



PS LA 2012/2 (GA) - GST classification of food and beverage items

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Practice Statement Law Administration (General Administration)

PS LA 2012/2 (GA)

FOI status: may be released

This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or is considered incorrect. Where this occurs tax officers must follow their business line's escalation process.

SUBJECT: GST classification of food and beverage items

PURPOSE: This practice statement sets out:

- the arrangement the Australian Taxation Office (ATO) has with GS1 Australia to ensure food and beverage items shown on GS1net are correctly classified for GST purposes
 - the administrative approach the ATO will take for past years or periods where manufacturers and other suppliers have applied the ATO confirmed GST classification on GS1net, and
 - the procedures for tax officers to follow and matters to take into account when considering a change in the GST treatment of a food or beverage item listed on GS1net.
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SCOPE

1. This practice statement applies to manufacturers and other suppliers that rely on GS1net, the GS1 Australia database, to determine the ATO confirmed GST classification of the food and beverage items that they supply.
2. It outlines the procedures for tax officers to follow and matters to take into account when considering a change in the GST classification of a food or beverage¹ item listed on GS1net.

BACKGROUND

3. The ATO entered into an arrangement with GS1 Australia documented in the fact sheet *Simpler GST accounting for the food and grocery industry*² (the fact sheet).
4. The arrangement, applying from 1 July 2002, seeks to ensure food and beverage items shown on GS1net are correctly classified for GST purposes.
5. The fact sheet previously outlined specific undertakings between the ATO and manufacturers or other suppliers to deal with circumstances where the ATO changed the GST classification of an item listed on GS1net that it had previously confirmed.
6. This practice statement outlines the administrative approach³ that the Commissioner will take from 1 July 2010 in respect of the undertaking outlined in the fact sheet.

Who is GS1 Australia and what is GS1net?

7. GS1 Australia is a non-profit trade organisation that administers the global GS1 system of numbering, barcoding and electronic messaging in Australia.
8. GS1 Australia numbers and barcodes can be found on most food and beverage items sold in retail stores. The barcode represents the GS1 number in a form that can be read by a scanner and entered instantly into a computer. The GS1 numbers provide a common language in which manufacturers, wholesalers and retailers can communicate about the goods and services they trade.
9. Manufacturers and other suppliers register with GS1 Australia and pay a membership fee. This provides them with numbers and barcodes for their products, system support (for example, scanning technology) and access to GS1net.
10. GS1net, which includes the GS1net Registry, is an internet based service where manufacturers and other suppliers can find details, including the ATO confirmed GST rate, on a large number of food and beverage items.

¹ The reference to beverages listed on GS1net is a reference to non-alcoholic beverages.

² NAT 7162.

³ Refer paragraphs 11 and 12 of this practice statement.

STATEMENT

11. The ATO will only prospectively apply changes it makes to the GST classification of a food or beverage item listed on GS1net where:
 - the ATO has previously confirmed the GST classification of that item
 - the manufacturer or other supplier has acted in good faith by applying the ATO confirmed GST classification to that item, and
 - the ATO subsequently determines the GST classification of that item should be changed from GST-free to taxable or to partly taxable and partly GST-free.
12. This means that where all the criteria in paragraph 11 of this practice statement apply:
 - the ATO will **not** require retrospective adjustments to the manufacturer's or other supplier's activity statements
 - the ATO will **not** apply penalties regarding that item during the period before the GST classification is changed, and
 - the general interest charge (GIC) will **not** accrue regarding that item during the period before the GST classification is changed.
13. Where the ATO does **not** confirm the GST classification of a food or beverage item submitted by GS1net, and there is a later change to the ATO view of the GST classification of that item, the undertaking outlined at paragraphs 11 and 12 of this practice statement will **not** apply.
14. This practice statement must be followed where a tax officer determines that the GST classification of the food or beverage item listed on GS1net should be changed. The tax officer must escalate the issue in accordance with paragraphs 24 to 30 of this practice statement.

