁴ *Simplot* at [104].

¹⁵ *Simplot* at [130]. See also *Lansell House Pty Ltd v Commissioner of Taxation* [2011] FCAFC 6 at [7].

¹⁶ *Simplot* at [130].

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Marketed as

31. In determining whether a product is food of a kind marketed as a prepared meal, it is necessary to consider the kinds of food that are marketed as a prepared meal. The marketed use of a product is to be determined objectively, having regard to what a reasonable observer would understand from the content of the marketing.¹⁷

32. The marketing of a product involves the end-to-end process where products are put onto the market. This includes promotional and sales activities.¹⁸ The content of the marketing is what those activities objectively convey to the market.¹⁹

33. Marketing includes labelling (including the name), packaging, display, product placement, promotion and advertising.²⁰ Marketing does not include internal activities of the seller, nor is it determined by the subjective intention or motivation of the seller. These things do not convey any message to the market.²¹

34. Marketing of food products can occur 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 in each case. The marketing activities carried out by competitors in the market are also relevant to identifying the class or genus of products marketed as a prepared meal. A product will have the same GST treatment, whether it is sold at the wholesale or retail level, especially where there is no change in the product between points of sale.

35. The statutory question is not whether the product itself is marketed as a prepared meal. If a product is of the same kind as food that is marketed as a prepared meal, it does not matter if its own marketing does not represent it as a prepared meal.²²

36. While it is not determinative, the marketing of the product itself remains relevant.²³ Where a product is marketed as a prepared meal, this is a strong indicator that the product is food of a kind marketed as a prepared meal.

37. Whether a product is, in fact, marketed as a prepared meal cannot be determined by looking at individual aspects of the product's marketing in isolation. For example, a chicken cordon bleu product may be described on its packaging as being 'perfect for dinner', but this alone does not mean the product is being marketed as a prepared meal. On the other hand, a macaroni and cheese product that is described as 'All you need for dinner' and is designed to be heated and eaten directly from the packaging is being marketed as a prepared meal.

38. While a product's own marketing may be a strong indicator that a product is food of a kind marketed as a prepared meal, it is not determinative. It is still necessary to consider the other attributes of the product. For example, if a product is not of a sufficient quantity for a meal, or is not sufficiently prepared, it will not be food of a kind marketed as a prepared meal.

39. The test does not require that food of the relevant kind be *solely or principally* marketed as a prepared meal. However, as the Court in *Simplot* emphasised, application of the statutory test must be informed by common sense and common experience.²⁴

¹⁷ *Simplot* at [108].

¹⁸ *Cascade* at [24].

¹⁹ *Simplot* at [105], [108] and [110].

²⁰ *Cascade* at [23].

²¹ *Simplot* at [108], referring to *Cascade* at [23–26].

²² *Simplot* at [129].

²³ *Cascade* at [22].

²⁴ *Simplot* at [86] and [104].

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40. In applying this 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. For example, an isolated instance of a plain yoghurt product being marketed as a prepared meal would not result in that product, or all plain yoghurts, becoming food of a kind marketed as a prepared meal.

Prepared meal

41. In *Simplot*, the Court held that prepared meal took its ordinary meaning read in context.²⁵ The Court held that the attributes of a 'prepared meal' are to be determined from common sense and common experience and include considerations of quantity, composition and presentation.²⁶

42. For a product to be food of a kind marketed as a prepared meal, it is not necessary for it to be:

- called a 'prepared meal'
- marketed for consumption on a particular occasion such as breakfast, lunch or dinner
- packaged and described as a single serving, or
- designed to be consumed directly out of its packaging.²⁷

43. 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.²⁸ However, in practice, many meal components will not possess the necessary attributes that would make them food of a kind marketed as a prepared meal.

44. A product will be food of a kind marketed as a prepared meal if it is the kind of food that, as a matter of common sense and common experience, is marketed as a prepared meal. This is determined objectively by considering the attributes of the product, including quantity, composition and presentation.

45. Each attribute is considered in further detail in paragraphs 46 to 63 of this Determination.

Quantity

46. In *Simplot*, the Court held that a meal involves a 'quantity of substance'.²⁹

47. The following considerations are relevant regarding the quantity of a product:

- The product need not be a substantial or big meal – a light or small meal is still a meal.
- What will be a 'quantity of substance' will vary based on the product in question.
- Products that are presented as being for consumption by a particular group (for example, babies and children) or that is commonly consumed on a particular occasion (for example, breakfast) need to be considered in light of

²⁵ *Simplot* at [111].

²⁶ *Simplot* at [124].

²⁷ *Simplot* at [119], [139–140].

²⁸ *Simplot* at [130].

²⁹ *Simplot* at [124].

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that context. A quantity of food may be of sufficient quantity when presented as a meal for infants, even if the same quantity might not be sufficient as a meal for adults.

- The product may be marketed as a snack, or a kind of food that can be eaten as a snack, and still be food of a kind that is marketed as a prepared meal.
- The product may be supplied in large quantities and may still be food of a kind marketed as a prepared meal.³⁰ There is no upper threshold on quantity. See Example 1 of this Determination.

48. The degree to which quantity is relevant may also depend on the form in which the product is sold. Some products are commonly sold in a way that the consumer is able to choose or measure the amount they purchase (for example, sushi or some salads sold at a delicatessen). In these circumstances, the quantity or weight chosen or measured will be of little relevance in determining whether the product is food of a kind marketed as a prepared meal.

49. As a matter of common sense and common experience, a product is not food of a kind marketed as a prepared meal unless it is of a sufficient quantity for a meal. This will depend on the facts.

