

# ***GSTD 2025/D1 - Goods and services tax: supplies of formula products***

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This document has been finalised by [GSTD 2026/1](#).

⚠ There is a Compendium for this document: [GSTD 2026/1EC](#) .

## ⚠ **Transitional compliance approach**

We are reviewing our view on how GST applies to formula products marketed principally for children from the age of 12 months. For more information see [Toddler formula](#).

We will not devote compliance resources to the products outlined in Appendix 1 to this Determination until this review is completed. This transitional compliance approach will continue while this draft Determination is being finalised.

Further information on this transitional compliance approach, including when the approach will end, is at paragraphs 68 to 73 of this Determination.



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# Draft Goods and Services Tax Determination

## Goods and services tax: supplies of formula products

### Transitional compliance approach

We are reviewing our view on how GST applies to formula products marketed principally for children from the age of 12 months. For more information – see [Toddler formula](#).

We will not devote compliance resources to the products outlined in Appendix 1 to this Determination until this review is completed. This transitional compliance approach will continue while this draft Determination is being finalised.

Further information on this transitional compliance approach, including when the approach will end, is at paragraphs 68 to 73 of this Determination.

### ❗ Relying on this draft Determination

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Determination applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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**What this draft Determination is about**

- This draft Determination<sup>1</sup> explains our view on when the supply of a formula product is GST-free under section 38-2 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
- Paragraph 38-3(1)(d) of the GST Act provides that the supply of a beverage (or an ingredient for a beverage) will not be GST-free, unless it is of a beverage (or ingredient) of a kind specified in the third column of the table in clause 1 of Schedule 2 to the GST Act.
- The third column of table item 13 of clause 1 of Schedule 2 to the GST Act (table item 13) specifies:
  - beverages, and ingredients for beverages, of a kind marketed principally as food for infants or invalids
- This Determination explains our view on which formula products are GST-free under table item 13 as beverages or ingredients for beverages of a kind marketed principally as food for **infants**.
- This Determination does not cover products that are ingredients used to make formula (ingredient products). However, our view on the meaning of ‘infants’ (see paragraphs 27 to 33 of this Determination) may assist in determining whether an ingredient product is GST-free under table item 13. This will only apply where the ingredient product is of a kind marketed principally for use in making formula products for infants.
- This Determination does not cover supplies of beverages, and ingredients for beverages, of a kind marketed principally as food for **invalids**.
- The third column of table items 1 and 2 in clause 1 of Schedule 2 to the GST Act (table items 1 and 2) specifies:

1	Milk products	any of the following products: <ol style="list-style-type: none"> <li>(a) milk, skim milk or buttermilk (whether liquid, powdered, concentrated or condensed);</li> <li>(b) casein;</li> <li>(c) whey, whey powder or whey paste</li> </ol>
2		beverages consisting of products referred to in item 1 (or a combination of those products), to the extent of at least 95%, but not including flavoured beverages

- This Determination also explains our view on whether supplies of formula products are GST-free under table item 1 or table item 2.
- Appendix 1 to this Determination outlines our transitional compliance approach to formula products marketed principally for children from the age of 12 months.

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<sup>1</sup> 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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10. All further legislative references in this Determination are to the GST Act, unless otherwise indicated.

## Legislative context

11. A supply of food is GST-free.<sup>2</sup>

12. However, a supply is not GST-free if it is a supply of, among other things:

- food of a kind specified in the third column of the table in clause 1 of Schedule 1<sup>3</sup>, or
- a beverage (or an ingredient for a beverage), other than a beverage (or ingredient) of a kind specified in the third column of the table in clause 1 of Schedule 2.<sup>4</sup>

13. This means there is a different GST treatment for ‘food’ as compared with ‘beverages’ and ‘ingredients for beverages’.

