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GST/HST Policy Statement

P-240 Application of GST/HST to Products Commonly Described as “Dietary Supplements”

Date of Issue

July 31, 2002

Subject

APPLICATION OF GST/HST TO PRODUCTS COMMONLY DESCRIBED AS “DIETARY SUPPLEMENTS”

Legislative Reference(s)

Section 1 of Part III, *Basic Groceries*, of Schedule VI to the *Excise Tax Act* (ETA)

National Coding System File Number(s)

11850-1

Issue and Decision

This policy statement addresses the issue of whether products commonly described as “dietary supplements” are taxable at 7% GST (or 15% HST as applicable) or at 0% (zero-rated). More specifically, this policy statement considers whether such products are zero-rated pursuant to section 1 of Part III, *Basic Groceries*, of Schedule VI to the *Excise Tax Act* (ETA) as food or beverages for human consumption or as an ingredient to be mixed with or used in the preparation of such food or beverages.

Products commonly described as “dietary supplements” are generally made from synthetic or natural ingredients that are ingestible and that may be nutritive. These products are available in a variety of formats: solid including powder, gel, liquid including oil, and tinctures and may contain vitamins, minerals, fibre, protein, amino acids, fatty acids, enzymes, or compounds derived from plant or animal products.

Meal replacement and nutritional supplement products¹ that meet the criteria set out in the Food and Drugs Act are not covered by this policy and such products would generally be zero-rated pursuant to section 1, Part III, Schedule VI to the ETA.

¹ Defined in Section B.01.001 of the Regulations to the Food and Drugs Act

Criteria For Determining Whether A Product Falls Within The Preamble To Section 1 Of Part III Of Schedule VI To The ETA

Section 1 of Part III, *Basic Groceries*, of Schedule VI to the ETA states that food or beverages for human consumption (including sweetening agents, seasonings and other ingredients to be mixed with or used in the preparation of such food or beverages (“ingredients”)) are zero-rated as a supply of a basic grocery. Certain foods or beverages, however, are excluded from zero-rating by paragraphs 1(a) to 1(r).

Food or Beverage

The CCRA considers that a product will be a food or beverage if an average consumer would recognize and purchase the product as a food or beverage in the ordinary course of buying basic groceries. Put differently, products would be considered to be food or beverages if they would be consumed by an average consumer when food or beverages are typically consumed, such as at mealtimes or for a snack.

This approach is based on the views of an average consumer. As a result, individual preferences for, or dislikes of, certain products would not alter the general perception that a product was, or was not, a food or beverage. Similarly, products that meet the special dietary needs of certain segments of the population such as those with restricted or special purpose diets, high performance athletes and dieters may not necessarily be viewed by the average consumer as food or beverages.

Consumers usually consume food for enjoyment or to allay hunger, while beverages are usually consumed for enjoyment or to quench thirst. Most products which the average consumer would consider to be food or beverages have some nutritive value and today’s more health conscious consumers may select and consume certain products not only to allay hunger, for enjoyment or to quench thirst but also for the particular nutritive value that the product offers. On the other end of the spectrum, some products that the average consumer may consider to be food or beverages may have little or no nutritive value. Some terms used to describe such products include “fun food”, “junk food” or “empty calories”. Nevertheless, in general, food and beverages are consumed to sustain or maintain life, to allay hunger or thirst, or for enjoyment, rather than for therapeutic or preventative effects (e.g., to correct actual or perceived health problems) or to achieve specific beneficial effects related to performance or physique.

For instance, sweetened medicated throat lozenges are consumed for their purported beneficial effects on symptoms related to a sore throat. However, those lozenges would not be considered by the average consumer to be food. In a similar fashion, many other flavoured or sweetened products that may have a pleasing taste would not be considered by the average consumer to be a food or beverage. Therefore, although these products are pleasant tasting, they do not fall within the meaning of ‘food’ for purposes of Part III of Schedule VI to the ETA.

Products that are labelled or marketed as products to be consumed to facilitate the intake of certain ingredients (nutritive or otherwise) or which place an emphasis on claims

relating to the benefits of the product, for example, therapeutic or preventive effects, or enhancing performance or physique, are not considered to be products that an average consumer would ordinarily purchase in the course of buying food or beverages. Rather, these products are represented as being for another purpose. For this reason, products in pill, tablet, or capsule format are not commonly regarded as “food” as they are not products that an average consumer would purchase in the course of buying food or beverages.

Ingredient

The CCRA considers a product to be an ingredient if an average consumer would recognize the product as an ingredient into food or a beverage. Thus, it is not the views of individuals or persons with special dietary concerns or requirements that will determine whether a product would be considered to be an ingredient.

