


***GSTD 2000/D2 - Goods and Services Tax: when is a supply of food, in terms of paragraph 38-3(1)(a) of the A New Tax System (Goods and Services Tax) Act 1999 , 'for consumption on the premises from which it is supplied'?***

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This document has been finalised.

## Draft Goods and Services Tax Determination

### **Goods and Services Tax: when is a supply of food, in terms of paragraph 38-3(1)(a) of the *A New Tax System (Goods and Services Tax) Act 1999*, ‘for consumption on the premises from which it is supplied’?**

#### *Preamble*

*Draft Goods and Services Tax Determinations (DGSTDs) present the preliminary, though considered, views of the Australian Taxation Office. DGSTDs should not be relied on; only final Tax Determinations represent authoritative statements by the Australian Taxation Office.*

1. A supply of food for consumption on the premises is a taxable supply. Whether you supply food for consumption on the premises from which it is supplied will depend upon the circumstances surrounding the supply.
2. You supply food for consumption on the premises if it is to be consumed:
  - a) at the outlet where the supply takes place – for example, cafes, hotels, restaurants, reception lounges or snack bars;
  - b) in grounds surrounding the food supply outlet – for example, at tables on a footpath or in a food court;
  - c) at any venue with defined limits or boundaries associated with leisure, sport or entertainment – for example, football grounds, gardens, showgrounds, amusement parks, racecourses, zoos or concert halls.
3. However, some suppliers will provide food for consumption both on the premises (dine-in) and away from the premises (takeaway). If you supply food that would otherwise be GST-free to both dine-in and takeaway customers, you need to identify food supplied for consumption on the premises from that which is to be consumed elsewhere. If your business operations identify takeaway supplies from dine-in supplies, the takeaway food is not supplied for consumption on the premises. You will be able to identify takeaway food from dine-in food if you:
  - have separate ordering and serving processes for dine-in and takeaway customers (dine-in customers may order and receive their meals at their tables);

- provide different packaging for dine-in and takeaway food (for example, dine-in customers may receive their water or fruit juice in a glass rather than in a sealed disposable container); or
- have different menus or product lines for dine-in and takeaway customers.

4. If your business operations do not identify takeaway supplies from dine-in supplies, food will remain GST-free if:

- it is served in its original or takeaway form (for example, an unprocessed apple or unopened bottle of water);
- it is not served at a table; and
- it is not served in circumstances indicating that consumption will take place on the premises (for example, a bottle of plain mineral water served with a glass).

### **Example 1**

5. *Greg operates a roadhouse. The roadhouse supplies food which is taken away and consumed off premises whilst food is also provided to eat in a diner which is part of the premises. Orders are made at the same counter for food taken away and for food consumed in the diner.*

6. *It is Greg's practice to ask customers whether they want to eat in the diner or take food away. Customers who eat in the diner are given a table number and sit themselves at the table. Customers taking food away wait at the counter.*

7. *Different packaging is used. Meals in the diner are served on a plate. Cold beverages provided in the diner are served in a glass. Meals taken away are wrapped in paper or cardboard. Cold beverages taken away are either supplied in disposable cups or in the original packaging.*

8. *Greg's business operations allow him to separately identify food for consumption both on the premises and away from the premises.*

### **Example 2**

9. *Heather has a snack bar in a food court. All of the water that she sells to customers, whether they drink it in the food court or take it away, is in its sealed bottled form. It is not Heather's practice to ask customers who purchase food or drink if they wish to consume it in the food court or take it away.*

10. *The bottled water is not served at a table and it is not served in circumstances indicating that consumption will take place on the premises (for example, accompanying a meal on a returnable tray). We will accept that the water is not supplied for consumption on the premises.*

### **Example 3**

11. *The facts are the same as in example 2 except that Heather asks her customers if they wish to consume their food or drink in the food court or take it away – as she uses different packaging for dine-in and takeaway supplies.*

12. *For those customers who indicate that they will dine in the food court, supplies of food and drink, including whole fruit and bottled water which would otherwise be GST-free, are for consumption on the premises and will be taxable. For those customers who indicate that they will take the food or drink away, supplies that are otherwise GST-free are not for consumption on the premises and will remain GST-free.*

## Your comments

13. We invite you to comment on this Draft GST Determination. We are allowing 2 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

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## Commissioner of Taxation

10 May 2000

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### *Previous draft:*

Not previously issued in draft form.

### *Subject references:*

- food
- food premises
- goods & services tax
- GST food
- GST free
- GST supply
- premises
- taxable supply
- taxation Determinations

### *Legislative references:*

- ANTS(GST)A99 38-3(1)(a)
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### ATO references:

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