50. The question is whether the total product is a sufficient quantity. This is not impacted by the recommended serving size described on the packaging or by individually wrapped portions or components within the product. It is the total weight of the product that is relevant.³¹

51. Based on our review of products on the market, we consider that products of less than 150 grams in total weight will not be a sufficient quantity for a meal and are not food of a kind marketed as a prepared meal. However, this does not apply to products that are sold in situations where the consumer may choose or measure the amount they purchase. See paragraph 48 of this Determination.

Composition

52. In *Simplot*, the Court held that a prepared meal involves food consisting of more than one ingredient or element.³² A product is more likely to be food of a kind marketed as a prepared meal where it is made from multiple ingredients or elements. It is a matter of fact and degree whether a particular combination of ingredients or elements constitutes a meal.

53. It is necessary to consider the nature of the ingredients or elements and not simply the number of ingredients or elements.³³ A product that includes some combination of protein, vegetables or a grain product (for example, pasta, rice or bread) is more likely to be of a kind marketed as a prepared meal.

54. The composition of a product may also indicate its suitability to be eaten at a particular meal occasion. For example, products containing cereal or muesli are generally

³⁰ As discussed in *Simplot* at [139] in relation to a product that was not sold 'pre-portioned', the fact that '[i]t was entirely up to the consumer to determine how much or how little of the package was to be consumed on any one occasion' did not prevent the relevant product being food of a kind marketed as a prepared meal.

³¹ *Simplot* at [129], [134] and [138].

³² *Simplot* at [124].

³³ In this context, we consider that 'ingredient' means something used as a component in making the food. In contrast 'element' means separately identifiable aspects of the food. For example, mashed potato is a single element but is made of multiple ingredients (potato, butter, milk).

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consumed for breakfast and are commonly marketed as breakfast foods (see Example 2 of this Determination). On the other hand, products containing custard, jelly and cake are generally consumed for dessert and are not a kind of food that is marketed as a prepared meal (see Example 4 of this Determination).

55. In practice, applying common sense and common experience involves considering whether the product has a similar composition to products sold as a prepared meal by entities in the food industry. For example, in *Simplot*, the Court characterised the products as pasta in sauce, risotto or fried rice and observed that these types of foods are, as a matter of common sense and common experience, foods of a kind marketed as a prepared meal.³⁴

Presentation

56. In *Simplot*, the Court also held that a prepared meal involves a combination of foods that is ‘complete’.³⁵ This attribute was referred to as ‘presentation’. A product’s presentation will indicate it is food of a kind marketed as a prepared meal if it is presented as being complete. Being ‘complete’, in this context, involves both the degree of preparation and whether the product is supplied with all necessary inclusions to be a complete ‘meal’.

57. First, the product should be ‘complete’ in the sense of being prepared and should require only limited further preparation, assembly and activity by the consumer. When determining whether a product is ‘complete’, the following principles are relevant:

- If a product is sold fully assembled, the fact that all or part of it may be raw does not prevent it from being sufficiently prepared, even if it requires cooking before consumption.
- If cooking or heating is required for the product to be ready for consumption, this should only require limited activity by the consumer, such as cooking or heating in a microwave, oven, frying pan, or saucepan. Simply heating a product and stirring regularly during the process will not mean, by itself, that the product is not sufficiently prepared. This will apply even where these activities are required to complete the cooking process for a partly cooked product. See Example 5 of this Determination.
- Where a product requires one of the following actions by the consumer, particularly where more than one of these is required, this may point to a conclusion that the product is not sufficiently prepared
 - chopping, peeling, or otherwise preparing the ingredients
 - cooking different ingredients or elements separately or using different methods, or
 - cooking a product which contains raw ingredients where this requires active involvement of the consumer. Active involvement includes actions like stirring, monitoring, adjusting temperature, and the staged addition of different ingredients. See Example 6 of this Determination.
- Some products, including sushi and salad products, are ready for consumption when sold even though part of them may be raw.

³⁴ *Simplot* at [134–140].

³⁵ *Simplot* at [124].

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- Sometimes a single product is sold with some or all of the ingredients or elements separated from each other. The fact that a consumer needs to combine the ingredients or elements before consumption of itself does not mean that the product is not sufficiently prepared to be 'complete'. For example, a product will be sufficiently prepared if all the consumer needs to do is combine various salad ingredients or elements and dress the salad with a provided sachet of dressing (see Example 11 of this Determination).

58. Second, the product should be presented as being 'complete' in the sense of being a complete meal. Whether a product is presented as a complete meal is a matter of fact and degree.

59. Where a product includes all required seasonings, sauces or flavourings, this is an indicator that the product is presented as complete. Recommendations or instructions to add water or oil when cooking or heating do not mean that the product is not sufficiently prepared or complete.

60. A product may be presented, including by its own marketing, as a kind of food that is commonly eaten:

- on its own as a complete meal (for example, it may be presented as fried rice or risotto)
- as a meal component only (for example, it may be presented as mashed potato or chicken kiev)
- as an appetizer (for example, it may be presented as spring rolls, curry puffs, samosa, arancini balls, croquettes, calamari rings, prawn cutlets, or devilled eggs).

61. A product that is presented as a kind of food that is commonly eaten as a meal component only, or as an appetizer, will generally not be food of a kind marketed as a prepared meal (see Example 7 of this Determination).

62. In some cases, specific aspects of a product's presentation, including its own marketing, will strongly indicate that it is food of a kind marketed as a prepared meal.

