

## ***Prepared food -***

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- ! This ruling is being reviewed as a result of a recent court/tribunal decision. Refer to Decision Impact Statement: Simplot Australia Pty Limited v Commissioner of Taxation (VID 59 of 2022).
- ! This publication is extracted from the Food Industry Partnership - issues register. See issue 5 of that register. This publication should be read in conjunction with the related content of that register where further context is required.



## Food Industry Partnership

### Prepared food

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#### ***Prepared food***

##### ***What is a prepared meal?***

1. Clause 1, Item 4 of Schedule 1 of the GST Act operates to subject the following to GST:
2. *'food marketed as a prepared meal, but not including soup'*. *The Further Supplementary Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998* (the EM) provides that the term 'prepared meal' is intended to cover a range of food products that:
  - directly compete against take-aways and restaurants;
  - require refrigeration or freezing for storage (clause 3 of Schedule 1); and
  - are marketed as a 'prepared meal'.
3. The term 'prepared meal' is not defined in the GST Act and will therefore bear its ordinary meaning.
4. The Macquarie Dictionary provides that 'meal' means 'the food eaten or served for a repast'. This definition could be applied to a single food item or to a meal consisting of several food items.
5. The Macquarie Dictionary defines 'prepare' in relation to food as 'to get ready for eating, as a meal, by due assembling, dressing or cooking'.
6. The EM at paragraph 1.33 provides examples of prepared meals:
  - prepared meals, such as curry and rice dishes, mornays and similar dishes sold cold by a take-away or supermarket that only need reheating to be ready for consumption;
  - fresh or frozen lasagne;
  - sushi;
  - cooked pasta dishes sold complete with sauce;
  - frozen TV dinners; and

- fresh or frozen complete meals (for example,. single serves of a roast dinner including vegetables and low fat dietary meals).

7. All of the above meals, except for the sushi, are of a kind that are duly assembled, cooked or partly cooked and require heating and completion of the cooking process for them to be ready for consumption. Sushi is by its nature ready for consumption when it is duly assembled even though part of it is raw.

8. Therefore, for food to be regarded as a 'prepared meal' in accordance with Item 4, the food needs to be supplied assembled and dressed (if applicable). In addition, if the food is cooked or partly cooked and is to be served hot, it should only need heating, which may include completion of the cooking process, to be ready for consumption. Heating will be interpreted to mean warmed in the microwave oven, convection oven, frying pan, wok or saucepan.

9. Paragraph 1.34 of the EM provides examples of food items that are not considered to be prepared meals. They are:

- frozen vegetables;
- uncooked pasta products;
- fish fingers; and
- baby food, baked beans, spaghetti and Irish stews that do not require refrigeration or freezing.

10. Uncooked pasta products are not considered a prepared meal as they are not cooked.

11. Baby food, baked beans and spaghetti in cans or jars are not considered 'prepared meals' as in their unopened state they do not require refrigeration or freezing for their storage – clause 3 of Schedule 1 of the GST Act.

12. Further to the above, in determining whether food is marketed as a 'prepared meal' the activities of the seller are relevant. Consideration is given to the following:

- the name of the goods;
- the price of the goods;
- the labeling on any containers for the goods;
- literature or instructions packed with the goods;
- how the goods are packaged;
- how the goods are promoted or advertised; and
- how the goods are distributed.

### *Example 1*

13. The local supermarket sells fish and chips packaged together in a box in their frozen food section. The fish and chips have been 'par' cooked. The instructions on the box suggest that the product can be:

- oven baked for 15 minutes;
- cooked on the grill for 15 – 17 minutes; or
- cooked in a pan for 10 minutes.

14. The fish and chips are considered to be a 'prepared meal' as the consumer is merely required to take the product home and heat and serve. In this case, heating the product can be achieved by various methods.

*Example 2*

15. Also in the frozen food section of the supermarket is a packet of fish and sauce, combined with pasta. The directions on the packet are to either microwave on high for four minutes, stir and then microwave for a further two minutes or to bake in the oven for 20 minutes, after which time the product is ready to eat.