Generally, it is the view of the CCRA that an average consumer would consider a product to be an ingredient if the product added to flavour, texture or appearance of the final product; that is, if it was integral to the final product. Moreover, in order to be regarded as an ingredient to a food or beverage, the final product, in and of itself, would be considered to be a food or beverage by the average consumer.

As with food and beverages, it is also recognized that some products that would be considered to be ingredients by an average consumer have no nutritive value. It is also recognized that consumers may select and add certain products to mix with or include as part of their preparation of food and beverages for the particular nutritive value that the product offers. However, it is the CCRA's view that products that are consumed for their therapeutic, preventative, or performance or physique enhancing properties would not be recognized by an average consumer as ingredients.

In addition, a product that is marketed for its beneficial effects, and that is added to a food or beverage simply as a means of consuming it, would not be considered by an average consumer as an ingredient simply because it is ingested in this manner. For example, granulated or powdered fibre marketed for its beneficial effects to the digestive system is normally added to a glass (e.g., eight oz.) of juice, milk, or water as a means of consuming it. Nevertheless, in this instance, fibre is not an ingredient to be mixed with, or used in the preparation of, a beverage. Alternatively, fruit punch crystals are mixed with water to form a liquid that would commonly be regarded by an average consumer as a "beverage" since consumers would acknowledge that the fruit punch is usually consumed to quench thirst or for enjoyment.

Food and Non-Food Uses

While products may indicate multiple uses, the CCRA will consider the true nature of a product to determine if it fits the criteria included in this policy. For example, it may be that a product has equally recognized food and non-food uses. In that case, the CCRA considers the product to be a food, beverage or ingredient, as the case may be, provided that the product is packaged and represented in a manner that is not inconsistent with a food, beverage or ingredient. The kind of products that are addressed in this policy, however, generally are represented in one overriding manner, although representations about secondary purposes or uses may also be possible.

Criteria For Determining That A Product Would Not Fit Within The Preamble To
Section 1 Of Part III Of Schedule VI To The ETA

Among other factors, the CCRA will consider labelling, packaging and marketing to determine whether a product would be considered by an average consumer to be a “food”, “beverage” or “ingredient”.

Labelling

A product with a label that displays one or more of the following would generally not be considered to be a food, beverage or ingredient:

- a) Identification as a “dietary supplement” or “supplement”. Although not determinative in itself, such an identification may be an indication that the product is consumed for the purpose of enhancing or improving a person’s state of health and not as a food, beverage or ingredient. Remember that the tax status of products that are nutritional supplements or meal replacements that meet the requirements of the *Food and Drugs Act* are not covered by this policy;
- b) Claims that the product
 - has a therapeutic or preventive effect,
 - enhances mental or physical performance, or
 - enhances physique;

For example, “Protein Product X builds muscle mass” or “Product Y will boost your immune system” or “Product Z prevents muscle aches and pains” or “Product P will help define your abdominal muscles”. Note that general health claims, such as “studies have found that a diet high in fibre is a factor in the maintenance of good health” on a label of a food high in fibre would not be considered a claim for a therapeutic or preventive effect;

- c) Emphasis on particular nutrient(s) not commonly regarded by a consumer as an ingredient (e.g. whey protein isolate). The CCRA would consider that the nutrient is emphasized if the name of the nutrient is prominently displayed on the label. Advertising material as to the purity or superior source of the nutrient would also indicate an emphasis on that particular nutrient. However, when a label contains general nutrition information or information that a product is fortified with particular vitamins and minerals, or that it is a source of protein, that alone will not exclude a product from the preamble. While some products may only indicate the nutrient(s) on the label, manufacturer’s literature near the product or information on the manufacturer’s website may indicate that the product is to be consumed for its therapeutic or beneficial effects or to enhance mental or physical performance. For example, products that would fall under this category would include products that purport to help rebuild strength, build endurance, build muscle mass, increase energy or improve health. Products such