63. For example, an appetizer or similar small plate dish (for example, dumplings) may be presented as being a complete meal that can be heated and eaten straight from the packaging. These are attributes that are relevant to the overall assessment of the product and will strongly indicate that the product is food of a kind marketed as a prepared meal (see Example 8 of this Determination).

Salad products

64. A 'salad' is ordinarily understood as a cold dish of various mixtures of raw or cooked foods, particularly vegetables, usually seasoned and dressed with oil, vinegar or other dressing.

65. Salads are a broad category of food that includes some products that are marketed as prepared meals and others that are not marketed as prepared meals.

66. A salad product will be food of a kind marketed as a prepared meal if it is the kind of salad product that, as a matter of common sense and common experience, is marketed as a prepared meal by entities in the food industry. This is to be determined objectively by considering the attributes of salad products that are marketed as prepared meals (including quantity, composition, and presentation) and those of the product itself.

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67. Some kinds of salad products are readily recognisable, as a matter of common sense and common experience, as being commonly marketed as a prepared meal, even if the precise composition and presentation vary from product to product – for example, Caesar salad. Other kinds of salad product are readily recognisable as not being marketed in this way – for example, coleslaw.

68. Between these ‘readily recognisable’ categories, a wide variety of salad products are supplied across the food industry. Where a salad product does not fall within one of these categories, it is necessary to consider the attributes of the product (particularly its composition and presentation) and determine whether it is sufficiently similar to the kinds of salad products that are commonly marketed as a prepared meal.

69. Generally, the kinds of salad products that are marketed as a prepared meal contain a variety of ingredients, a balanced proportion of ingredients, and a sufficient overall quantity to constitute a meal. Salad products with these attributes are the kind that are commonly marketed as complete meals to be eaten on their own.

70. Salad products that lack variety and a balance of ingredients are less likely to be food of a kind marketed as a prepared meal. This is a question of fact and degree.

71. The following table identifies common attributes that can indicate whether or not a salad product is food of a kind marketed as a prepared meal:

Table 1: This Table identifies common attributes that can indicate whether or not a salad product is food of a kind marketed as a prepared meal

Attributes that indicate a salad product is not food of a kind marketed as a prepared meal	Attributes that indicate a salad product is food of a kind marketed as a prepared meal
The salad product: - has a high proportion of one ingredient (or category of ingredient³⁶) with insignificant amounts of others - has a limited number of different ingredients (or categories of ingredient).	The salad product: - contains a variety of ingredients in balanced proportions - contains a more than insignificant meat or seafood component - contains instructions for heating (even if heating is optional) - is sold as a single serving in a bowl or similar container from which it is designed to be eaten - is sold in a takeaway environment such as a food court or salad bar.

Examples

72. Paragraphs 73 to 102 of this Determination provide examples illustrating our view on how the law applies in practice.³⁷

Example 1 – quantity – large quantities

73. *Wholesaler Ltd sells frozen beef lasagne in a range of sizes including 5 kg and 10 kg trays.*

³⁶ For further explanation, see explanation at paragraph 126 of Appendix 1 to this Determination.

³⁷ Examples of salad products can be found in Appendix 1.

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74. While the lasagne trays are not pre-portioned and are provided in quantities that are more than what one person would be expected to consume as a meal, neither of these factors affect whether they are food of a kind marketed as a prepared meal.

75. The lasagne trays have the attributes of a prepared meal, including sufficient quantity, composition and presentation. As a matter of common sense and common experience, lasagne is a kind of food that is marketed as a prepared meal.

76. The lasagne trays are food of a kind marketed as a prepared meal.

Example 2 – composition – breakfast products

77. Manufacturer Ltd makes and sells pots of bircher muesli containing rolled oats soaked in yoghurt and apple juice, coconut flakes and raisins. The pots weigh 150 grams.

78. The pots of bircher muesli have the attributes of a prepared meal, including sufficient quantity, composition and presentation. In particular, the composition of the product indicates its suitability to be eaten at breakfast. As a matter of common sense and common experience, bircher muesli is a kind of food that is marketed as a prepared meal (a complete breakfast).

79. The pots of bircher muesli are food of a kind marketed as a prepared meal.

Example 3 – composition – number of ingredients or elements

80. Retailer Ltd sells a range of frozen food products, including a frozen mashed potato product. This product comes with 2 pre-portioned packets of 200 grams each and instructions for heating the packets in the microwave, either separately or together.

81. The product's composition is not consistent with that of a prepared meal as it comprises only one element. While mashed potato is a component in meals, as a matter of common sense and common experience, a product composed solely of mashed potato (or solely of mashed potato, butter and seasonings) is not a kind of food that is marketed as a prepared meal.

82. The frozen mashed potato product is not food of a kind marketed as a prepared meal.

Example 4 – composition – nature of ingredients or elements

83. Importer Ltd imports a range of chilled desserts, including a product called 'Not Just a Trifle'. The trifle contains a wide range of ingredients including cream, custard, strawberries, grapes, pears, mango, pomegranate seeds, raw almonds and pistachios, jelly, sponge cake and sherry.

84. While the trifle includes many different ingredients, the nature of these ingredients, when combined, mean that the composition of the product is not consistent with that of a prepared meal but rather is that of a dessert. A dessert may be part of a meal or a course in itself but it is not a meal.

