

STD 96/10 - Title: Classification of drinking yoghurt



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There is a Withdrawal notice for this document.

This Document is a Ruling for the purposes of section 77 of the *Sales Tax Assessment Act 1992* and may be relied upon by any person to whom it applies.

Sales Tax Determination

Title: **Classification of drinking yoghurt**

Background

The Australian Taxation Office (ATO) has received requests regarding the classification of drinking yoghurt.

Drinking yoghurt is described and marketed variously, as a drink which can be used on breakfast cereals and in place of flavoured milk and fruit juice. It has also been described as an alternative to soft drink. Drinking yoghurt is promoted as a nourishing liquid to be consumed in the same manner as other beverages - either from a glass, from a bottle or with cereals.

Private rulings exempting drinking yoghurt have issued in the past on the basis that products will be accepted as yoghurt for sales tax purposes if they can be marketed under the particular State legislation as yoghurt. Yoghurt is exempt from sales tax as food for human consumption.

The intention was to exempt all yoghurt products which complied with the relevant State legislation. Products that could not be marketed under the legislation were to be classified according to their general characteristics ie., as food, beverages or ice cream.

Enquiries at the time disclosed that drinking yoghurts could be marketed as yoghurt under the relevant Victorian Food Standard Code 1987. That standard and other state food codes have since been amalgamated under Standard H8, Yoghurt and Yoghurt Products, administered by the National Food Authority. The new code does not refer to drinking yoghurts but merely specifies the ingredients, quantities, microbiological standard and pH value for yoghurt and yoghurt products.

The ATO has now reviewed the classification of drinking yoghurt.

Issue

How is drinking yoghurt classified for sales tax purposes?

Decision

- Drinking yoghurt is a beverage for sales tax purposes and is excluded from exemption by subitem 68(2)(b) in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992 (E&C Act)*.
 - Drinking yoghurt with a milk composition (currently at least 95%) which meets the requirements of Item 70 in Schedule 1 to the *E&C Act* is exempt from sales tax.
 - Drinking yoghurt with a milk composition (currently 90% or more) which meets the requirements of Item 12 in Schedule 2 to the *E&C Act* is taxable at the concessional rate of 12%.
 - Other drinking yoghurts are taxable at the rate of 22% under Item 1 in Schedule 4 to the *E&C Act*.
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Date of effect

This determination replaces any previous private rulings to the extent that they are inconsistent with this determination. If any person has been acting on the basis of any such previous ruling, they have until 20 February 1997 to comply with this determination.

Reasons

We have based our decision on the following legislative provisions:

Sales Tax (Exemptions and Classifications) Act 1992; Items 68 and 70 in Schedule 1; Item 12 in Schedule 2 and Item 1 in Schedule 4

The ATO accepts that drinking yoghurts which satisfy the National Food Authority's Standard H8 are yoghurt and are food for human consumption for the purposes of sub-item 68(1)(a) in Schedule 1 to the *E&C Act*. However, sub-item 68(2)(b) excludes most beverages from this exemption.

The meaning of 'beverage'

The word 'beverage' is not defined in the sales tax legislation and in accordance with principles of statutory interpretation takes its ordinary meaning.

The Macquarie Dictionary defines the word 'beverage' as *a drink of any kind* and, in turn, defines the noun 'drink' as *any liquid which is swallowed to quench thirst, for nourishment etc; a beverage*.

In addition, the Macquarie Dictionary defines the word 'food' as *1. What is eaten, or taken into the body, for nourishment. 2. more or less solid nourishment (as opposed to drink)*.

and case law:

Bristol-Myers Company Pty Ltd v. FC of T 90 ATC 4553; (1990) 21 ATR 417

Whether drinking yoghurt is a beverage

In *Bristol-Myers Company Pty Ltd v. FC of T*, one of the issues in contention was whether the product 'Sustagen Gold' which was accepted as a food for human consumption was a beverage and excluded from sales tax exemption. The manufacturers regarded 'Sustagen Gold' as a 'nutritionally balanced liquid food'. The Court held that it was, in fact, a beverage.

Lockhart J stated 'There is no doubt that it (Sustagen Gold) has the capacity, if so desired by the consumer, to replace a meal and its marketing mentions this fact. On the other hand it is obvious that it is also intended to be, and is marketed as, a liquid to be drunk either with meals or between meals.'

Lockhart J went on to say that 'An important part of a beverage is to replenish fluids. It is an important element in the concept of a beverage that it is something one drinks not eats. This is quite a usual means of distinguishing beverages from other types of liquid foods which are not beverages such as gravy, sauce and syrup.'

Drinking yoghurt is a liquid and is usually described and promoted by its manufacturers as a drink to be consumed in the same way as other drinks, such as milk or fruit juice.

Drinking yoghurt is a beverage and is excluded from the sales tax exemption provided by Item 68 in Schedule 1 to the *E&C Act*.

Whether drinking yoghurt qualifies for exemption under Item 70 in Schedule 1 to the *E&C Act* or for the concessional rate of sales tax under Item 12 in Schedule 2 to the *E&C Act* will depend upon the milk composition of the product in each case.

**Communication
of the Decision**

This determination has been made available for publication by the sales tax publishing houses and will be mailed directly to sellers of these goods that are registered as sales taxpayers with the ATO.

Commissioner of Taxation
20 November 1996

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Related Determinations:

Related Rulings:

Subject Ref: beverage; classifications; drinking yoghurt; exemptions; food for human consumption; yoghurt

Legislative Ref: Sales Tax (Exemptions and Classifications) Act 1992 Items 68 and 70 in Schedule 1

Sales Tax (Exemptions and Classifications) Act 1992 Item 12 in Schedule 2

Sales Tax (Exemptions and Classifications) Act 1992 Item 1 in Schedule 4

Case Ref: Bristol-Myers Company Pty Ltd v. FC of T 90 ATC 4553; (1990) 21 ATR 417

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