GSTD 2002/2 - Goods and services tax: what supplies of fruit and vegetable juices are GST-free?

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Goods and Services Tax Determination

Goods and services tax: what supplies of fruit and vegetable juices are GST-free?

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).

Background

1. *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides that supplies of many foods and beverages for human consumption are GST-free. Fruit and vegetable juices are beverages for human consumption and their supply will be GST-free if they meet the requirements listed in clause 1 of Schedule 2 to the GST Act, and do not come within any of the other exclusions listed in section 38-3 of the GST Act.

2. This Determination explains how you work out whether the fruit or vegetable juice you supply is GST-free. The Determination also explains when a supply of a concentrate for making non-alcoholic beverages is GST-free.

Explanation

3. A supply of food is GST-free.[1] Food is defined to include beverages for human consumption and ingredients for such beverages.[2] However, supplies of beverages or ingredients for beverages will only be GST-free[3] if they satisfy the requirements in clause 1 of Schedule 2 to the GST Act. The items in Schedule 2 that concern fruit and vegetable juices are Items 10, 11 and 12. These items are shown in the following extract.

'**Schedule 2 - Beverages that are GST-free**

1 Beverages that are GST-free

*Beverages specified in the third column of the table are GST-free.

Beverages that are GST-free		
Item	**Category**	**Beverages**
10	Fruit and vegetable juices	concentrates for making non-alcoholic *beverages, if the concentrates consist of at least 90% by volume of juices of fruits
11		non-alcoholic carbonated *beverages, if they consist wholly of juices of fruits or vegetables
12		non-alcoholic non-carbonated *beverages, if they consist of at least 90% by volume of juices of fruits or vegetables

3 Fruit and vegetable juices

For the purposes of items 11 and 12 in the table, herbage is treated as vegetables.'

Fruit and vegetable juices

4. Item 11 provides that a carbonated beverage will only be GST-free if it consists wholly of fruit or vegetable juices. Item 12 provides that non-alcoholic and non-carbonated beverages will only be GST-free if they consist of at least 90% of juices of fruits or vegetables by volume. However, to be supplied GST-free the fruit and vegetable juices must be beverages under the ordinary meaning of the word beverage.

[1] Section 38-2.
[2] Subsection 38-4(1).
[3] Paragraph 38-3(1)(d).

The meaning of beverage

5. The GST Act defines beverage to include water,[4] but does not otherwise discuss the meaning of a beverage. The word beverage appears in a similar context in the former sales tax legislation[5] and has been considered by the courts to mean 'a drink of any kind' and, in turn, drink as 'any liquid which is swallowed to quench thirst or for nourishment.'[6]

6. For something to be a drink, it must be a liquid to be swallowed:

- to quench thirst; or
- for nourishment.

7. A liquid providing nourishment will sustain life by assisting in growth or providing energy. A nutritional purpose may be contrasted with a medicinal purpose which arises where a liquid is provided for the treatment of disease or has curative or remedial properties.

8. Liquids that are consumed other than to quench thirst or for nourishment (for example, liquids consumed for medicinal purposes) do not satisfy the requirements of Items 11 or 12 of Schedule 2.

Concentrates

9. Item 10 provides that certain concentrates for making beverages can be supplied GST-free, where they are for making non-alcoholic beverages. These products contain concentrated fruit or vegetable juices, and when reconstituted by the addition of water, return to a drinkable 'pure juice' state. However, to be supplied GST-free, the concentrate must consist of at least 90% by volume of juices of fruits or vegetables.

10. The labelling[7] of a product will indicate whether the concentrate either comprises more than 10% of sugar or other additives, such as preservatives and vitamin C, and therefore is subject to GST, or whether it consists 90% or more of fruit or vegetable juices and is GST-free.