85. As a matter of common sense and common experience, trifle is not a kind of food that is marketed as a prepared meal.

86. The trifle is not food of a kind marketed as a prepared meal.

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Example 5 – presentation – sufficiently prepared

87. *Manufacturer Ltd makes and sells a frozen pasta product containing chicken, vegetables, pasta and sauce. The product is sold in a 400 gram bag and has been partly cooked. The instructions on the bag say that the product should be:*

- *microwaved in a covered microwave-safe container on high for 6 minutes, stirred, and microwaved for a further 4 minutes, or*
- *cooked in a covered pan on the stove-top for 15 minutes, stirring as necessary.*

88. *The pasta product has the attributes of a prepared meal, including sufficient quantity, composition and presentation. As a matter of common sense and common experience, pasta in sauce with chicken and vegetables is a kind of food that is marketed as a prepared meal.*

89. *While the pasta product is not fully cooked at the point of sale, this does not prevent it from being sufficiently prepared. Completion of the cooking process can be achieved by alternate methods, both of which constitute limited further preparation and activity by the consumer as the product is partly cooked at the point of sale.*

90. *The pasta product is food of a kind marketed as a prepared meal.*

Example 6 – presentation – not sufficiently prepared

91. *Wholesaler Ltd sells meal preparation kits that contain all the ingredients necessary to make a meal. Each kit is accompanied by step-by-step cooking directions. The Chicken Stir-Fry kit comes with raw chicken, fresh chopped vegetables, and a packet of sauce.*

92. *The product's presentation is not consistent with that of a prepared meal as it is not presented as complete. Even though the product is prepared to some degree and contains all the necessary ingredients for a meal, the ingredients require more than limited preparation, assembly and activity by the consumer before consumption. The chicken and vegetables are raw and cooking the product requires active involvement of the consumer, including stirring, monitoring, adjusting temperature, and the staged addition of different ingredients, to ensure the meal is fully cooked.*

93. *As a matter of common sense and common experience, a product containing raw chicken, fresh chopped vegetables, and a packet of sauce is not a kind of food that is marketed as a prepared meal.*

94. *The Chicken Stir-Fry kit is not of a kind marketed as a prepared meal.*

Example 7 – presentation – not sufficiently complete

95. *Importer Ltd imports and sells a refrigerated food product that contains beef meatballs in a tomato and herb sauce. The product is 800 grams and the packaging indicates it serves 4 people. The packaging provides instructions for heating in the oven or microwave.*

96. *While the product is a sufficient quantity for a meal, its composition and presentation are not consistent with that of a prepared meal. The product has only 2 components, being meatballs and a sauce and is a kind of food that normally requires the addition of pasta, rice or similar additional component to be a complete meal. It is presented as a kind of food that would commonly be included as part of a meal, but is not presented as a kind of food that would be eaten on its own as a complete meal.*

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97. *As a matter of common sense and common experience, the presentation of the product, the nature of the components and their limited number mean that it is not a kind of food that is marketed as a prepared meal.*

98. *The product is not food of a kind marketed as a prepared meal.*

Example 8 – presentation – sufficiently complete

99. *In its refrigerated section, Retailer Ltd sells Easy Dumplings that contain 4 vegetable and 4 prawn dumplings in a microwavable container. The product weighs 250 grams. The product comes with a sachet of soy sauce.*

100. *The product has the attributes of a prepared meal, including quantity, composition and presentation. While not all products containing dumplings are food of a kind marketed as a prepared meal, this product is of a sufficient quantity and composition for a meal and is presented as being a complete meal that can be heated and eaten straight from the packaging.*

101. *As a matter of common sense and common experience, products packaged and presented this way, are food of a kind marketed as a prepared meal.*

102. *The Easy Dumplings product is food of a kind marketed as a prepared meal.*

Date of effect

103. This Determination will not take effect until finalised. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to you to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

104. We will continue to act in accordance with Law Administration Practice Statement PS LA 2011/27 *Determining whether the ATO's views of the law should be applied prospectively only* and Law Administration Practice Statement PS LA 2012/2 (GA) *GST classification of food and beverage items*.

Impact on existing ATO public advice and guidance

105. We have identified that the following updates to existing ATO public advice and guidance are required. These will be made at the time the final Determination is issued:

- an addendum to the Detailed Food List
- withdrawal of Goods and Services Tax Industry Issue Food Industry Partnership Prepared food (Issue 5 Prepared Food).

106. The addendum to the Detailed Food List will be made to ensure consistency with the principles in this Determination. While this will involve updates to the item descriptions and notes for a number of Detailed Food List entries, at this stage we have only identified 3 entries with updates that will be a change in view. In the following Detailed Food List entries, the GST-free status will either change or be limited in application as outlined below:

- chicken wraps, uncooked

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- prepared product that requires assembling before consumption, or
- vegetarian meal that requires assembling before consumption.

107. These Detailed Food List entries are not fully aligned with the principles in this Determination and will require updates to their item description, notes or GST-status, including removal of incorrect examples provided in the notes of the latter 2 entries. The updates will make it clear that products that require only limited further preparation, assembly, and activity by the consumer can be food of a kind marketed as a prepared meal.

108. The withdrawal of Issue 5 Prepared Food will be effective from the date of withdrawal. Issue 5 Prepared Food will be withdrawn because the principles expressed in that Ruling are not fully aligned with the principles deriving from the *Simplot* decision as outlined in this Determination.

109. The Detailed Food List and Issue 5 Prepared Food are public rulings and continue to apply. Your ability to rely on the Detailed Food List or Issue 5 Prepared Food is unaffected by this Determination.

