

# ***What is food? -***

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## Food Industry Partnership

### What is food?

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### What is food?

1. A supply of food is GST-free in accordance with section 38-2 of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act). Food is defined in the Act to mean:

- Food for human consumption (whether or not requiring further processing or treatment);
- Ingredients for food for human consumption;
- Beverages for human consumption (including water);
- Ingredients for beverages for human consumption;
- Goods to be mixed with or added to food for human consumption (including condiments, spices, seasonings, sweetening agents or flavourings); or
- Fats and oils marketed for culinary purposes.

2. However, food does not include:

- Live animals (other than crustaceans or molluscs);
- Unprocessed cow's milk;
- Any grain, cereal or sugar cane that has not been subject to any process or treatment resulting in an alteration of its form, nature or condition; or
- Plants under cultivation that can be consumed (without being subject to further process or treatment) as food for human consumption.

3. Once it has been determined that an item is food, further consideration needs to be given to section 38-3 of the Act, which applies to make certain foods subject to GST. A supply of food will be subject to GST if it is a supply of:

- Food for consumption on the premises from which it is supplied;
- Hot food for consumption away from the premises where it is supplied;

- Food specified in Schedule 1 of the Act (which includes prepared food, confectionery, savoury snacks, bakery products, ice-cream food and biscuit goods), or food that is a combination of foods both on Schedule 1 and those that are not;
- A beverage, other than those specified in Schedule 2 of the Act (which includes milk products, soy milk and rice milk, tea, coffee etc., fruit and vegetable juices, beverages for infants or invalids and water);
- Ingredients for beverages, other than those specified in Schedule 2 of the Act.

***Does the way a product is marketed determine whether it is food?***

4. In determining whether an item will be considered food for human consumption, a marketing test applies to certain items listed in Schedule 1 and Schedule 2 of the Act as follows:

- Fats and oils marketed for culinary purposes – (s38-4(1)(f) of the GST Act) ;
- Food marketed as a prepared meal, but not including soup;
- Food marketed as confectionery;
- Food marketed as ingredients for confectionery;
- Flavoured iceblocks (whether or not marketed in a frozen state);
- Malt extract, if it is marketed principally for drinking purposes;
- Preparations for drinking purposes that are marketed principally as tea preparations, coffee preparations, or preparations for malted beverages;
- Preparations marketed principally as substitutes for tea preparations, coffee preparations or preparations for malted beverages;
- Dry preparations marketed for the purpose of flavouring milk;
- Concentrates for making non-alcoholic beverages if the concentrates consist of at least 90% by volume of fruit juices; or
- Beverages and ingredients for beverages, of a kind marketed principally as food for infants or invalids.

***Are products that can be consumed as ‘food’ but also have other uses considered to be food?***

5. A supply of a product that is food for human consumption as defined in section 38-4 of the Act is GST-free (provided that it is not excluded by another part of the food provisions). However, some GST-free food products have alternative non-food uses.

6. There is no requirement for the supplier to ascertain how the purchaser will use the product. The GST status of the product depends on whether it is a supply of food for human consumption as defined in the Act.

***Example 1***

7. Rice flour can be consumed as an ingredient for food (for example, added to bakery products) and satisfies the definition of food in paragraph 38-4(1)(b) of the Act. However, rice flour can also be used in the processing of aluminium. If rice flour that is supplied as an ingredient for food for human consumption is purchased by an aluminium processor, it remains GST-free. It does not matter that the purchaser intends to use the food product for purposes other than food for human consumption.

8. However, a product with a GST-free food use will not retain its GST-free status if, in the course of its supply, the supplier differentiates it from the GST-free food product.

### *Example 2*

9. A butcher supplies soup bones for sale. Soup bones are 'ingredients for food for human consumption' pursuant to paragraph 38-4(1)(b) of the Act. If a customer purchases soup bones with the intention of feeding them to her dog, the status of the product supplied has not changed. The butcher has supplied food for human consumption that is GST-free. It does not matter that the customer will use the bones for an alternative use.

10. If the butcher finds that soup bones are not selling well and re-labels them as 'pet food', the product has been differentiated by the supplier. When a supply of pet bones is made to a customer, it is not a supply of 'food for human consumption'. As a result the supply of pet bones is a taxable supply.

11. To be GST-free under the food provisions of the Act, the product must be a supply of food for human consumption as defined in the Act. The mere fact that a product is edible is not sufficient for it to qualify as GST-free food.