EXPLANATION

15. The GST classification of all food and beverage items is determined under the GST law. For manufacturers and other suppliers that use GS1net to determine the GST classification of the food and beverage items that they acquire or supply, this practice statement aims to provide certainty and minimise compliance costs.
16. The certainty for manufacturers and other suppliers is provided by the undertaking that, where they have acted in good faith by applying an ATO confirmed GST classification on GS1net for a food or beverage item, changes to the GST classification by the ATO will only be applied prospectively.⁴
17. The ATO will accept that a manufacturer or other supplier has **acted in good faith** where they have access to GS1net and they have applied the ATO confirmed GS1net published GST classification to the food or beverage item.
18. To minimise compliance costs, consideration is also given to the circumstances of the manufacturer and other suppliers of the food or beverage item. Factors to consider in determining the prospective date under this practice statement are provided at paragraphs 32 to 34.

⁴ The administrative approach outlined in this practice statement is consistent with *Law Administration Practice Statement PS LA 2011/27 Matters the Commissioner considers when determining whether the Australian Taxation Office (ATO) view of the law should be applied prospectively*.

The arrangement for confirming the GST classification on GS1net

19. The arrangement between the ATO and GS1 Australia for confirming the GST classification of food and beverage items on GS1net includes the following:

Notification of GST classification

- (a) When manufacturers or other suppliers list their food and beverage items on GS1net they must identify the Global Product Code (GPC) and indicate whether the item is taxable, GST-free, or partly taxable and partly GST-free by specifying a GST rate of between 0% and 10% as the GST value.

Where the item is listed as GST-free (that is, 0%) the manufacturer or other supplier will also declare whether it is 'Free to End Consumer' (FEC) by specifying the Tax Exempt Party as 'Consumer'.

- (b) If the item is classified using a GPC that the ATO has advised to include in the confirmation process, GS1 Australia will extract the GST classification details for all new or updated (where required) food and beverage items from GS1net and provide it in a daily file to the ATO.

For the purposes of the ATO confirmation process, GS1 Australia provides updates to a food or beverage item in the daily file to the ATO where there is a change in the:

- GPC to an item that is on the include list
- GST rate
- FEC declaration, or
- the item description.

- (c) When a food or beverage item is included in the daily file for confirmation by the ATO, the GST Approval Status on GS1net will be labelled 'Pending'.

For items allocated by the manufacturer or other supplier to a GPC not included in the confirmation process, the item's GST Approval Status is set to 'Not Required' on GS1net.

ATO review of the daily file

- (d) The ATO will consider the details in the daily file, including the GST rate and FEC declaration, and confirm or reject the GST classifications for the items that have been input into GS1net. The ATO will return the completed daily file to GS1 Australia within the agreed timeframes.

Where the ATO does not confirm the GST classification

- (e) The ATO may not be able to confirm the GST classification of the item:
- if the GST classification of that item is not covered by an existing precedential ATO view
 - if the GST classification of that item cannot be determined by a straightforward application of the law, or
 - where further information is required to clarify the GST classification of that item (for example, where a marketing test applies or where an item is partly taxable and partly GST-free).

In these circumstances, GS1 Australia will leave the GST Approval Status as 'Pending' for either or both of the GST Rate and GST Free Only to End Consumer as appropriate, and will contact the manufacturer or other supplier via email and phone advising them to contact the ATO to discuss the GST classification of the item.

Publication of ATO confirmed GST rates on GS1net

- (f) Where the ATO has confirmed the GST classification of the item, GS1 Australia will upload that confirmation and publish it on GS1net. The publishing includes the GST Approval Status for these food and beverage items being labelled as 'Approved'.

ATO's confirmation of GST classification on the daily file is not a ruling

20. The ATO's confirmation of the GST classification of the food and beverage items on the daily file does not have the legal status of a private or public ruling. Therefore, it does not provide the same level of protection to taxpayers who rely on it.
21. However, if ATO confirmation is provided it will be because the view is consistent with the precedential ATO view or because the same conclusion can be reached by the ATO through a straightforward application of the law.