110. The proposed addendum to the Detailed Food List will apply both before and after its date of issue. As the addendum will apply both before and after its date of issue, both the pre-addendum wording of the Detailed Food List and the revised wording in the addendum will apply for overlapping periods of time. In these circumstances, you can choose to rely on either version of the Detailed Food List during that period.³⁸

New entries to the Detailed Food List

111. When the final Determination is issued, we will also update the Detailed Food List by:

- deleting the entry for ‘salad (for example, green, rice, pasta, coleslaw) not marketed as a prepared meal’, and
- adding a number of new entries covering specific readily recognisable categories of salad products.

112. The following entries will be added to the Detailed Food List:

Table 2: This Table shows entries that will be added to the Detailed Food List

Item	GST status
salad – coleslaw, a salad containing cabbage and dressing. May also include: • grated carrot, and • spring onion, parsley, or similar garnishes.	GST-free
salad – creamy potato salad, containing potatoes and dressing. May also include: • bacon, egg, and • spring onions, chives, or similar garnishes.	GST-free
salad – creamy pasta salad, containing pasta and mayonnaise dressing. May also include: • grated carrot, and • spring onion, parsley, or similar garnishes.	GST-free

³⁸ Subsection 357-75(1A) of Schedule 1 to the *Taxation Administration Act 1953*. See also paragraph 58A of TR 2006/10.

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salad – tabbouleh or tabbouli, a salad containing chopped parsley, bulgur wheat (or similar alternative), tomatoes, mint, onion, and dressing.	GST-free
salad – seafood salad, containing seafood extender (sometimes referred to as surimi or seafood mix), prawns, celery and dressing. May also contain spring onions, parsley, or similar garnishes.	GST-free
salad – Caesar salad, containing lettuce, croutons, parmesan cheese, bacon, and Caesar dressing. May also contain chicken or egg.	taxable
salad – Greek salad, containing tomato, cucumber, onion, capsicum, olives, fetta, and dressing. May also contain lettuce.	taxable
pasta product (including a pasta salad) with a pesto or tomato-based sauce or dressing, to be served cold or hot	taxable

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Appendix 1 – Method statement and compliance approach

❶ *This Appendix (including the examples) sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. When this Determination is finalised, provided you follow the advice in this Appendix in good faith and consistently with the Ruling section, the Commissioner will administer the law in accordance with this approach.*

113. The 4-step method in this Appendix sets out the process to follow to determine whether a product is food of a kind marketed as a prepared meal. It contains a compliance approach for certain salad products in Step 3.³⁹

114. We have developed the compliance approach in Step 3 to assist taxpayers in determining whether or not certain salad products are likely to be food of a kind marketed as a prepared meal. Where a salad product meets the criteria in the compliance approach:

- We consider there to be a low risk that the salad product will be food of a kind marketed as a prepared meal.
- We will not have cause to apply compliance resources to review whether the salad product is food of a kind marketed as a prepared meal. However, we may choose to check compliance with this approach.

115. The 4-step method is also outlined in the flow chart at paragraph 131 of this Appendix.

4-step method

Step 1 – Determine whether the product is a sufficient quantity for a meal

116. If the product is not a sufficient quantity for a meal (see paragraph 51 of this Determination):

- the product is not food of a kind marketed as a prepared meal, and
- it is not necessary to proceed to Steps 2 to 4 of this table.

117. Otherwise, proceed to Step 2.

Step 2 – Determine whether the product is covered by the Detailed Food List

118. The Detailed Food List confirms our view on the GST classification of certain readily recognisable kinds of products that are, or are not, food of a kind marketed as a prepared meal.

119. Due to the wide variety of food products supplied across the food industry, it is not possible to exhaustively list all the different kinds of products on the Detailed Food List.

120. A product is considered to be ‘covered by the Detailed Food List’ if the item description of an entry on the Detailed Food List accurately describes the product (see Examples 9 and 10 of this Determination).

³⁹ The other steps (Steps 1, 2 and 4) are not part of the compliance approach – they apply to all products and explain how to apply our view in this Determination and the Detailed Food List. These other steps are included in this Appendix to make it clear when the compliance approach in Step 3 can be applied.

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121. If a product is covered by the Detailed Food List:
- the GST classification in the Detailed Food List applies to that product
 - you cannot apply the compliance approach for certain salad products in Step 3 to that product, even if it is a salad product, and
 - it is not necessary to proceed to Step 4.
122. If a product is not covered by the Detailed Food List, proceed to Step 3.

Step 3 – Apply compliance approach for certain salad products

123. Step 3 provides a compliance approach for determining whether certain salad products have a sufficient variety of ingredients in sufficiently balanced proportions to be food of a kind marketed as a prepared meal.

124. This compliance approach does not apply if the salad product:
- contains a meat or seafood component that is 10% or more of the total weight of the product
 - contains instructions for heating (even if heating is optional)
 - is sold as a single serving in a bowl or similar container from which it is designed to be eaten, or
 - is sold in a takeaway environment such as a food court or salad bar.
125. This compliance approach applies to salad products that are not covered by the Detailed Food List (see Step 2) and have any of the following attributes:
- 70% or more of the total product by weight is a single ingredient or category of ingredient, being pasta, rice or other grain
 - 60% or more of the total product by weight is a single ingredient or category of ingredient, being anything other than pasta, rice or other grain, or
 - the product contains 3 or fewer different ingredients or categories of ingredient, excluding
 - dressing, oil, salt, seasoning, dried herbs, or similar type of ingredient, and
 - individual ingredients that are 1% or less of the total weight of the product.

