


Decision impact statement

Simplot Australia Pty Limited v Commissioner of Taxation

Court citation:	[2023] FCA 1115
Venue:	Federal Court
Venue reference no:	VID 59 of 2022
Judge name:	Hespe J
Judgment date:	22 September 2023
Appeals on foot:	No
Decision outcome:	Favourable to the Commissioner

Impacted advice

 The ATO is reviewing the impact of this decision on related advice and guidance products.

- Goods and Services Tax Industry Issue GSTII FL1 *Detailed Food List*
- Goods and Services Tax Industry Issue GSTII FI3 *Prepared food*
- GST issues register *Food industry partnership*

Summary

This Decision impact statement outlines the ATO's response to this case, which concerned whether 6 frozen food products were 'food of a kind marketed as a prepared meal'.

A supply of food is taxable under paragraph 38-3(1)(c) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) if it is food of a kind specified in the third column of table item 4 of clause 1 of Schedule 1 to the GST Act.

All legislative references in this Decision impact statement are to the GST Act, unless otherwise indicated. Unless otherwise indicated, all judgment paragraph references are to the judgment of *Simplot Australia Pty Limited v Commissioner of Taxation* [2023] FCA 1115 (*Simplot*).

Brief summary of facts

The case concerned the GST classification of certain frozen food products supplied or imported by Simplot Australia Pty Limited (Simplot Australia). The products each contained a mix of vegetables along with spices or seasonings (some included grains). Some products were labelled as 'sides', while others provided serving suggestions, including through pictures that displayed the products served with added protein (for example, chicken or pork).

The Commissioner issued assessments to Simplot Australia on the basis that the supply or importation of the products were subject to GST because they were 'food of

a kind marketed as a prepared meal'. Simplot Australia objected to the assessments, the Commissioner disallowed the objections and Simplot Australia appealed to the Federal Court.

Issues decided by the Court

The Court held the statutory question to be a single composite question – that being, is the product 'food of a kind marketed as a prepared meal'?

The Court said the words 'of a kind' in paragraph 38-3(1)(c) are words of expansion rather than limitation. They have the effect that the third column of Schedule 1 refers to a class or genus of food rather than an identification of a specific item of food.¹

The statutory question is not how the product itself was marketed, but whether the product is a member of a class of foods that are marketed as prepared meals.² While the actual marketing of the product in question may be of some relevance, it is not determinative. What is required is consideration of the marketing generally of products of the same kind as the product in question – that is, by other sellers.³

The Court noted that there is no necessary dichotomy between a meal component or side dish and a meal.⁴ The legislation draws no distinction between the two. Food can be of a kind marketed as a prepared meal despite it being a meal component.

The Court stated that the attributes of a 'prepared meal' are to be discerned from common experience and include⁵:

- (a) quantity – a meal connotes a quantity of substance, even if it may be termed a small meal;
- (b) composition – a prepared meal connotes food consisting of more than one ingredient or element. Whether a combination of foods constitutes a meal is a question of fact and degree. A dish comprised solely of vegetables can be a meal. However a serving of a mix of vegetables (e.g. peas and corn) may not be a meal;
- (c) presentation – a prepared meal connotes a combination of foods that is complete. Matters such as seasoning, sauces and flavourings may all be relevant in determining whether foods are of a kind marketed as a prepared meal.

In concluding that all the products in question were 'food of a kind marketed as a prepared meal', the Court said⁶:

Foods of a kind marketed as a prepared meal therefore refers to foods of a sufficient quantity, mix and seasonings as to be regarded by the ordinary person as being of a kind that are marketed as a prepared meal.

ATO view of decision

This decision confirms the Commissioner's classification of these particular products.

A product is taxable as 'food of a kind marketed as a prepared meal' if it is within a class or genus of food marketed generally as having the attributes of a prepared meal (including quantity, composition and presentation). The Court has left open that a prepared meal may have attributes additional to the 3 stated.

¹ At [98–99], applying *Cascade Brewery Company Pty Limited v Commissioner of Taxation* [2006] FCA 821 at [16] and *Lansell House Pty Ltd v Commissioner of Taxation* [2011] FCAFC 6 at [30].

² At [103] and [108].

³ At [103] and [108].

⁴ At [130].

⁵ At [124].

⁶ At [125].

As the concepts of 'meal' and 'meal component' are not mutually exclusive, a product which is regarded as a 'meal component' may yet be taxable as 'food of a kind marketed as a prepared meal' in some situations.

This does not mean that everything which is a meal component or any particular meal component will be taxable. Whether or not a meal component is taxable will depend on application of the statutory test as a 'single composite question'.

In practice, it will be the facts, circumstances and evidence which determine whether a meal component is 'food of a kind marketed as a prepared meal'.

The Commissioner considers that it will be rare that, as a result of the decision in *Simplot*, a meal component not previously understood to be taxable will now be understood to come within a class or genus of food marketed generally as having the attributes of a prepared meal (including quantity, composition and presentation).

For example, many prepared meals include peas, but the supply of only frozen peas is not 'food of a kind marketed as a prepared meal'. The decision in *Simplot* does not now make a supply of frozen peas taxable. Frozen peas are not a mix of ingredients, and are not seasoned, flavoured or presented as a complete meal. They do not have the attributes necessary to make them 'food of a kind marketed as a prepared meal'. The same will apply for products like frozen mixed vegetables, frozen crumbed chicken pieces, and frozen fish pieces.

Taxpayers should review food products to ensure they are classifying them consistently with the decision in *Simplot*. If taxpayers are uncertain about the GST treatment of any products, we encourage them to seek ATO advice while we develop further public guidance.

Implications for impacted advice or guidance

The ATO is reviewing the impact of the decision in *Simplot* on related advice and guidance products, including Goods and Services Tax Industry Issue GSTII FL1 *Detailed Food List*, the GST issues register *Food industry partnership* (including Goods and Services Tax Industry Issue GSTII FI3 *Prepared food*), and ATO Interpretative Decisions.

The ATO is also preparing further public advice on the implications of the decision and to explain how the principles from this decision apply to other products.

Comments

We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

Date issued: 8 November 2023
Due date: 8 December 2023
Contact officer: Renae Carter
Email: Renae.Carter@ato.gov.au
Phone: 02 9374 2942

Legislative references

ANTS(GST)A 1999 38-3(1)(c)
ANTS(GST)A 1999 Schedule 1

Case references

Cascade Brewery v Commissioner of Taxation [2006] FCA 821; (2006) 153 FCR 11; 2006 ATC 4339; 64 ATR 28; [2006] ALMD 7073

Lansell House Pty Ltd v Commissioner of Taxation (2011) 190 FCR 354; [2011] FCAFC 6; 2011 ATC 20-239; [2011] ALMD 2353; (2011) 79 ATR 22

ATO references

NO: 1-SIGL8MU
ISSN: 2653-5424

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