14. ‘Food’ is defined by a list of inclusions and a list of exclusions. Relevantly, food is defined to include not only ‘food for human consumption’ but also ‘beverages’ and ‘ingredients for beverages’ for human consumption.<sup>5</sup>

15. ‘Beverage’ is not defined, other than to confirm that it ‘includes water’.<sup>6</sup>

## Background

16. Formula products consist of a powdered preparation that, when mixed with water, becomes a drinkable, nourishing liquid. Some formula products are also sold in liquid ready-to-drink form. Formula products contain less than 95% milk solids.

17. Formula products marketed and sold in Australia are typically identified by ‘stages’ referenced by age:

- Stage 1 – ‘infant formula’ suitable from birth, or from 0 to 6 months
- Stage 2 – ‘follow-on formula’ suitable from 6 to 12 months
- Stage 3 – ‘toddler formula’ suitable from 12 months (sometimes 1 to 3 years)
- Stage 4 – ‘junior formula’ suitable from 2 years.

18. In Australia, formula products are regulated by the Australia New Zealand Food Standards Code (Food Standards Code). Under the Food Standards Code, an ‘infant’ is defined to mean ‘a person under the age of 12 months’.<sup>7</sup>

19. Infant formula products are regulated under Standard 2.9.1 of the Food Standards Code and include ‘infant formula’ and ‘follow-on formula’. These are defined as follows<sup>8</sup>:

***infant formula product*** means a product based on milk or other edible food constituents of animal or plant origin which is represented as nutritionally adequate to serve by itself either

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<sup>2</sup> Section 38-2.

<sup>3</sup> Paragraph 38-3(1)(c), noting this paragraph also includes ‘food that is a combination of one or more foods at least one of which is food of such a kind’.

<sup>4</sup> Paragraph 38-3(1)(d).

<sup>5</sup> Paragraphs 38-4(1)(c) and (d).

<sup>6</sup> Subsection 38-4(2) and section 195-1.

<sup>7</sup> Standard 1.1.2—2 of the Food Standards Code.

<sup>8</sup> Standard 2.9.1—3 of the Food Standards Code. Standard 2.9.1 of the Food Standards Code also regulates infant formula products that meet the definition of ‘special medical purpose product for infants’.

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as the sole or principal liquid source of nourishment for infants, depending on the age of the infant.

**infant formula** means an infant formula product that is represented as:

- (a) a breast milk substitute for infants; and
- (b) satisfying by itself the nutritional requirements of infants under the age of 6 months.

**follow-on formula** means an infant formula product that: is represented as:

- (a) either a breast milk substitute or replacement for infant formula; and
- (b) being suitable to constitute the principal liquid source of nourishment in a progressively diversified diet for infants from the age of 6 months.

20. In contrast, formula products for children aged from 12 months are regulated under Standard 2.9.3, which contains the following definitions<sup>9</sup>:

**formulated supplementary food** means a food specifically formulated as, and sold on the basis that it is, a supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual's requirements.

**formulated supplementary food for young children** means a formulated supplementary food for children aged 1 to 3 years.

21. The Food Standards Code imposes different marketing restrictions, labelling requirements, and compositional requirements on formula products based on their categorisation under these definitions.<sup>10</sup>

## Ruling

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22. A supply of a product is GST-free if it is a beverage, or an ingredient for a beverage, 'of a kind marketed principally as food for infants'.<sup>11</sup>

23. In the context of formula products, it is necessary to determine the meaning of the term 'infants' in table item 13 and the age range of the children covered by the term. It is also necessary to determine the meaning of the phrases 'beverages, and ingredients for beverages', 'of a kind', and 'marketed principally'.

24. Our view is that only supplies of formula products for children aged up to 12 months are GST-free under table item 13 because they are of a kind marketed principally as food for *infants*.

25. Supplies of formula products for children aged from 12 months are not GST-free under table item 13 because they are not of a kind marketed principally as food for infants.

26. Supplies of formula products are not GST-free under table item 1 or table item 2. They are not of a kind specified (relevantly, milk or powdered milk), nor do they consist of at least 95% of these kinds of products.

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<sup>9</sup> Standard 2.9.3—2 of the Food Standards Code.