126. In this context, we use the phrase ‘category of ingredient’ to refer to very similar ingredients or ingredients that are commonly included together. For the purpose of considering whether a salad product has any of these attributes, we consider it appropriate that:

- different varieties of what is essentially the same ingredient be treated as a single ‘category of ingredient’ (for example, white rice and brown rice, cherry and grape tomatoes, and mixed beans)
- leafy greens (for example, lettuce, mizuna, kale, and spinach), raw grated carrot or beetroot, and cabbage be treated as a single ‘category of ingredient’, and
- all other ingredients be counted separately.

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127. Where a salad product meets the criteria in this compliance approach:

- We consider there to be a low risk that the salad product will be food of a kind marketed as a prepared meal.
- We will not have cause to apply compliance resources to review whether the salad product is food of a kind marketed as a prepared meal. However, we may choose to check compliance with this approach.

128. For salad products to which this compliance approach does not apply, proceed to Step 4.

Step 4 – Determine whether the product is of a kind that, as a matter of common sense and common experience, is marketed as a prepared meal

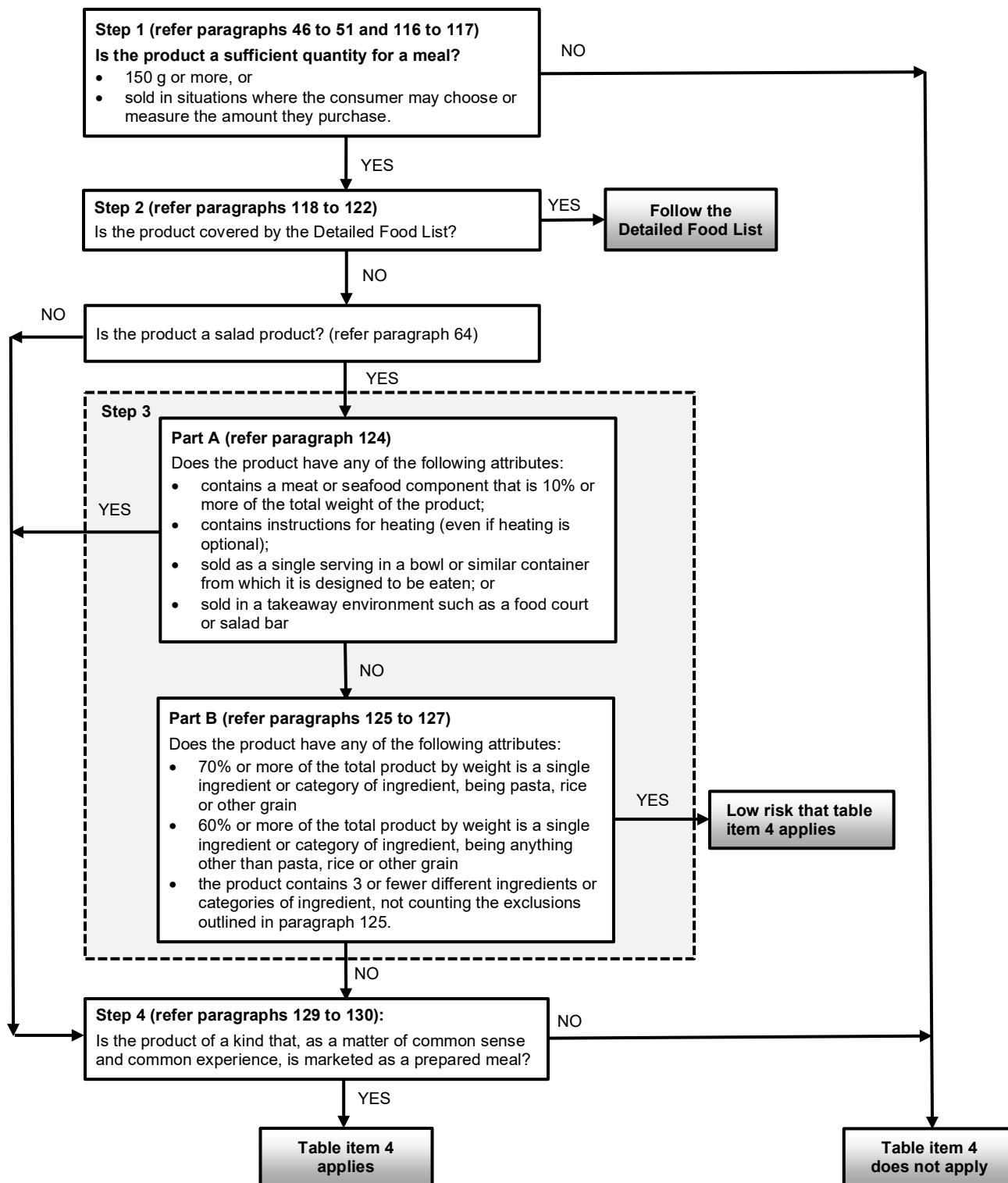
129. For any products where Steps 1 to 3 do not assist with the GST classification of the product under table item 4, the general principles as outlined in this Determination should be applied to determine whether the product is food of a kind marketed as a prepared meal.

130. While not exhaustive, we consider that Steps 1 to 3 will identify **most** salad products that are **not** food of a kind marketed as a prepared meal. Any salad products where Steps 1 to 3 do not assist with GST classification of the product under table item 4, are **highly likely** to be food of a kind marketed as a prepared meal.

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131. This flow chart summarises the 4-step method to assist taxpayers in determining whether a product is food of a kind marketed as a prepared meal. This includes a compliance approach in Step 3 for certain salad products.

Diagram 1: This diagram summarises the 4-step method



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Examples

132. Paragraphs 133 to 176 of this Determination provide examples illustrating how our compliance approach can assist in determining whether certain salad products are likely to be food of a kind marketed as a prepared meal.

