

## **Law Administrative Practice Statement Compendium – PS LA 2012/2 (GA)**

This is a compendium of responses to the issues raised by external parties to Draft PS LA 3541 (GA) – GST classification of food and beverage items.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft LAPS.

### **Summary of issues raised and responses**

<b>Issue No.</b>	<b>Issue raised*</b>	<b>ATO Response/Action taken†</b>
1.	As discussed at the Food Classification Working Party meeting on 25 August 2011 the term 'beverage' should be altered to specify 'non-alcoholic beverages' because GS1 only canvasses non-alcoholic beverages. We suggest that the subject heading of the practice statement is changed accordingly. Alternatively, this should be expressly made clear in the paragraphs appearing under the heading Background.	Change made. A footnote has been added in paragraph 2, under Scope, to clarify that a reference to 'beverages' is a reference to non-alcoholic beverages.
2.	<p>It is noted that taxpayer participation in the arrangements with GS1 Australia is strictly voluntary and at no time should a non-participating taxpayer be penalised for failing to participate.</p> <p>Taxpayers who choose to adopt food and beverage classifications which differ from the confirmed classifications published on GS1net should have their circumstances determined under the GST law. Their non-participation in GS1net should not be relevant to these considerations.</p> <p>This is not to say that concessions cannot be offered to taxpayers who do agree to participate on a voluntary basis.</p> <p>It is considered that these principles should be included in the practice statement.</p>	<p>Partial change made. The practice statement consistently reflects the arrangements documented in the factsheet <i>Simpler GST accounting for the food and grocery industry</i> (NAT 7162). These arrangements have applied since 1 July 2002.</p> <p>The practice statement applies to those taxpayers that choose to register with GS1net. The undertakings in the practice statement (and fact sheet) are based on the understanding that the Australian Taxation Office (ATO) has previously confirmed a classification that it now proposes to change.</p> <p>New paragraph 15 has been added to the Explanation section to avoid doubt that the GST classification of all food and beverage items is determined under the GST law.</p>

\* Unless otherwise noted, references are to examples and paragraphs in Draft PS LA 3541 (GA)

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3.	It is considered that paragraph 4 overstates the effect of the arrangement with GS1 Australia by suggesting that it 'ensures' correct classification. The arrangement "seeks to ensure" that food and beverage items listed on GS1net are correctly classified. The GS1net classifications are not the law.	Change made. In paragraph 4, 'ensure' has been changed to 'seeks to ensure'.
4.	Paragraph 6 refers to an undertaking outlined in a fact sheet. As the undertaking appears to be set out in paragraph 16 of the draft practice statement it would be helpful to cross-reference paragraphs 6 and 16.	Change made. A footnote has been added to reference paragraphs 11 and 12. These are the relevant paragraphs that provide the undertakings from the fact sheet.
5.	<p>Paragraphs 11 to 14 explain what happens with classification changes where a manufacturer or other supplier has been acting in good faith and applying the ATO confirmed GST classification as published on GS1net. In particular, paragraph 12 confirms the undertaking that there will be no retrospective adjustments, penalties or interest.</p> <p>Paragraph 13 explains that these undertakings will not apply where the ATO has not confirmed the published classification and there is later change to the classification of that food or beverage item.</p> <p>This qualification is accepted but wish to state that even though the undertakings do not apply, the practice statement should confirm that in such cases the question whether retrospective adjustments, penalties and interest are applicable should be based on the facts of the case. Example 1 at paragraphs 36 to 44 should conclude with a statement to this effect.</p>	<p>No change made. Each case will be determined on its own facts, however, the focus of this practice statement is on the undertakings given in the fact sheet <i>Simpler GST accounting for the food and grocery industry</i>.</p> <p>In Example 1 the item is treated by the manufacturer as GST-free but it is determined by the ATO as taxable. As they have not applied the GST classification on GS1net the undertakings in this practice statement do not apply.</p>
6.	The meaning of 'rely on' in paragraphs 15 and 16 should also be clarified. Does it mean that taxpayers who act consistently with GS1net will be presumed to have relied on GS1net or will such taxpayers be expected to demonstrate their reliance to	<p>Changes made. The term 'rely on' has been replaced with the term 'acting in good faith by applying' to be consistent with the undertaking outlined in paragraph 11.</p> <p>This arrangement is based on willing participation. New paragraph 17</p>