- as orange juice fortified with calcium or vitamin C that claim that the product is a part of an overall healthy diet would not fall under this category;
- d) Claims that the product will promote weight loss (e.g., the product has a thermogenic effect);
 - e) Pictorial representations or product names that would lead a consumer to conclude that the principal purpose for consuming the product is for a therapeutic or preventive effect, to enhance mental or physical performance or to promote weight loss;
 - f) Restrictions related to the amount to be consumed. A product that is labelled for restricted consumption (e.g., only a certain number of teaspoons are to be taken daily) or with specific frequencies or quantities of dosage would not be considered to be a food or beverage;
 - g) Warnings as to who should not consume the product. (e.g., the product should not be consumed, or should only be consumed in restricted amounts, by pregnant women or children under 16 years of age);
 - h) Identification by the health care community or dietary authorities that there is a potential general health risk associated with the consumption of a particular element found in a product. Where such a health risk is identified, the product would generally not be considered to be a food or beverage by an average consumer. However, a caution by an authority that a particular product should only be consumed in moderation or an allergy advisory that a product may contain traces of nuts, for example, would not be considered to be a caution about a general health risk;
 - i) A caution as to how the product is to be “taken” or that it is to be “taken as directed by a physician”;
 - j) Instructions advising oral absorption (e.g. held under the tongue);
 - k) A Drug Identification Number (DIN) or a Natural Health Product number². Although not determinative in itself, the presence of a DIN or Natural Health Product number may be an indication that the product is promoted and consumed for its beneficial effects. However, the absence of a DIN or Natural Health Product number does not necessarily mean that a product is considered to be a “food” or a “beverage”;
 - l) A listing of active or medicinal ingredients. Often when a product is positioned as a dietary supplement, the label will list separately those components that are considered “active” (i.e. considered to contribute to a therapeutic effect) and “non-active” ingredients (i.e., those which do not contribute to a therapeutic effect).

² Products subject to proposed Natural Health Products Regulations, Health Canada

Packaging/Format

A product that is packaged in pill, tablet or capsule format or packaged in a format not commonly associated with foodstuffs (e.g., liquids in eye droppers, or gels in tubes) would generally not be considered by an average consumer to be a food, beverage or ingredient. This does not include some products commonly considered food that are often imported and sold as concentrated pastes (e.g. anchovy or tomato paste) in tubes.

Where the focus is on the benefits of the product, rather than the format per se, this is an indication that the product may not be a food or beverage. For example, a manufacturer may offer an algae product in both pill and liquid formats. Although a person may prefer a particular format for ease of consumption, the primary focus continues to be on the expected health benefits of ingesting the algae and not the format. Therefore, algae in a liquid format would not be considered a “beverage”.

Conversely, it is the CCRA’s view that an average consumer would generally accept that a product in bar format was food.

Marketing

Products marketed in any of the following manners would generally not be considered by an average consumer to be a food, beverage or ingredient:

- a) The product is not available in grocery stores, markets, specialty food stores or in direct sales food catalogues. The product is available in specialty vitamin stores or nutrition centres or is placed amongst non-prescription drugs and/or cosmetics and not with commonly recognized food or beverages in health food stores, pharmacies or large department stores;
- b) Where the product is advertised in a direct sales catalogue it is with products that are neither food, nor beverages, nor ingredients;
- c) The advertising, whether through print or electronic media (e.g., the Internet), or through information placed in stores, includes claims related to purported beneficial effects mentioned previously in this policy statement;
- d) The product is compared to other products that are not considered to be food, beverage or ingredients. For example, where an advertisement for a particular product available in powder format, includes a comparison to a similar product available in pill or tablet form, the comparison to products in those formats may indicate that the powdered product is a dietary supplement and not a food, beverage or ingredient.

The following examples illustrate the application of this policy.

Example #1 – Protein Isolate and Phosphate Compound

Facts

1. Protein Isolate and Phosphate Compound is a powdered combination of protein isolates and phosphate compounds.
2. The product comes in strawberry, vanilla and chocolate flavours.
3. The product is labelled, marketed and promoted as a bodybuilding dietary enhancement.
4. Product literature states that the product provides additional energy to muscle tissue to enhance the building of muscle mass.
5. The product label states that for best results mix 125 mL (½ cup) of Protein Isolate Phosphate Compound with 500 mL of milk and consume 30 minutes before a workout. The resulting mixture has an appearance, texture and taste similar to that of a milkshake.
6. The product label advises consumers to consult their medical practitioner prior to use of the product.
7. The product is supplied in health food stores as well as in traditional food outlets.

Decision

All supplies of Protein Isolate and Phosphate Compound are taxable at 7% GST (or 15% HST as applicable) pursuant to section 165 of the ETA.

Rationale

Protein Isolate and Phosphate Compound is not considered to be an ingredient to a beverage and, therefore, is not zero-rated under section 1 of Part III of Schedule VI to the ETA.

The fact that Protein Isolate and Phosphate Compound is mixed with milk and ingested into the body by drinking, does not mean that it is an ingredient used in the preparation of a beverage; rather, it is added to milk as a means of ingestion.