16. In this instance, the fish and sauce, combined with pasta is considered to be a 'prepared meal'.

*Example 3*

17. Also situated in the frozen food freezer is a pasta product containing a variety of vegetables and a sachet of sauce. The wording on the packaging says 'Design-a-Dinner' by adding meat of your choice. The instructions on the packet are:

- heat one tablespoon of oil in a wok or frying pan over a medium heat;
- add 300-400g of meat of your choice and cook for 3-4 minutes until browned;
- move meat to one side and add sauce and add 1/4 cup of water and stir until melted; and
- stir in frozen vegetables and pasta and cook for 6-7 minutes, stirring frequently. Serve immediately.

18. This product is not considered to be a 'prepared meal' as it is not assembled. The buyer is required to take the product home and undertake a considerable amount of preparation, including buying and preparing the meat, before being able to serve a meal. The words 'Design-a-Dinner' on the packaging are not considered in isolation in determining whether the product is a 'prepared meal'.

*Example 4*

19. There are two different varieties of hokkien noodles in the freezer at the supermarket. The first variety is stir fry vegetables with hokkien noodles. The cooking instructions require the buyer to do the following:

- defrost the noodles by immersing in boiling water for 2 minutes, and then either
  1. heating 1 tablespoon of oil in a frying pan or wok and adding the defrosted noodles and the stir fry vegetables and stir frying over a high heat for 6 – 7 minutes. Serve immediately.
  2. Add the stir fry vegetables and defrosted noodles in a microwave proof dish, cover and microwave on HIGH for 6 – 7 minutes. Stir half way through the cooking time. Serve immediately.

20. This product is not assembled and is therefore not considered to be a 'prepared meal'. The second variety is hokkien style noodles and stir fry vegetables with a sachet of sauce. The information on the packaging says '...allowing you to prepare a meal'. The cooking instructions are as follows:

- Heat 1 tablespoon of oil in a wok or frypan;
- Defrost the noodles in a microwave dish on HIGH for one minute;
- Place the defrosted noodles and frozen vegetables in the wok or frypan and cook over medium heat for three minutes stirring frequently;
- Add the sachet of sauce to the vegetables and noodles and cook for a further 2 minutes. Serve immediately.

21. This product is not assembled and is therefore not considered to be a 'prepared meal'.

*Example 5*

22. A vacuum sealed bag of noodles contains all ingredients, including the sauce, and only requires reheating to be ready for consumption. In order to be a prepared meal, three criteria need to be satisfied:

- The product must directly compete against take-aways and restaurants;
- It must require refrigeration or freezing for storage; and
- It must be marketed as a prepared meal.

23. Since the product does not require refrigeration or freezing for its storage it will not be considered a 'prepared meal'.

***Platters and other similar arrangements of food***

24. Clause 1, Item 5 of Schedule 1 of the GST Act operates to subject platters and other similar arrangements of food to GST. Therefore, fruit and cheese and cheese and cabanossi platters will be subject to GST.

25. The term 'platter' is not defined in the legislation and therefore its ordinary meaning is to be adopted. 'Platter' is defined in the Macquarie Dictionary to mean:

1. a large shallow dish, commonly oval, for holding or serving meat etc.

26. Item 5 of Schedule 1 is referring to platters and arrangements of food that can be uncovered and placed on the table ready for serving (for example, as a catering product at parties, BBQs and so forth).

*Example 1*

27. Sammy's Supermarket sells pumpkin that is chopped into pieces ready for roasting. There are four to six pieces of pumpkin on a plastic tray covered in plastic wrap. This product is not considered to be a platter.

*Example 2*

28. David's Gourmet Foods supplies trays of gourmet food to customers for use at parties and other functions. One of these trays consists of an arrangement of antipasto products including, meats, sundried tomatoes, pickled vegetables, bread sticks and other items chosen by the customer. This product is considered to be a platter and subject to GST.

29. However, each of these items can also be sold individually. For example, the sundried tomatoes are also sold in separate plastic containers with a lid. The supply of the products in this way is not considered to fall within Item 5 of the GST Act. However, it would need to be ascertained whether the products are then subject to GST under one of the other items in Schedule 1 of the GST Act.