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	<p>the satisfaction of the ATO?</p> <p>As GS1 is an internet based service, it is expected that most manufacturers and suppliers will simply search the service as necessary, but proving reliance in respect of the GS1 for a specific food or non-alcoholic beverage item may well prove problematic for retailers that stock thousands of such product lines.</p> <p>We are of the view that taxpayers should be presumed to have relied on the published classification where they have adopted a GST classification consistent with that published classification. The ATO's position should be clarified in the practice statement.</p>	<p>has also been added to clarify the ATO's expectation of what is acting in good faith:</p> <p>We will accept that a manufacturer or other supplier has <b>acted in good faith</b> where they have access to GS1net and they have applied the ATO confirmed GS1net published GST classification to the food or beverage item.</p>
7.	<p>Will downstream wholesalers and retailers be presumed to have acted in reliance on the arrangement between the ATO and GS1 Australia where they have followed the GST classification adopted by the participating manufacturer or distributor of the food or beverage item?</p>	<p>No. The practice statement mirrors the undertakings outlined in the fact sheet <i>Simpler GST accounting for the food and grocery industry</i>. Consistent with the fact sheet, the practice statement applies to the manufacturer and all other suppliers in the supply chain for the food item that have access to GS1net and apply the ATO confirmed GST classification on GS1net.</p> <p>Whether other parties would be subject to retrospective adjustments, penalties and interest will depend on the circumstances of each case.</p>
8.	<p>Previous arrangement between ATO and EANnet was treated as private ruling whereas now this is not considered as Private Ruling – is there any difference in impact to taxpayers who rely on the GST classification in GS1?</p>	<p>No. The fact sheet <i>Simpler GST accounting for the food and grocery industry</i>, was a public ruling under the former indirect tax rulings regime until 1 July 2010 rather than a private ruling.</p> <p>There will not be a difference in impact for taxpayers who rely on the ATO confirmed classification in GS1net where the relevant factors in paragraph 11 apply.</p>
9.	<p>Paragraphs 23 to 28 outline the procedure to be followed for changing a classification on GS1net. It is noted that liaison between the ATO and the manufacturer or other supplier occurs quite late and only for the purpose of determining the</p>	<p>Partial change made. If the GST classification of the food or beverage item was raised during an audit or advice case the taxpayer would already be engaged in the process. However, to ensure this occurs in all circumstances new paragraph 27 has been added:</p>

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	<p>appropriate prospective date for the commencement of the new classification.</p> <p>We consider that the relevant manufacturer or other supplier should be engaged at a much earlier stage and invited to participate in the classification review and not merely its implementation.</p>	<p>The impacted manufacturer or other supplier should be engaged as early as possible.</p>
10.	<p>A manufacturer has developed a new beverage item ready for the market. They apply for a barcode through GS1 Australia and input the product data into GS1net including the GST status as GST-free. At this point the GS1net GST approval status shows as 'Pending'.</p>	<p>Change made to paragraph 38.</p>
11.	<p>The manufacturer is also sent an email advising them to contact the ATO with additional information to clarify the GST classification and, if considered necessary, to apply for a private ruling.</p>	<p>Change made to paragraph 40.</p>
12.	<p>A manufacturer is developing a new food item and in July 2008 the manufacturer lists the food item on GS1net after obtaining a barcode number from GS1 Australia. As part of the arrangement with the ATO, GS1 Australia includes the food item in the daily file to the ATO including the manufacturer's self determined GST classification as GST-free. At this point the GS1net GST approval status shows as 'Pending'.</p>	<p>Change made to paragraph 47.</p>
13.	<p>The ATO reviews the food item as part of the daily file process and confirms the GST classification as GST-free based on a straightforward application of the GST law. GS1 Australia publishes the ATO confirmation on GS1net, setting the GS1net GST Approval status to 'Approved'.</p>	<p>Change made to paragraph 48.</p>

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14.	<p>In paragraph 52, it is stated that there is an expectation that ‘manufacturers will advise all of their suppliers of the change’. It also stated that the ATO will liaise with GS1 Australia to have GS1 updated.</p> <p>While it is expected that manufacturers will inform suppliers etc, there is some uncertainty as to when and how this information will make its way to <i>all</i> suppliers and, more significantly to those responsible for actioning GST rate changes. We consider that this dependence on an expectation that manufacturers undertake the communication exercise may be problematic, especially as manufacturers are likely to approach the issue differently. It follows, that there are likely to be variations in the communications, i.e.: a manufacturer may not want to advise of an adverse GST rate change as the product is price sensitive, until the latest possible time.</p> <p>Our preference is for standard communications to issue from GS1 in the form of updates expressly highlighting any GST rate changes to its member base which includes Woolworths, Coles and IGA. If appropriate, these updates should be on a weekly basis. This method of communication will be more streamlined and transparent for all manufacturers and suppliers who are registered with GS1.</p> <p>As everyone is not registered with GS1, it still leaves some onus on the manufacturer to communicate changes in rates to other end users, the minimum 30 day time frame should still work for these supply chains.</p>	<p>Changes made to the last paragraph of Example 2 (which was paragraph 52 in the draft PSLA 3541 (GA)) and also the last paragraph of Example 4, about the communication by GS1 Australia of changes to GST classifications.</p> <p>The agreement between the ATO and GS1 Australia includes that changes to GST classifications will be communicated to GS1 members through their regular reporting processes.</p>