Where the manufacturer or other supplier disagrees with the ATO

22. There may be circumstances where the manufacturer or other supplier disagrees with the ATO on the GST classification of the food or beverage item through the daily file process.
23. In these circumstances the manufacturer or other supplier can seek a private ruling⁵ on the GST classification of the food or beverage item. The private ruling process provides them with review rights.⁶

The ATO process for changing a GST classification which has been confirmed on GS1net

24. Before changing the GST classification of a food or beverage item, tax officers must:
- (a) determine whether there is a precedential ATO view of the GST law for the GST classification of the food or beverage item
 - (b) determine if the GST classification can be decided by a straightforward application of the GST law
 - (c) ascertain whether the food or beverage item is classified on GS1net as taxable, GST-free or partly taxable and partly GST-free as confirmed by the ATO, and
 - (d) determine whether the GST classification on GS1net represents a correct application of the GST law.
25. Where the tax officer determines that the GST classification of the food or beverage item listed on GS1net must be changed they must firstly engage the team that confirms the daily files. This can be done by sending an email to 'GSTClassification@ato.gov.au'.

⁵ See section 359-10 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

⁶ See section 359-60 of Schedule 1 to the TAA.

26. If the GST classification on GS1net is inconsistent with the existing ATO view, the Senior Executive Service (SES) officer responsible for the team that confirms the daily files will be the decision maker.
27. The impacted manufacturer or other supplier should be engaged as early as possible.
28. Where it is considered that a review of the ATO view or creation of an ATO view is required, the GST classification of the food or beverage item must then be escalated in accordance with *Law Administration Practice Statement PS LA 2003/3 Precedential ATO view*.
29. The team that confirms the daily files will be responsible for liaising with the manufacturer or other supplier to determine the relevant factors for setting the prospective date. The SES officer that this team reports to will be responsible for approving the prospective date for the change to the GST classification for a food or beverage item on GS1net in all circumstances.
30. Appendix A on page 11 of this practice statement illustrates this process diagrammatically.

How do tax officers access GS1net information?

31. Access to GS1net is controlled by the Indirect Tax – Interpretative Assistance team that confirms the GST classification of food and beverage items on GS1net. Tax officers are able to verify the GST classification of food and beverage items on GS1net by sending an email to 'GSTClassification@ato.gov.au'.

Working out the prospective date

32. In determining the prospective date of the change it is accepted that industry practices will generally require a minimum of 30 days from notification of the change to implementation through the supply chain. The same prospective date will apply to the manufacturer or other suppliers of the food or beverage item.
33. In determining the appropriate prospective date, other factors to consider include:
 - (a) the contractual terms between the parties involved in the supply chain for an item including:
 - a set price point for the item and consequences of a change in that price, and
 - the term of the contract
 - (b) suppliers' shelf-stock and how an increase in price would affect demand by the public and potential viability of the product in the market for the supplier
 - (c) commitments that the manufacturers or other suppliers have made to shareholders, employees, consumers and business partners in relation to the supply of the item
 - (d) any commercial commitment relating to the manufacture of the item such as an advertising campaign or production costs already incurred, and
 - (e) the time it would take to update inventory or record management systems for all parties involved in the supply chain for the item.

34. This is not an exhaustive list. There may be other relevant factors that need to be taken into account in determining an appropriate prospective date.

EXAMPLES

35. The following examples outline the approach the ATO will take in determining the prospective date for a change to the GST classification for a food or beverage item on GS1net.
36. Each decision must be made based on all the relevant circumstances relating to the particular item. The examples are not intended to be exhaustive or prescriptive.
37. In all of the examples, it is assumed that the manufacturer and supplier have acted in good faith.