<sup>10</sup> The requirements for infant formula products (including compositional requirements, labelling and packaging requirements) are set out in Standard 2.9.1 of the Food Standards Code, while the requirements for formulated supplementary foods for young children (including compositional and labelling requirements) are contained in Standard 2.9.3 of the Food Standards Code.

<sup>11</sup> Section 38-2, paragraph 38-3(1)(d) and table item 13.

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### Meaning of ‘infants’

27. The term ‘infants’ is not defined in the GST Act and takes its ordinary meaning in context.<sup>12</sup> The meaning of ‘infants’ was considered in *Cascade Brewery Company Pty Limited v Commissioner of Taxation* [2006] FCA 821 (*Cascade Brewery*) where Sundberg J held<sup>13</sup>:

In my view “infants” in item 13 bears the primary meaning given by the dictionaries referred to: “a child during the earliest period of its life”; “a child during the earliest period of life ...; now most usually applied to a child in arms, a babe”; “a child in the first period of life”. The *Macquarie* meaning is to the same effect as the primary meaning given by the *Oxford Dictionary*:

“1. a child during the earliest period of its life, or a baby.”

28. The extended meaning in some dictionaries, which can include children up to 7 years of age, was rejected.<sup>14</sup> However, it was not necessary in *Cascade Brewery* for the judge to identify a specific age limit at which ‘the earliest period of life’ ends.

29. The meaning of ordinary words in statutes is to be determined by reference to context, on the basis of ‘... local knowledge, experience of the world and common sense ...’<sup>15</sup>, and with ‘... the assistance of dictionaries and other books ...’.<sup>16</sup> However, care must be taken to consider context and to not ‘make a fortress out of the dictionary’.<sup>17</sup>

30. The term ‘infant’ is consistently used in general authoritative sources in health, feeding and childhood development contexts to refer to a child aged up to 12 months.<sup>18</sup> These sources reflect the ordinary experience of raising and feeding children in Australia. They form the basis of a general understanding of the term ‘infant’. From 12 months, children are generally considered to have moved into the next stage or period of life and are usually referred to as ‘toddlers’.

31. While the Food Standards Code is not determinative of the meaning of the term ‘infants’ in table item 13, the use of the term ‘infant’ in the Food Standards Code reflects the general understanding that an infant is a child aged up to 12 months (see paragraphs 18 to 21 of this Determination).

32. In some circumstances, it is necessary to distinguish between the ordinary meaning of a word and a specialised trade meaning to determine the relevant context in which the word is used in a statute.<sup>19</sup> However, this is not necessary in this case as the ordinary meaning aligns with use of the term in the Food Standards Code.

33. The ordinary meaning of ‘infants’ in the context of table item 13 is a child aged up to 12 months.

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<sup>12</sup> *Cascade Brewery Company Pty Limited v Commissioner of Taxation* [2006] FCA 821 at [40].

<sup>13</sup> *Cascade Brewery* at [34].

<sup>14</sup> *Cascade Brewery* at [34–40], [48].

<sup>15</sup> *Lansell House Pty Ltd v Commissioner of Taxation* [2010] FCA 329 (*Lansell House FCA*) at [57], citing *Seay v Eastwood* [1976] 1 WLR 1117 at [1121].

<sup>16</sup> *Cascade Brewery* at [27], citing *Telstra Corp Ltd v The Commissioner of Taxation of the Commonwealth of Australia* [1996] FCA 705. See also *Lansell House FCA* at [60], citing *Australian Gas Light Co v Valuer-General* (1940) 40 SR (NSW) 126 at [137].

<sup>17</sup> See *Thiess v Collector of Customs* [2014] HCA 12 at [23]; *Sea Shepherd Australia Limited v Commissioner of Taxation* [2013] FCAFC 68 at [36].

<sup>18</sup> For example, World Health Organisation, UN High Commissioner for Refugees, Centres for Disease Control and Prevention, Australian Institute of Health, and the Medical Research Council.

<sup>19</sup> For example, *Collector of Customs v Agfa Gevaert Ltd* [1996] HCA 36.

