

GSTD 2008/2 - Goods and services tax: are supplies of food known as breakfast bars GST-free?

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! There is a Compendium for this document: **GSTD 2008/2EC** .

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Goods and Services Tax Determination

Goods and services tax: are supplies of food known as breakfast bars GST-free?

Preamble

This document was published prior to 1 July 2010 and was a public ruling for the purposes of 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.]

1. No, supplies of food known as breakfast bars are *not* GST-free and are therefore taxable supplies if all the other requirements of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met.

Explanation

2. The GST Act provides that many supplies of food are GST-free. A supply of food is GST-free¹ if the product is food as defined in the GST Act and the supply is not excluded from being GST-free by the GST Act.² As food for human consumption, breakfast bars satisfy the definition of food.³

¹ Section 38-2 of the GST Act.

² Section 38-3 of the GST Act.

³ Paragraph 38-4(1)(a) of the GST Act.

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3. However, the GST Act also provides that supplies of certain specified food are not GST-free. That is, food of a kind specified in the table in clause 1 of Schedule 1 to the GST Act is not GST-free, nor is food that is a combination of one or more foods at least one of which is food of such a kind.⁴

4. Item 11 of Schedule 1 to the GST Act (Item 11) specifies 'food known as muesli bars or health food bars, and similar foodstuffs'. Therefore, supplies of food known as muesli bars, health food bars and foodstuffs of a similar kind are not GST-free.

Known as

5. The use of the words 'known as' in Item 11 does not indicate a specific marketing test. That is, foodstuffs do not have to be actually labelled 'muesli bars' or 'health food bars', to be food known as muesli bars or health food bars. Rather, the terms 'muesli bars' and 'health food bars' are broad terms which are commonly used by sellers and consumers, indicating classes of products. Therefore, the Commissioner considers that the ordinary usage of these terms is appropriate in determining whether food known as breakfast bars fall within Item 11.

Muesli bars

6. The term 'muesli bar' is not defined in the GST Act, so the ordinary meaning of the term applies. The dictionary definition of muesli bar is 'a commercially-prepared and packaged snack made from a muesli mixture, usually sweetened and set in a bar shape'.⁵ Muesli is defined as 'a breakfast cereal of various mixed products such as oats, wheat germ, chopped fruit and nuts, etc'.⁶

7. A typical muesli bar contains ingredients similar to those found in muesli breakfast cereals, plus additional sugars and other ingredients necessary to achieve a consistency suitable for presentation in bar form. Some muesli bars contain confectionery pieces such as chocolate chips or chocolate, yoghurt or other flavoured coatings.

Similar foodstuffs

8. Item 11 specifies 'foods known as muesli bars or health food bars, and similar foodstuffs'. The ordinary meaning of 'similar' is 'having likeness or resemblance, especially in a general way'.⁷ Therefore, foods that resemble muesli bars in a general way, having regard to their essential character, are considered to be similar foodstuffs and therefore within the class of foods specified in Item 11.

9. The characteristics of muesli bars that form a basis for comparison with other products may be categorised as:

- physical presentation; and
- ingredients.

⁴ Paragraph 38-3(1)(c) of the GST Act.

⁵ The Macquarie Dictionary, 2001, revised 3rd edition, Macquarie Library Pty Ltd, NSW.

⁶ The Macquarie Dictionary, 2001, revised 3rd edition, Macquarie Library Pty Ltd, NSW.

⁷ The Macquarie Dictionary, 2001, revised 3rd edition, Macquarie Library Pty Ltd, NSW.

Physical presentation

10. Muesli bars are shaped in the form of a bar for ease of eating. The size of muesli bars is appropriate for a single serving.
11. The texture of muesli bars varies from chewy to crunchy. Muesli bars are usually individually wrapped when sold, either individually or packaged in boxes.
12. To be similar to a muesli bar, a product would need to have a similar physical presentation.

Ingredients

13. To be similar to muesli bars, it would be expected that the foodstuff would contain some or all of the ingredients common to muesli bars as described above.

Breakfast bars

14. Some products available on the market are known as 'breakfast bars'. The term 'breakfast bar' is not used in the GST Act.
15. Products known as breakfast bars may include the words 'breakfast bars' on their packaging and usually:
- consist predominantly of cereals and sugars and may contain other ingredients such as fruits and/or nuts; and
 - are of a similar size and shape to muesli bars.
16. It is the Commissioner's view that breakfast bars resemble muesli bars in the manner of their physical presentation as they are of similar shape and size, and contain similar ingredients.
17. As breakfast bars are similar in character to muesli bars, they satisfy the description of 'similar foodstuffs'. Therefore, breakfast bars are food of a kind specified at Item 11. As paragraph 38-3(1)(c) of the GST Act provides that food of a kind specified in Schedule 1 to the GST Act is not GST-free, supplies of breakfast bars are taxable supplies if all the requirements of section 9-5 of the GST Act are met.
18. As breakfast bars are similar to muesli bars, we do not consider it necessary to consider whether they are also similar to health food bars.

Date of Effect

19. 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).
20. [Omitted.]

Commissioner of Taxation27 August 2008

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Previous draft:

Previously issued as GSTD 2008/D1

Related Rulings/Determinations:

TR 2006/10

Subject references:

- breakfast bars
- goods and services tax
- GST supply
- GST-food
- GST-free
- health food bars
- muesli bars
- taxable supply

Legislative references:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 38-2
- ANTS(GST)A 1999 38-3
- ANTS(GST)A 1999 38-3(1)(c)
- ANTS(GST)A 1999 38-4(1)(a)
- ANTS(GST)A 1999 Sch 1
- TAA 1953 Sch 1 Div 358

Other references:

- The Macquarie Dictionary, 2001, revised 3rd edition, Macquarie Library Pty Ltd, NSW

ATO references

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