Example 1 – GST classification on GS1net not confirmed

38. 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'.
39. The beverage item is included in the daily file for review by the ATO. However, based on the information provided the ATO concludes that the beverage item should be taxable. The daily file is returned to GS1 Australia and they advise the manufacturer of the ATO advice and record the GST classification on GS1net as 'Not Approved'.
40. The manufacturer is also sent an email by GS1 Australia advising them to contact the ATO with additional information to clarify the GST classification and, if considered necessary, to apply for a private ruling.
41. The manufacturer decides that they do not need the GST classification confirmed by the ATO and continues to the market place with the beverage item.
42. The ATO has cause to undertake compliance activity. During the compliance activity, it is determined that the beverage item has been treated as GST-free by the manufacturer and their retailers.
43. The tax officer reviews the GST classification and determines that the beverage item is taxable as per an ATO view in the Detailed Food List.
44. The manufacturer refers to the arrangement between the ATO and GS1 Australia and suggests that the change in GST classification of the beverage item should be on a prospective basis.
45. The tax officer refers the issue to the team that confirms the GST classifications of food and beverage items on GS1net. It is determined that the beverage item had been included in the daily files for review, but that the ATO advised that the item was taxable.
46. The manufacturer is advised that, as they have not applied the GST classification of the beverage item as advised by the ATO under the arrangement with GS1 Australia, they are not covered by the undertakings of the ATO in the arrangement with GS1 Australia as set out in paragraphs 11 and 12 of this practice statement.

Example 2 – No existing ATO view

47. 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'.
48. 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'.
49. During compliance activity in June 2011, a tax officer has cause to review the GST classification of that food item and considers that the correct GST classification is taxable.
50. The tax officer sends an email to 'GSTClassification@ato.gov.au' to check the GST classification of that food item on GS1net. The GST classification has been published on GS1net as GST-free, however, on review it is considered by the team that an ATO view is required.
51. The technical issue is escalated in accordance with *PS LA 2003/3 Precedential ATO view* and it is agreed that an ATO view is required.
52. The manufacturer is asked to clarify the circumstances, including details of existing contracts or arrangements with their wholesale or retail customers. The manufacturer advises that after discussions with their suppliers they will be able to implement the change within 5 weeks.
53. The team that considers the GST classifications of food and beverage items on GS1net then liaises with the area within the Indirect Tax business line⁷ that is creating the ATO view to ensure the application date of the ATO view is consistent with the proposed prospective date. The proposed prospective date is then escalated to the SES officer responsible for the team that confirms the GST classification of food and beverage items on GS1net.
54. The SES officer approves that the change in GST classification from GST-free to taxable for the food item is to occur from a date in 5 weeks time. The manufacturer is advised of the date by the ATO and the expectation that they will advise all their suppliers of the change. The ATO will liaise with GS1 Australia to have GS1net updated and the change in GST classification will be communicated to GS1 members through the regular reporting process.

Example 3 – Change in ATO view

55. The circumstances are the same as Example 2 except that the GST classification of the food item on GS1net aligns with the current precedential ATO view. However, the tax officer forms the opinion that the existing precedential ATO view is contrary to the GST law.
56. The tax officer engages the team that confirms the GST classifications of food and beverage items on GS1net. They agree with the opinion that the GST classification of the food item is contrary to the GST law and recommend that they seek assistance from technical expertise within the Indirect Tax business line. This recommendation is endorsed by their SES officer.

⁷ Law & Practice can also be engaged if the requirements of *Law Administration Practice Statement PS LA 2012/1 Management of high risk technical issues and engagement of tax technical officers in Law and Practice* are met.

