

GSTD 2000/5 - Goods and services tax: when is a supply of food, in terms of paragraph 38-3(1)(a) of the A New Tax System (Goods and Services Tax) Act 1999, 'for consumption on the premises from which it is supplied'?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*

Goods and Services Tax Determination

Goods and services tax: when is a supply of food, in terms of paragraph 38-3(1)(a) of the *A New Tax System (Goods and Services Tax) Act 1999*, ‘for consumption on the premises from which it is supplied’?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you - provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Date of Effect

This Determination applies [to tax periods commencing] both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

1. A supply of food, for consumption on the premises from which it is supplied, is a taxable supply. Whether you supply food for consumption on the premises from which it is supplied will depend upon the circumstances surrounding the supply.
2. You supply food for consumption on the premises from which it is supplied if the food is to be consumed:
 - a) at the place where the supply takes place – for example, restaurants, cafes, snack bars, hotels, motels, bed and breakfasts, clubs, reception lounges, aircraft, boats, trains, venues for catered functions or university dining halls;

- b) in grounds surrounding the food supply outlet – for example, at tables on a footpath or in a food court;
- c) at any venue with defined limits or boundaries associated with leisure, sport or entertainment – for example, football grounds, gardens (that are on private property or have restricted access), showgrounds, amusement parks, racecourses, zoos or concert halls.

3. However, some suppliers will provide food for consumption both on the premises (dine-in) and away from the premises (takeaway). If you supply food that would otherwise be GST-free to both dine-in and takeaway customers, you need to identify food supplied for consumption on the premises from that which is to be consumed elsewhere. If your business operations identify takeaway supplies from dine-in supplies, the takeaway food is not supplied for consumption on the premises. You will be able to identify takeaway food from dine-in food if you:

- have separate ordering and/or serving processes for dine-in and takeaway customers (for example, dine-in customers may order and receive their meals at their tables or food could be served on a plate or on a returnable tray);
- provide different packaging for dine-in and takeaway food (for example, dine-in customers may receive their water or fruit juice in a glass rather than in a sealed disposable container); or
- have different menus or product lines for dine-in and takeaway customers.

4. If your business operations do not identify takeaway supplies from dine-in supplies, food will remain GST-free if:

- it is served in its original or takeaway form (for example, an unprocessed apple or unopened bottle of water); and
- it is not served in circumstances indicating that consumption will take place on the premises (for example, the food is not served at a table).

Example 1

5. *Greg operates a roadhouse. The roadhouse supplies food which is taken away and consumed off premises whilst food is also provided to eat in a diner which is part of the premises. Orders are made at the same counter for food taken away and for food consumed in the diner.*

6. *It is Greg's practice to ask customers whether they want to eat in the diner or take food away. Customers who eat in the diner are given a table number and sit themselves at the table. Customers taking food away wait at the counter.*

7. *Different packaging is used. Meals in the diner are served on a plate. Cold beverages provided in the diner are served in a glass. Meals taken away are wrapped in paper or cardboard. Cold beverages taken away are either supplied in disposable cups or in the original packaging.*

8. *Greg's business operations allow him to separately identify food for consumption both on the premises and away from the premises.*

Example 2

9. *Heather has a snack bar in a food court. All of the water that she sells to customers, whether they drink it in the food court or take it away, is in its sealed bottled form. It is not Heather's practice to ask customers who purchase food or drink if they wish to consume it in the food court or take it away.*

10. *The bottled water is not served at a table and it is not served in circumstances indicating that consumption will take place on the premises (for example, accompanying a meal on a returnable tray). We will accept that the water is not supplied for consumption on the premises.*

Example 3

11. *The facts are the same as in example 2 except that Heather asks her customers if they wish to consume their food or drink in the food court or take it away – as she uses different packaging for dine-in and takeaway supplies.*

12. *For those customers who indicate that they will dine in the food court, supplies of food and drink, including whole fruit and bottled water which would otherwise be GST-free, are for consumption on the premises and will be taxable. For those customers who indicate that they will take the food or drink away, supplies that are otherwise GST-free are not for consumption on the premises and will remain GST-free.*

Commissioner of Taxation

21 June 2000

Previous draft:

Previously released as GSTD 2000/D2.

Related Rulings/Determinations:

TR 2006/10; GSTD 2000/4

Subject references:

- food
- food premises
- Goods & services tax

- GST food

- GST free

- GST supply

- premises

- taxable supply

- taxation determinations

Legislative references:

- ANTS(GST)A99 38-3(1)(a)

- TAA 1953 Sch 1 Div 358

ATO references:

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