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## Meaning of ‘beverages and ingredients for beverages’

34. The meaning of ‘beverage’ in the sales tax legislation was considered in *Bristol-Myers Company Pty Ltd v Commissioner of Taxation* [1990] FCA 318 (*Bristol-Myers*).

35. In *Bristol-Myers*, Lockhart J held that the meaning of ‘beverage’ in that context was ‘a drink of any kind’.<sup>20</sup> The judge further held that a ‘drink’ was ‘any liquid which is swallowed to quench thirst or for nourishment’.<sup>21</sup> In concluding that the nutritional supplement ‘Sustagen Gold’ was a ‘beverage’, Lockhart J explained that the fact that the product contained added nutrients, and could be consumed as a meal replacement, did not alter its characterisation as a beverage.<sup>22</sup>

36. Formula products generally consist of a powdered preparation supplied with instructions for mixing with water to produce a drinkable, nourishing liquid. Consistent with the observations in *Bristol-Myers*, that drinkable, nourishing liquid is a beverage.

37. Powdered formula products are therefore ‘ingredients for beverages’.

38. Some formula products are also sold pre-mixed and ready-to-drink. These liquid products are ‘beverages’.

## Meaning of ‘of a kind’

39. The phrase ‘of a kind’ is not defined in the GST Act. However, the phrase has been considered by the courts in the context of classification of food products under the GST Act.<sup>23</sup> In these cases, ‘of a kind’ has been interpreted as an operative phrase that adds further generality to the description of a class or genus of items.<sup>24</sup>

40. The words ‘of a kind’ have the effect that the question is not whether the product is the particular item specified in column 3 of the tables in Schedules 1 or 2, but whether the product is a member of a class or genus of food identified by the item specified.<sup>25</sup>

41. 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.

42. A product will be ‘of a kind’ if it possesses the same sort of distinguishing features as those which belong to a particular class or genus of products. The distinguishing features of formula products that belong to the class or genus specified in table item 13 are outlined at paragraph 46 of this Determination.

## Meaning of ‘marketed principally’

43. The marketing of a product involves the end-to-end process where products are put onto the market.<sup>26</sup> This includes promotional and sales activities. The content of the marketing is what those activities objectively convey to the market. Marketing includes

<sup>20</sup> *Bristol-Myers* 23 FCR 126 at [130].

<sup>21</sup> *Bristol-Myers* 23 FCR 126 at [130].

<sup>22</sup> *Bristol-Myers* 23 FCR 126 at [131].

<sup>23</sup> See *Lansell House FCA*; *Lansell House Pty Ltd v Commissioner of Taxation* [2011] FCAFC 6 (*Lansell House FCAFC*); *Cascade Brewery*; *Simplot Australia Pty Limited v Commissioner of Taxation* [2023] FCA 1115 (*Simplot*).

<sup>24</sup> *Lansell House FCA* at [19]; *Lansell House FCAFC* at [30]; *Simplot* at [98].

<sup>25</sup> *Simplot* at [98–99], applying *Cascade Brewery* at [16] and *Lansell House FCAFC* at [30].

<sup>26</sup> *Cascade Brewery* at [24].

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labelling (including the name), packaging, display circumstances, product placement, promotion, and advertising.<sup>27</sup>

44. The activities of all suppliers in a supply chain will be relevant, including those of a manufacturer, importer, wholesaler, or retailer. The marketing activities carried out by competitors in the market are also relevant in identifying the class or genus of formula products marketed principally as food for infants.<sup>28</sup>

45. The marketing test in table item 13 is a ‘marketed principally’ test. The test is not satisfied if products of that kind have some marketing that is directed towards them being used as food for infants. The product must be of a kind marketed ‘mainly, chiefly, predominantly or preponderantly’ as food for infants.<sup>29</sup>

### Formula products of a kind marketed principally as food for infants

46. Due to the regulatory environment in which formula products are marketed and sold in Australia, there is a clear distinction between the kinds that are marketed principally as food for infants (children aged up to 12 months) and the kinds that are not. The distinguishing features of the kinds of formula products that are marketed principally as food for infants, and the kinds that are not, are outlined in Table 1 of this Determination:

Table 1 Distinguishing features of formula products that are of a kind marketed principally as food for infants, and those that are not

Distinguishing features of formula products that are of a kind marketed principally as food for infants	Distinguishing features of formula products that are not of a kind marketed principally as food for infants
<ul style="list-style-type: none"> <li>• labelled or described as:               <ul style="list-style-type: none"> <li>– Stage 1 or Stage 2</li> <li>– infant formula</li> <li>– follow-on formula</li> </ul> </li> <li>• recommended for children aged up to 12 months (for example, 0 to 6 months, 6 to 12 months, ‘suitable from birth’)</li> <li>• a composition that complies with Standard 2.9.1 of the Food Standards Code for ‘infant formula products’.</li> </ul>	<ul style="list-style-type: none"> <li>• labelled or described as:               <ul style="list-style-type: none"> <li>– Stage 3 or Stage 4</li> <li>– toddler formula or milk</li> <li>– junior formula or milk</li> </ul> </li> <li>• recommended for children aged from 12 months (for example, 1 to 3 years, 3 to 5 years)</li> <li>• a composition that complies with Standard 2.9.3 of the Food Standards Code for ‘formulated supplementary food for young children’.</li> </ul>

47. While formula products marketed principally as being for children aged from 12 months have some similar features to those marketed principally as being for children aged up to 12 months, they do not possess the relevant distinguishing features to be products of the same kind.

### Table items 1 and 2 (milk products)

48. Supplies of products are also GST-free if they are of a kind specified in table item 1 or table item 2.

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<sup>27</sup> *Cascade Brewery* at [23].

<sup>28</sup> *Simplot* at [106]; *Cascade Brewery* at [11].

<sup>29</sup> *Cascade Brewery* at [61].

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**Table item 1**

49. Table item 1 provides a list of milk products including ‘milk, skim milk or buttermilk (whether liquid, powdered, concentrated or condensed)’.

50. The Macquarie Dictionary relevantly gives the following definitions<sup>30</sup>:

**milk**

*noun* 1. an opaque white or bluish white liquid secreted by the mammary glands of female mammals, serving for the nourishment of their young, and, in the case of the cow and some other animals, used by humans for food or as a source of dairy products.

2. any liquid resembling this, as the liquid within a coconut, the juice or sap (latex) of certain plants, the liquid obtained by crushing parts of plants as beans or nuts or tubers, or various pharmaceutical preparations.

...

**powdered milk**

*noun* dehydrated milk.

51. The term ‘milk’ in table item 1 is an ordinary English word in common usage.<sup>31</sup> Its meaning is to be determined on the basis of ‘... local knowledge, experience of the world and common sense...’.<sup>32</sup> As commonly understood, milk is a whitish opaque liquid that includes milk derived from animal or plant sources.

52. The class or genus identified in table item 1 comprises various products that either:

- are a kind of milk (milk, skim milk or buttermilk) in various forms (liquid, powdered, concentrated or condensed), or
- can be extracted from milk (casein, whey, whey powder or whey paste).

53. Formula products are not of a kind specified in table item 1. Most relevantly, they are not a kind of milk or powdered milk. This is because, while formula products contain a high proportion of milk solids (but below 95%), they also contain additional ingredients including sweeteners and oils.

54. Beverages, and ingredients for beverages, are not of a kind specified in table item 1 simply because they contain one of the listed products as an ingredient. To read table item 1 as including products that are comprised of less than 95% of the listed products in table item 1 would make table item 2 redundant.

55. Supplies of formula products are therefore not GST-free under table item 1.

**Table item 2**

56. The class or genus identified in table item 2 comprises beverages, other than flavoured beverages, consisting of at least 95% of the products listed in table item 1. The class or genus is limited to ‘beverages’ only and does not also include ‘ingredients for beverages’.