57. The technical issue is then escalated to the area⁸ within the Indirect Tax business line with the technical expertise to create an ATO view. The issue is reviewed and it is determined that a new ATO view, which will overturn the existing ATO view, will need to be created. The proposed change in ATO view is technically cleared by the Deputy Chief Tax Counsel – Indirect Taxes.⁹
58. After receiving technical clearance that the food item is taxable, the SES officer responsible for the team that confirms the GST classification of food and beverage items on GS1net takes responsibility for administering the change on a prospective basis.
59. The manufacturer is contacted and asked to provide additional information to clarify the circumstance surrounding the supplies of the food item. The manufacturer advises that their current contracts have 10 weeks to run and that they are just entering discussions for the next period.
60. Relevant to the prospective date is that the ATO view for this food item is contained in the Detailed Food List, with the next periodic update in 12 weeks. The update process includes industry consultation on proposed changes.
61. Consideration is given to these factors and as the ATO view is to apply consistently across all similar food items, the prospective date¹⁰ will be the date of change of the ATO view in the Detailed Food List.
62. Accordingly, the manufacturer is advised that the prospective date is planned for 12 weeks to align to the date for the publishing of the addendum to the Detailed Food List.

Example 4 – GST classification on GS1net different to ATO view

63. A tax officer undertaking a compliance activity reviews the GST classification of a food item and forms an opinion, based on a precedential ATO view (for example, the Detailed Food List), that the GST classification of the food item should be taxable.
64. The tax officer contacts the team that confirms the GST classification of food and beverage items on GS1net and they advise the food item is recorded as GST-free and has been confirmed by the ATO.
65. The tax officer then requests that the team reconsider the GST classification of this food item. The team agrees that the food item should be taxable and escalates the issue to their SES officer for approval.
66. The SES officer approves the GST classification be changed to taxable and instructs them to work with the manufacturer to determine the prospective date.
67. The manufacturer is contacted and advised that the ATO view for this type of food item is that it is taxable. However, as per the ATO undertaking, the GST classification change from GST-free to taxable will be on a prospective basis.
68. The manufacturer is asked to clarify the situation including details of existing contracts or arrangements with their wholesale or retail customers. The manufacturer advises that the main retailer of the food item has approximately 6 weeks of shelf stock that has been purchased at the GST-free contract rate.

⁸ Law and Practice can also be engaged if the requirements of PS LA 2012/1 are met.

⁹ PS LA 2003/3 requires the matter must be brought to the attention of the relevant Deputy Chief Tax Counsel.

¹⁰ As there is a change in the ATO view the SES officer responsible for the team that confirms the GST classifications of food and beverage items, will liaise with the Deputy Chief Tax Counsel – Indirect Taxes, to agree on the prospective date.

Further, that the contract provides that where there is an increase in costs to the retailer, such as additional GST, the manufacturer will be liable to pay that amount to the retailer.

