

15 November 2024

Ms Renae Carter
Technical Leadership and Advice - GST
Australian Taxation Office
The Treasury
Langton Crescent
PARKES ACT 2600

By email: renae.carter@ato.gov.au

Dear Ms Carter,

Draft GSTD 2024/D3 - Goods and services tax: supplies of food of a kind marketed as a prepared meal

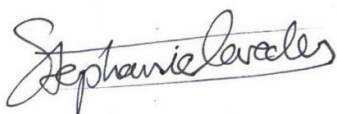
As the representative of over 160 large corporates that operate across 22 industries, the Corporate Tax Association (CTA) welcomes the opportunity to respond to the Australian Taxation Office's (ATO) Draft GST Determination *GSTD 2024/D3 - Goods and services tax: supplies of food of a kind marketed as a prepared meal* (**Draft Determination**).

The Draft Determination is a vastly positive improvement on its first iteration as [GSTD 2024/D1](#). We thank the ATO for listening to and addressing many stakeholder concerns in the Draft Determination.

We set out some matters we would like to raise with the Draft Determination in the attached Appendix, in particular the retrospective application of the Draft Determination. In this regard, we seek confirmation from the ATO that no compliance resources will be applied to supplies of food marketed as a prepared meal made prior to the date of issue of the Draft Determination and compliance resources will only be applied (as necessary) to supplies made after the time the Draft Determination is issued.

We would welcome the opportunity to discuss this matter with you further. Should you have any questions or if you wish to arrange a meeting to discuss this matter, please do not hesitate to contact me on 0408 028 196 or at scaredes@corptax.com.au.

Yours sincerely



Stephanie Caredes
Senior Tax & Policy Adviser

Appendix

1. Retrospective application

The Draft Determination is set to apply both before and after the date it is finalised. We submit that the final Determination should apply prospectively from its date of issue given that it captures the ATO's views on *Simplot Australia Pty Limited v Commissioner of Taxation* [2023] FCT 1115 which was handed down in 2023.

In the event that the ATO maintains the view that the final Determination should apply both before and after its date of issue, we seek confirmation from the ATO that no compliance resources will be applied to supplies of food marketed as a prepared meal made prior to the date of issue of the final Determination and compliance resources will only be applied (as necessary) to supplies made after the time the Draft Determination is issued.

2. Thresholds

a) 150 gram 'threshold'

There is a view expressed in the Draft Determination that products weighing less than 150 grams in total weight are not of a sufficient quantity for a meal and therefore are not 'food of a kind marketed as a prepared meal' (paragraph 51). We note the exception where the consumer can choose the amount of the food product they purchase.

While views may be put forward as to why 150 grams is or is not a suitable threshold amount and a higher or lower amount may be more suitable, it is useful that a specific amount has been included in the Draft Determination. This provides practical assistance to taxpayers when determining whether a particular food product is likely to be 'food of a kind marketed as a prepared meal' or not.

b) 60% / 70% threshold for single ingredient whether pasta, rice or other grain

Paragraph 125 of the Draft Determination provides that the compliance approach contained in Appendix 1 applies to salads with the following attributes:

- *70% or more of the total product by weight is a single ingredient or category of ingredient, being pasta, rice or other grain*
- *60% or more of the total product by weight is a single ingredient or category of ingredient, being anything other than pasta, rice or other grain, or*
- *the product contains 3 or fewer different ingredients or categories of ingredient, excluding*
 - *dressing, oil, salt, seasoning, dried herbs, or similar type of ingredient, and*
 - *individual ingredients that are 1% or less of the total weight of the product.*

It would be useful to understand the reasoning behind the 70% threshold that applies to salads where 70% or more of the total product is a single ingredient or category of ingredient, **being** pasta, rice or other grain and the 60% threshold that applies to salads where 60% or more of the total product is a single ingredient or category of ingredient **other than** pasta, rice or other grain.

Examples 12 (GST-free) and 13 (taxable) concerning variations on a Mediterranean salad kit seem to be attempting to demonstrate the 60% threshold. In example 13, an additional ingredient (olives) is added which changes the percentage allocation of the salad kit ingredients to put the mixed leafy greens below 60% (at 45%). It suggests that the more ingredients the salad kit has, the more likely it is to be taxable.

We query how this is to be applied in practice.

3. Step 3 of the Method Statement in Appendix 1

a) Impact of availability of seasonal ingredients

The Method Statement and compliance approach contained in Appendix 1 provides a 4 Step method. Step 3 applies a compliance approach for certain salad products. The phrase 'category of ingredient' may need further guidance to be provided in the future. If a salad has ingredients that reach 60% of the product weight and is considered GST-free, what happens if an ingredient that comprises 5% product weight is seasonal and not available to be used all year round? Is a replacement ingredient automatically considered as a similar 'category of ingredient'? If not, does this mean the GST rating of the salad product could vary during the course of the year based on the seasonal mix of ingredients? This may be an area to reviewed by the GST Product Classification Cluster covering the food stream after an initial period of application of the Draft Determination by industry participants.

b) Exclusion of dressings and seasonings

The compliance approach contains a '3 ingredients or less' test for when a particular product could be viewed as a prepared meal. The exclusion of dressings and seasonings (paragraph 125), while welcome, could in its present form could have a very different outcome for a salad containing fresh herbs versus dry herbs. We would suggest the exclusion is clarified to simply refer to herbs rather than 'dried herbs'.

4. New entries to the Detailed Food List

Could the 'salad – creamy pasta salad, containing pasta and mayonnaise dressing' new entry into the Detailed Food List be aligned with the 'salad – creamy potato salad, containing potatoes and dressing' to remove the word 'mayonnaise' and simply refer to 'dressing'?

5. Date of Application for Pricing Changes to take effect

At this point in time, there is no exact date available when any changes covered by the Determination will apply from, accepting that initially the date of application would be the date the ATO issues the final Determination.

Ordinarily, product prices are locked in a number of weeks in advance, usually with price freezes in place, ahead of the Christmas period which is nearly upon us. It may be difficult for manufacturers/wholesalers and retailers to put in place price changes where the application of the Determination may require pricing changes for certain products at this time of year. This could also impact on supply chains.

Subject to the timing of the finalisation of the Determination, it would be useful if there could be an agreed date for the application of the changes to take effect, such as 1 March 2025, with sufficient advance notice given to all industry stakeholders to allow time for system changes and to avoid unnecessary supply chain issues. In the past, pre-planned changeover dates have worked well for all industry participants, for example Salad Bowls had a three-month lead time until the changeover date of 1 October 2018 communicated by the ATO took effect and GST was added to these products.

On the assumption the ATO may wish to finalise the Determination before year end, a changeover date of 1 March 2025 gives sufficient time past the nearing Christmas period for stakeholders to plan for pricing changes.