Protein Isolate and Phosphate Compound is labelled, packaged and marketed as a dietary supplement to enhance a consumer's bodybuilding. It is consumed primarily by particular individuals because of its purported physiological effects as a protein supplement and muscle-builder. Although the final product may have a pleasant taste, an average consumer would not purchase this product as a food or beverage.

Example #2 – Ground Roasted Seeds of Evergreen

Facts

1. Ground Roasted Seeds of Evergreen is the ground, roasted seed of a subtropical evergreen plant.
2. Ground Roasted Seeds of Evergreen is generally sold in grocery stores.
3. Ground Roasted Seeds of Evergreen is marketed in a manner similar to other products, which when added to water or milk, are also consumed by the average person as a warm beverage.
4. Ground Roasted Seeds of Evergreen is consumed by infusing the ground seeds with hot water and filtering the flavoured liquid prior to consumption.
5. Ground Roasted Seeds of Evergreen is marketed, promoted, and advertised as a pleasant, flavourful warm drink.
6. Ground Roasted Seeds of Evergreen includes a stimulant that increases alertness, however, the product is not marketed or promoted on this basis.
7. Ground Roasted Seeds of Evergreen is also sold with the stimulant removed.
8. Ground Roasted Seeds of Evergreen does not have any restrictions related to consumption on its label although health advisories or precautions have been issued recommending that the stimulant be consumed in moderation.

Decision

Ground Roasted Seeds of Evergreen is zero-rated under section 1 of Part III of Schedule VI to the ETA.

Rationale

Ground Roasted Seeds of Evergreen is an ingredient used in the preparation of a beverage since the product is used to prepare a drink that is recognized by average consumers as a beverage. Generally, consumers consume this product for enjoyment and not for any purported physiological effect.

Although the product contains a stimulant, the product is not labelled or marketed on this basis. Rather the product is sold as a pleasing warm drink. Finally, the product does not carry any health advisories or precautions, which would lead an average consumer to conclude that the product was not a beverage.

Example #3 – Mediterranean Pressed Olive Oil

Facts

1. Mediterranean Pressed Olive Oil is a blend of organically grown olive oils from Greece, Italy and Spain.
2. Mediterranean Pressed Olive Oil is sold through health food retailers.
3. Mediterranean Pressed Olive Oil is sold in small 250 ml (8 oz.) bottles.
4. The label states that the oil is ideal as a cooking oil or as a massage oil.

Decision

Mediterranean Pressed Olive Oil is zero-rated under section 1 of Part III of Schedule VI to the ETA.

Rationale

Despite the fact that the product can be applied externally, the product is labelled, packaged, and marketed similar to other cooking oils. A consumer would consider Mediterranean Pressed Olive Oil to be a food ingredient.

Example #4 – Fyber

Facts

1. Fyber is sold in the breakfast cereal section of grocery retailers.
2. Fyber is labelled, packaged and marketed as a breakfast cereal. That is, the emphasis on the label and related marketing material is as a breakfast cereal and not on any particular beneficial health effect.
3. Fyber is composed of various grains and is fortified with vitamins and minerals.
4. Fyber may be eaten alone or added to other goods as desired. The label suggests sprinkling Fyber on other food such as yoghurt or fruit to increase one's fibre intake.
5. Fyber is labelled as an excellent source of dietary fibre. The label states that "Fyber eaten regularly will improve your inner health".
6. Fyber can be used in baking muffins (recipe on the box).

Decision

Fyber is zero-rated under section 1 of Part III of Schedule VI to the ETA.

Rationale

Fyber is labelled, packaged and marketed in a manner similar to other breakfast cereals so that a consumer would consider Fyber to be cereal. Although Fyber may be used as an ingredient and has a general statement on its label concerning a health benefit, Fyber is regarded as a breakfast cereal.

Example # 5- Fibre Powdered Mix

Facts

1. The product is a naturally flavoured powdered fibre mix.
2. The product is available in three flavours: orange, vanilla and lemon.
3. The product is available in two sizes, a 454 gram size and 1.36 kg.
4. The label indicates that the main ingredient is psyllium.
5. The product also contains various herbal non-medicinal ingredients and flavourings, which are separately identified and which vary depending on the particular flavour of the product.
6. The label indicates the following:
 - An adult should start with one teaspoon twice a day. The amount can be increased gradually over three to four weeks to the recommended daily optimal intake. This optimal intake can vary between one and two tablespoons, depending on the weight of the person taking the product.
 - Children under the age of 16 are to take the product at half the rate listed for the smallest adult.
 - The product is to be used initially for a period of two months after the optimal daily intake is reached in order to cleanse the system. Afterwards, a maintenance daily intake of half of the optimal daily amount is recommended.
 - Pregnant or lactating women are advised to consult their health practitioner prior to taking this product.
 - A serving of Fibre Powdered Mix is to be mixed, using a blender, in six or eight ounces (180 ml to 240 ml) of water or juice.
 - The mixture should be drunk immediately after preparation.
 - For best results, drink 20 minutes before a meal.
 - If you are having more than three eliminations a day, reduce servings to one a day.
 - Drink eight glasses of water each day as part of this program.
7. The manufacturer's internet site contained the following information:
 - Using herbal supplements, often in conjunction with other methods, is one of the most popular ways to cleanse the body.