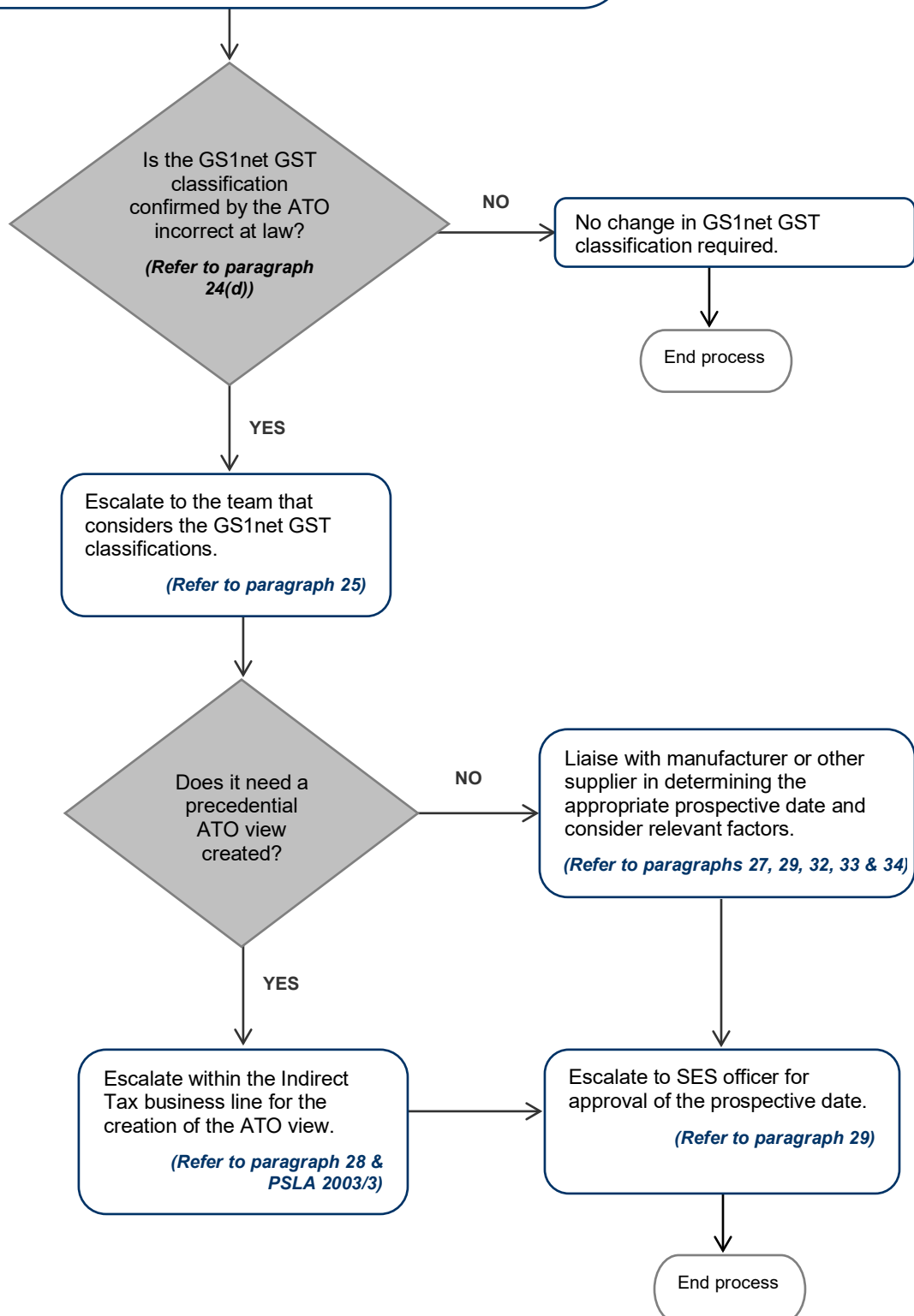
69. The manufacturer advises that this retailer has also indicated that the increase in price will impact demand for the product and that the retailer wishes to review their contract arrangements.
70. This information is considered by the team that confirms the GST classification of food and beverage items on GS1net and it is proposed that the minimum of 30 days for implementing the change be extended to 6 weeks. This approach is recommended as there is a reasonable argument that if they had known the tax implications were different:
 - the manufacturer and the main retailer would not have made the arrangements, and
 - the retailer would not have had this amount of shelf stock.
71. The SES officer approves the change in GST classification from GST-free to taxable for the food item to apply from a date in 6 weeks time. The manufacturer is advised of this date by the ATO and the expectation that they will advise all their suppliers of the change. The ATO will liaise with GS1 Australia to have GS1net updated without delay and the change in GST classification will be communicated to GS1 members through the regular reporting process.

Appendix A – Changing the GST classification on GS1net

Before changing the GST classification of a food or beverage item:

- Determine if there is a relevant precedential ATO view, or
- If the GST classification can be decided by a straightforward application of the GST law, and
- Check the GST classification of the food or beverage item on GS1net as confirmed by the ATO.

(Refer to paragraph 24(a), (b) & (c))



Subject references	Goods and services tax GST beverages GST food GST Food Stream GST free GST free of charge GST private rulings GST private rulings specific advice
Legislative references	TAA 1953 Sch 1 359-10 TAA 1953 Sch 1 359-60
Related public rulings	Detailed Food List
Related practice statements	PS LA 2003/3 PS LA 2011/27 PS LA 2012/1
Case references	
Other references	Simpler GST accounting methods for food retailers
File references	1-34LV5ZF
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Other Business Lines consulted	Law and Practice
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