Example 9 – coleslaw (GST-free)

133. *Retailer Ltd sells pre-packaged tubs of coleslaw (shredded cabbage, grated carrot and dressing) in various sizes, including 250 grams and 500 grams tubs. Retailer Ltd also sells the same coleslaw from large trays behind its deli counter where customers can select the amount they wish to purchase in a tub.*

Step 1

134. *The 250 grams and 500 grams pre-packaged coleslaw tubs are sold in a sufficient quantity for a meal.*

135. *As the consumer is able to choose or measure the amount of the coleslaw they purchase from the deli counter, the amount chosen or measured is of little relevance in determining whether the product is food of a kind marketed as a prepared meal.*

Step 2

136. *The coleslaw products are covered by the Detailed Food List as the item description of Detailed Food List entry #⁴⁰ accurately describes the products.*

137. *As the coleslaw products are covered by the Detailed Food List:*

- *the compliance approach for certain salad products in Step 3 of this Appendix does not apply to the product, and*
- *it is not necessary to proceed to Step 4.*

138. *The coleslaw products, whether sold in pre-packaged tubs or from behind the deli counter, are not food of a kind marketed as a prepared meal.*

Example 10 – coleslaw with corn and sultanas (GST-free)

139. *Wholesaler Ltd sells a coleslaw product in 300-gram tubs. The packaging states the coleslaw product serves 2 people. This coleslaw product contains the same ingredients as the coleslaw in Example 9 but also contains sultanas and corn.*

Step 1

140. *The coleslaw products are a sufficient quantity for a meal.*

⁴⁰ Detailed Food List entry to be added on final publication of this Determination. Refer to paragraph 112 of this Determination.

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Step 2

141. *The coleslaw product is not covered by the Detailed Food List. The item description of Detailed Food List entry #⁴¹ does not accurately describe the product and there are no other relevant entries.*

Step 3

142. *The coleslaw product:*

- *is not covered by the Detailed Food List*
- *does not have any of the attributes described at paragraph 124 of this Determination, and*
- *has one of the attributes described at paragraph 125 of this Determination as it contains only 3 ingredients or categories of ingredient – shredded cabbage and grated carrot (a single category), corn, and sultanas (dressing is excluded).*

143. *Accordingly, the coleslaw product meets the criteria in the compliance approach in Step 3 of this Appendix. We will not have cause to apply compliance resources to review whether the coleslaw product is food of a kind marketed as a prepared meal.*

144. *It is not necessary to proceed to Step 4.*

Example 11 – Caesar salad kit (taxable)

145. *Manufacturer Ltd makes and sells a Caesar salad kit containing bacon pieces, shaved parmesan cheese, croutons, cos lettuce and a sachet of dressing. The product weighs 200 grams. The different components are contained in separate internal packaging inside the outer bag and need to be combined before eating.*

Step 1

146. *The Caesar salad kit is a sufficient quantity for a meal.*

Step 2

147. *The Caesar salad kit is covered by the Detailed Food List as the item description of Detailed Food List entry #⁴² accurately describes the product.*

148. *As the Caesar salad kit is covered by the Detailed Food List:*

- *the compliance approach for certain salad products in Step 3 of this Appendix does not apply to the product, and*
- *it is not necessary to proceed to Step 4.*

149. *The Caesar salad kit is food of a kind marketed as a prepared meal.*

⁴¹ Detailed Food List entry to be added on final publication of this Determination. Refer to paragraph 112 of this Determination.

⁴² Detailed Food List entry to be added on final publication of this Determination. Refer to paragraph 112 of this Determination.

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Example 12 – Mediterranean salad kit (GST-free)

150. *Retailer Ltd sells a Mediterranean salad kit containing mixed leafy greens (65%), chickpeas (10%), roasted capsicum (10%), fetta (5%), and a sachet of dressing (10%). The product weighs 200 grams and is packaged in a bag.*

Step 1

151. *The Mediterranean salad kit is a sufficient quantity for a meal.*

Step 2

152. *The Mediterranean salad kit is not covered by the Detailed Food List as there is no Detailed Food List entry that accurately describes the product.*

Step 3

153. *The Mediterranean salad kit:*

- *is not covered by the Detailed Food List*
- *does not have any of the attributes described at paragraph 124 of this Determination, and*
- *has one of the attributes described at paragraph 125 of this Determination as a single ingredient or category of ingredient (mixed leafy greens) makes up 60% or more of the total product by weight.*

154. *Accordingly, the Mediterranean salad kit meets the criteria in the compliance approach in Step 3 of this Appendix. We will not have cause to apply compliance resources to review whether this Mediterranean salad kit is food of a kind marketed as a prepared meal.*

155. *It is not necessary to proceed to Step 4.*

Example 13 – Mediterranean salad kit (taxable)

156. *Retailer Ltd also sells another Mediterranean salad kit with a different composition to the product described in Example 12. This Mediterranean salad kit contains mixed leafy greens (45%), chickpeas (15%), roasted capsicum (10%), fetta (10%), olives (10%), and a sachet of dressing (10%). The product weighs 200 grams and is packaged in a bag.*

Step 1

157. *The Mediterranean salad kit is a sufficient quantity for a meal.*

Step 2

158. *The Mediterranean salad kit is not covered by the Detailed Food List as there is no Detailed Food List entry that accurately describes the product.*

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Step 3

159. *The Mediterranean salad kit:*

- *is not covered by the Detailed Food List, and*
- *does not have any of the attributes described at paragraph 124 of this Appendix.*