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<sup>30</sup> Pan Macmillan Australia (2025) *The Macquarie Dictionary* online, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au), accessed 15 September 2025.

<sup>31</sup> Similar to the terms used in table item 32 of clause 1 of Schedule 1 to the GST Act ‘biscuits, cookies, crackers, pretzels, cones or wafers’, see *Lansell House FCA* at [51].

<sup>32</sup> *Lansell House FCA* at [57].

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57. Powdered formula products are not of a kind specified in table item 2 as they are not beverages. That is to say, they are not drinks (refer to paragraphs 34 to 38 of this Determination).

58. When sold pre-mixed and ready-to-drink, formula products are beverages. However, ready-to-drink formula products do not consist of at least 95% of the listed product specified in table item 1. Accordingly, they are not of a kind specified in table item 2.

59. Supplies of formula products are therefore not GST-free under table item 2.

**Date of effect**

60. This Determination will not take effect until finalised. When finalised, it will apply both before and after its date of issue. However, it 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*).

61. 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 public advice and guidance**

62. 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:

- withdrawal of Goods and Services Tax Industry Issue – Food Industry Partnership *Beverages for infants* (Issue 14)
- an addendum to the GST Industry Issue GSTII FL1 *Detailed Food List* (DFL).

**Goods and Services Tax Industry Issue – Food Industry Partnership**

63. Our view in this Determination results in the same GST classification outcomes for all formula products (Stages 1 to 4) as in Issue 14 *Beverages for infants* of the Food Industry Partnership Goods and Services Tax Industry Issue, but for different reasons. The view in Issue 14 *Beverages for infants* was based on a trade meaning of 'infant' incorrectly derived from the Food Standards Code.

**Updates to the Detailed Food List**

64. An addendum to the DFL will ensure alignment of the DFL with the view expressed in this Determination.

65. The following new entries will be added to the DFL.

Table 2: New entries to be added to the DFL

Item	GST status
formula for children up to the age of 12 months	GST-free

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formula for children from 12 months (other than formula of a kind marketed principally as food for invalids)	taxable
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66. The following existing entries will be deleted from the DFL because they will be covered by the new entries in Table 2 of this Determination.

Table 3: Existing entries to be deleted from the DFL

DFL ID	Item	GST status
895	baby beverage (beverages, and ingredients for beverages, of a kind marketed principally as food for infants)	GST-free
11	baby formula (beverages, and ingredients for beverages, of a kind marketed principally as food for infants)	GST-free
1335	infant beverage (beverages, and ingredients for beverages, of a kind marketed principally as food for infants)	GST-free
1337	infant formula (beverages, and ingredients for beverages, of a kind marketed principally as food for infants)	GST-free
1355	juice – specialised baby/infant beverage less than 90% by volume of juice (beverages, and ingredients for beverages, of a kind marketed principally as food for infants)	GST-free

67. DFL entry 1355 applying to juice products will be deleted given our view of the ordinary meaning of infant, in the context of table item 13, being a child aged up to 12 months. We have not identified any juice products marketed principally to children up to 12 months.

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**Commissioner of Taxation**

 31 October 2025
 

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## **Appendix 1 – Transitional compliance approach**

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❶ This Appendix 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.

### **Transitional compliance approach to apply**

68. Our past advice and practice, including our review of this issue, has contributed to some uncertainty about the GST classification of formula products for children aged from 12 months.

69. We are applying a transitional compliance approach to the views expressed in this Determination. This transitional compliance approach covers:

- formula products marketed principally for children aged from 12 months, and
- products that are marketed principally as an ingredient for formula products for children aged from 12 months.

70. If you have treated the supply of these products as GST-free in good faith, we will not have cause to devote compliance resources to reviewing their GST treatment for a period following the finalisation of this draft Determination<sup>33</sup> (subject to paragraphs 72 to 73 of this Determination).

71. This transitional compliance approach will end at the conclusion of the first quarterly tax period that provides at least 4 months from the date of publication of the final Determination. For example, if the final Determination is published in March, April or May 2026, the transitional compliance approach will apply for tax periods up to and including 30 September 2026.