### *Example 3*

12. Saltco refines a batch of raw salt to cooking salt specifications. This batch complies with food standards. One portion of this batch is to be sold as cooking salt. Supplies of this product are supplies of an ingredient for food that is GST-free.

13. Saltco could have chosen to sell this entire batch of refined salt as cooking salt since it complies with food standards. However, the second portion of the batch is designated 'swimming pool salt'. As such, it no longer has to meet food standards or to be packaged and stored hygienically. Although the salt may be edible (and may also be stored to food grade standards), it is no longer a supply of an ingredient for food for human consumption. It is a supply of pool salt. A supply of pool salt is not a supply of food as defined in the Act and is therefore not GST-free.

14. It cannot be said that a supply of a product, which is indicated to be other than food, is a supply of food, even if it is identical in substance to the GST-free food product.

15. In determining whether a supply is a supply of GST-free food, it is not only the physical characteristics of the product that are important but also the nature of the supply.

16. Some of the ways in which a dual-purpose food product could be considered to be differentiated for non-food use are:

- designation as something other than food
- pre-delivery storage in conditions or containers that are unsuitable for food
- packaging in a non-food type of package or container
- labelling, invoicing or marketing as a non-food product
- delivery in a manner unsuitable for food

### *Example 4*

17. Vinegar is processed to meet food standards. Part A of the batch is designated for supply as an ingredient for food. Part B of the batch is designated for supply as a household cleaner. Part A is placed in hygienic bottles with tamper-proof seals. The labels indicate use of the vinegar in food. A supply of this product is a GST-free supply of food for human consumption for the purposes of the Act.

18. Part B of the batch is placed in plastic containers that do not satisfy standards for supply of a food product. The Part B product is labelled as cleaning vinegar. The products have been differentiated by the manner of their packaging and labelling. A supply of cleaning vinegar is not a supply of food for human consumption as defined in the Act. Therefore the supply is a taxable supply.

#### *Example 5*

19. Flour to be supplied as an ingredient for food is stored in stainless steel silos that are fumigated in accordance with standards for the storage of food. The flour is packed into hygienic paper bags. A supply of this product is a GST-free supply of food.

20. Flour milled to the same specifications, but to be supplied for use in manufacturing glue, is stored in sheds. It is fumigated with chemicals that render it unsuitable for use in food. It is delivered in bulk bins that are not subject to any hygiene standards. These products have been differentiated by the manner of their storage, packaging and delivery. In this case, a supply of the product for use in glue manufacture is not a supply of food for human consumption as defined in the Act. Therefore the supply is a taxable supply.

#### ***Will food' be GST-free if it is past its 'use-by date'?***

21. Food that is unfit for human consumption (for example, rotten meat or vegetables) is not considered food for human consumption. Because there is no marketing test, the vendor will determine the fitness of the product for human consumption. While the 'use by date' may be a relevant factor for the vendor's determination, it is not of itself relevant to the GST status of the product.

#### *Example*

22. Sammy's supermarket has a practice whereby fruit and vegetables that are no longer suitable for sale to the public are removed from the shelves and sold to farms, piggeries etc as stock feed. In this case, Sammy has determined that the fruit and vegetables are no longer food for human consumption and any sale will be subject to GST.

#### ***Does a supply of 'food' need to be legal for it to be GST-free?***

23. A supply of food is GST-free provided it satisfies the definition of food in section 38-4 of the GST Act (that is, it is considered to be food for human consumption). The term 'legal supply' has no application to the GST legislation (subsection 9-10(3) of the Act). For example, the food regulations per se have no standing in relation to the tax liability of a good, and a broad interpretation of the term 'food for human consumption' is to be applied.

24. Therefore, animals that are not generally consumed by humans are included in the definition of food as any supply of meat (other than live animals) will be GST-free if the meat is food for human consumption – see the fact sheet GST on Livestock and game sales.

#### ***Non-edible by-products***

25. Non-edible by-products are not considered to be food for human consumption and are subject to GST – see the fact sheet GST on Livestock and game sales.

***Does 'food' include pet food?***

26. Food does not include food that is marketed for animals (for example, pet food) as it is not considered to be food for human consumption (paragraph 1.13 of the Further Supplementary Explanatory Memorandum A New Tax System (Goods and Services Tax) Bill 1999).

***Example***