160. *Accordingly, the compliance approach in Step 3 of this Appendix can be applied to the Mediterranean salad kit.*

161. *However, the Mediterranean salad kit does not have any of the attributes described at paragraph 125 of this Appendix as:*

- *there is no single ingredient or category of ingredient that makes up 70% or 60% (as relevant) or more of the total product by weight, and*
- *it contains more than 3 different ingredients or categories of ingredient (taking into account the relevant exclusions).*

162. *Accordingly, this Mediterranean salad kit does not meet the criteria for the compliance approach in Step 3 of this Appendix.*

Step 4

163. *This Mediterranean salad kit has all the attributes of a prepared meal, including sufficient quantity, composition and presentation. It contains a variety of ingredients, a balanced proportion of ingredients, and is of a sufficient overall quantity for a meal.*

164. *As a matter of common sense and common experience, this Mediterranean salad kit is a kind of food that is commonly marketed as a complete meal to be eaten on its own.*

165. *This Mediterranean salad kit is food of a kind marketed as a prepared meal.*

Example 14 – Mediterranean lamb salad bowl (taxable)

166. *Wholesaler Ltd sells a Mediterranean lamb salad bowl containing mixed leafy greens (50%), roasted lamb strips (15%), chickpeas (10%), roasted capsicum (10%), fetta (5%), and a sachet of dressing (10%). The product weighs 280 grams is packaged in a bowl as a single serving.*

Step 1

167. *The Mediterranean salad bowl is a sufficient quantity for a meal.*

Step 2

168. *The Mediterranean salad bowl is not covered by the Detailed Food List as there is no Detailed Food List entry that accurately describes the product.*

Step 3

169. *The Mediterranean salad bowl has 2 of the attributes described at paragraph 124 of this Determination. It contains a meat component that is 15% (10% or more) of the total weight of the product. It is also sold as a single serving in a bowl from which it is designed*

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to be eaten. Accordingly, the compliance approach in Step 3 of this Appendix does not apply to the product.

Step 4

170. *The Mediterranean salad bowl has all the attributes of a prepared meal, including sufficient quantity, composition and presentation. It contains a variety of ingredients, a balanced proportion of ingredients, and is of a sufficient overall quantity for a meal.*

171. *As a matter of common sense and common experience, the Mediterranean salad bowl is a kind of food that is commonly marketed as a complete meal to be eaten on its own.*

172. *The Mediterranean salad bowl is food of a kind marketed as a prepared meal.*

Note: *In this case, the product has 2 of the attributes described at paragraph 124 of this Determination. However, the presence of any one of the attributes means that the compliance approach in Step 3 of this Appendix does not apply to the product.*

Example 15 – Mediterranean lamb salad sold from a deli counter (taxable)

173. *Retailer Ltd sells a Mediterranean lamb salad with the same composition as in Example 14 of this Determination from large trays behind its deli counter. The Mediterranean lamb salad is scooped up into in a container and the customer is charged based on the weight purchased.*

Step 1

174. *As the consumer is able to choose or measure the amount of the Mediterranean lamb salad they purchase from the deli counter, the amount chosen or measured is of little relevance in determining whether the product is food of a kind marketed as a prepared meal.*

Steps 2 – 4

175. *Steps 2, 3 and 4 apply in the same way as described in Example 14 of this Determination.*

176. *The Mediterranean lamb salad sold from the deli counter is food of a kind marketed as a prepared meal.*

Note: *Bulk packages of the same Mediterranean lamb salad sold by a manufacturer or wholesaler to Retailer Ltd to sell from their deli are also food of a kind marketed as a prepared meal.*

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Appendix 2 – Your comments

177. You are invited to comment on this draft Determination including the proposed date of effect and the impact of the Determination on any existing ATO public advice and guidance that you rely on.

178. In particular, we invite feedback on:

- our view that products that are less than 150 grams in total weight are generally not food of a kind marketed as a prepared meal, and
- our compliance approach to assist taxpayers in determining whether certain salad products are likely to be food of a kind marketed as a prepared meal.

179. Please forward your comments to the contact officer by the due date.

180. A compendium of comments is prepared when finalising this Determination, and an edited version (names and identifying information removed) is published to the Legal database on ato.gov.au.

181. Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 15 November 2024

Contact officer details have been removed as the comments period has ended.

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GSTII FL1; GSTII FI3; TR 2006/10

Legislative references:

- ANTS(GST)A 1999 38-3(1)(c)
- ANTS(GST)A 1999 Sch 1
- TAA 1953 Sch 1 357-75(1A)

Cases relied on:

- Cascade Brewery Company Pty Limited v Commissioner of Taxation [2006] FCA 821; 153 FCR 11; 2006 ATC 4339; 64 ATR 28; [2006] ALMD 7073
- Clean Investments Pty Ltd v Commissioner of Taxation [2001] FCA 80; 105 FCR 248; 2001 ATC 4068; 46 ATR 248; 184 ALR 314

- Lansell House Pty Ltd v Commissioner of Taxation [2010] FCA 329; 2010 ATC 20-173; 76 ATR 19; [2011] ALMD 1538
- Lansell House Pty Ltd v Commissioner of Taxation [2011] FCAFC 6; 190 FCR 354; 2011 ATC 20-239; 79 ATR 22; [2011] ALMD 2353
- Simplot Australia Pty Limited v Commissioner of Taxation [2023] FCA 1115; 2023 ATC 20-881

Other references:

- Further Supplementary Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998
- PS LA 2011/27
- PS LA 2012/2 (GA)

ATO references

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