### **When this transitional compliance approach will not apply**

72. This transitional compliance approach will not apply if:

- you take action to change your prior treatment of these products by now claiming input tax credits for acquisitions of the products that, at the time, you understood were supplied to you GST-free (see paragraph 73 of this Determination for further information)
- there is evidence of avoidance, fraud or evasion, or
- you otherwise take inappropriate advantage of this transitional compliance approach.

73. If you take action to now claim input tax credits on your acquisitions of the products, not only will the transitional compliance approach not apply to you, you will also need to review your on-supply of the products and remit the GST payable on those taxable supplies.

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<sup>33</sup> The date to be specified in the final Determination will align with the end of the first quarterly tax period that allows a minimum of 3 months from the date of publication of the final Determination.

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## Changes to GST treatment for past periods

74. If you intend to make changes to your GST treatment of supplies or acquisitions of for formula products in past periods, you should also consider:

- the potential effect of Division 142 (refer to Goods and Services Tax Ruling GSTR 2015/1 *Goods and services tax: the meaning of the terms 'passed on' and 'reimburse' for the purposes of Division 142 of the A New Tax System (Goods and Services Tax) Act 1999*), and
- the requirement to hold, and information requirements of, a valid tax invoice (refer to Goods and Services Tax Ruling GSTR 2013/1 *Goods and services tax: tax invoices*).

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## Appendix 2 – Your comments

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75. You are invited to comment on this draft Determination including the proposed date of effect and transitional compliance approach. Please forward your comments to the contact officer by the due date.

76. 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.

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

**Due date:** 28 November 2025

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

**GSTD 2025/D1**


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 Status: **draft only – for comment**


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**References***Related rulings and determinations:*

GSTLII FL1; TR 2006/10; GSTR 2013/1;  
GSTR 2015/1

*Legislative references:*

- ANTS(GST)A 1999 38-2
- ANTS(GST)A 1999 38-3(1)(c)
- ANTS(GST)A 1999 38-3(1)(d)
- ANTS(GST)A 1999 38-4(1)(c)
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- ANTS(GST)A 1999 Div 142
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*Cases relied on:*

- Australian Gas Light Co v Valuer-General (1940) 40 SR (NSW) 126; 57 WN (NSW) 53; 14 LGR (NSW) 149
- Bristol-Myer Company Pty Ltd v Commissioner of Taxation [1990] FCA 318; 23 FCR 126; 90 ATC 4553; (1990) 21 ATR 417
- Cascade Brewery Company Pty Limited v Commissioner of Taxation [2006] FCA 821; 153 FCR 11; 2006 ATC 4339; (2006) 64 ATR 28
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- Sea Shepherd Australia Limited v Commissioner of Taxation [2013] FCAFC 68; 212 FCR 252; (2013) 92 ATR 836
- Seay v Eastwood [1976] 3 All ER 153; (1976) 1 WLR 1117; (1976) 120 Sol J 734
- Simplot Australia Pty Limited v Commissioner of Taxation [2023] FCA 1115; 2023 ATC 20-881; (2023) 117 ATR 298; 2024 ALMD 1119
- Thiess v Collector of Customs [2014] HCA 12; (2014) 250 CLR 664; 2014 306 ALR 594; (2014) 92 ATR 28
- Telstra Corp Ltd v The Commissioner of Taxation of the Commonwealth of Australia [1996] FCA 705; 68 FCR 566; 96 ATC 4805; (1996) 33 ATR 290

*Other references:*

- Australia New Zealand Food Standards Code 1.1.2—2
- Australia New Zealand Food Standards Code 2.9.1
- Australia New Zealand Food Standards Code 2.9.1—3
- Australia New Zealand Food Standards Code 2.9.3
- Australia New Zealand Food Standards Code 2.9.3—2
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## ATO references

NO: 1-12UID3GK  
ISSN: 2205-6254  
BSL: ISP  
ATOlaw topic: Goods and services tax ~~ Food ~~ Beverages

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