Example 1 – a juice that is supplied GST-free

11. *ABC sells 1 litre bottles of orange juice. The labelling indicates that the juice is 100% orange juice. The labelling also states:*

- *reconstituted orange juice;*
- *no preservatives;*
- *no artificial colour; and*
- *contains vitamin C.*

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[4] The section 195-1 definition of beverage states that it has the meaning given by subsection 38-4(2).
[5] See, for example, Item 13 in Schedule 2 to the *Sales Tax (Exemptions and Classifications) Act 1992*.
[6] See Lockhart J in *Bristol Myers Co. Pty Ltd v. Federal Commissioner of Taxation* (1990) 21 ATR 417 at 421; 1990 ATC 4553 at 4556.
[7] *Australia New Zealand Food Standards Code* Standard 1.2.4 sets out the specific requirements for the labelling and naming of ingredients and compound ingredients.

12. *ABC orange juice consists of at least 90% fruit juice. It can be drunk to quench thirst or can be an accompaniment to a meal and will provide nourishment. Although it might be 'healthy' it is not in the nature of a medicine. The supply of this kind of beverage is GST-free under Item 12 of Schedule 2.*

13. *ABC also supplies a 250ml tetra® pack of orange juice that is labelled the same as the l litre orange juice. The tetra® pack has a straw attached. The supply of the orange juice in the tetra® pack is also GST-free under Item 12 of Schedule 2.*[8]

Example 2 – a juice that is provided as a taxable supply

14. *XYZ sells pure Aloe Vera juice in a range of sizes. The labelling on each bottle includes:*

- *a recommended dosage; and*
- *information on the medicinal benefits of the juice.*

Pamphlets that provide similar information are sometimes available at retail outlets.

15. *XYZ also markets a flavoured Aloe Vera juice. The labelling of this juice is identical to the labelling of the pure juices except that it states the juice has 15% lemon juice added. The XYZ range includes an Aloe Vera concentrate that is to be added to water. When water is added, the resulting reconstituted juice is consumed for the same reasons as XYZ Aloe Vera juice.*

16. *The XYZ range of Aloe Vera juices consist of at least 90% fruit or vegetable juice. However, they are consumed for their medicinal benefits as opposed to providing nourishment or as a drink or to quench thirst. The addition of lemon or another pure juice does not change the character of the juice. The juice is not a beverage for the purposes of paragraph 38-4(1)(c) of the GST Act and therefore is not GST-free. The XYZ Aloe Vera concentrate is an ingredient for making reconstituted aloe vera juice. However, it fails to satisfy paragraph 38-4(1)(d) of the GST Act as it is used for making a juice that is not a beverage for the purposes of paragraph 38-4(1)(c) of the GST Act and therefore is not GST-free.*

Commissioner of Taxation
22 May 2002

Previous draft:
Previously released in draft form as GSTD 2002/D1

Related Rulings/Determinations:
TR 2006/10

[8] The tetra® pack and straw are GST-free as they meet the requirements of section 38-6.

Subject references:

- fruit juices
- Goods & services tax
- GST beverages
- GST food
- GST free
- medicines & drugs
- taxable supply

Legislative references:

- ANTS(GST)A99 Subdiv 38A
- ANTS(GST)A99 38-2
- ANTS(GST)A99 38-3
- ANTS(GST)A99 38-3(1)(d)
- ANTS(GST)A99 38-4(1)
- ANTS(GST)A99 38-4(1)(c)
- ANTS(GST)A99 38-4(1)(d)
- ANTS(GST)A99 38-4(2)
- ANTS(GST)A99 38-6
- ANTS(GST)A99 195-1
- ANTS(GST)A99 Schedule 2
- Sales Tax (Exemptions and Classifications) Act 1992 Schedule 2
- TAA 1953 Sch 1 Div 358

Other references:

- Australia New Zealand Food Standards Code Standard 1.2.4

Case references:

- Bristol Myers Co Pty Ltd v. Federal Commissioner of Taxation (1990) 21 ATR 417; 1990 ATC 4553

ATO references:

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