- Psyllium has over eight times the bulking power of oat bran. Psyllium is approximately 75 to 80 percent dietary fibre, 60 to 70 percent of which is soluble fibre.
- The herbs in Fibre Powdered Mix create powerful detoxification effects.
- Fibre Powdered Mix is a convenient, easy-to-use powder that produces effective detoxification effects.
- To preserve the potency and effectiveness of the herbs in the product and because of the bulking effect of psyllium, it is recommended that the product be mixed immediately before drinking. Do not prepare the product ahead of time and store it in the refrigerator.

Decision

Fibre Powdered Mix is taxable at 7% (or 15% HST as applicable) pursuant to section 165 of the ETA.

Rationale

Fibre Powdered Mix is not considered to be an ingredient. An average consumer would not view this product as an ingredient since the product is not integral and necessary to the final flavour, texture or appearance of a final product which in and of itself would be considered to be a food or beverage by an average consumer. Although the product is mixed with fluids and consumed by drinking, the resultant blend is not considered to be a beverage.

The product label has recommendations for use based upon the tolerance of consumers' metabolisms and their body mass. The recommended adult usage is increased gradually over an initial period. Furthermore, the product label states, "For best results, drink 20 minutes before a meal" rather than as part of a meal. This suggests that the product is consumed for its beneficial effects.

An average consumer would conclude that the product was not an ingredient because many of the ingredients found in the product have therapeutic properties and, on their own, are taken for their beneficial effects on the digestive system. The product label differentiates between "Ingredients" and "Non-Medicinal Ingredients" which indicates that the product is consumed for its beneficial effects.

Example #6 – Shark Cartilage

Facts

1. Shark Cartilage is 100% powdered shark cartilage.
2. Shark Cartilage is sold in orange, lemon-lime and vanilla flavours.
3. An individual serving consists of 15 ml (one tbsp) of Shark Cartilage mixed with

300 mL (10 oz.) of water or juice prior to consumption.

4. The label for Shark Cartilage suggests the consumer not exceed three servings per day.
5. The label for Shark Cartilage suggests that it be taken to maintain proper bone and joint health.
6. The label for Shark Cartilage includes a restriction that the product should not be consumed by pregnant women, children, or individuals who have recently undergone surgery.
7. Information on the manufacturer's web site claims that medical research is being conducted into the benefits of shark cartilage in inhibiting tumour-based cancer and metastasis.

Decision

All supplies of Shark Cartilage are taxable at 7% (or 15% as applicable) pursuant to section 165 of the ETA.

Rationale

The product is labelled and marketed on the basis of its beneficial effects related to bone and joint health.

A caution appears on the label that the product must be consumed in restricted amounts.

As a result, although Shark Cartilage is mixed with a liquid, it does not form a 'beverage' as the resultant mixture would not be recognized by an average consumer as a beverage. The addition of the product to liquid is merely a means of consuming the powdered cartilage. Therefore, the product is not considered an ingredient used in the preparation of a beverage.

Example #7 – Herb Cold and Flu Inhibitor

Facts

1. Herb Cold and Flu Inhibitor is a lemon-flavoured blend of various dried, ground herbs.
2. The herbs are packaged in perforated sachets.
3. The herbs are infused with hot water and the resulting liquid is consumed.
4. The product is labelled and marketed as a cold and flu inhibitor.

5. The product label states that for best results the product should be consumed at the first indication of cold or flu symptoms.
6. The product label includes an advisory that it should be consumed no more frequently than once per day.

Decision

Herb Cold and Flu Inhibitor is taxable at 7% (or 15 % as applicable) pursuant to section 165 of the ETA.

Rationale

Although it may be pleasant tasting, Herb Cold and Flu Inhibitor would not be considered to be an ingredient that forms a beverage by an average consumer as the final product is consumed for its beneficial effects of easing the symptoms of a cold or the flu rather than as a beverage.

Example #8 – EPG Compound

Facts

1. EPG Compound contains the liquid herbal extracts of Echinacea, Propolis and Goldenseal.
2. EPG is available in 60 mL (two fl. oz.) eyedropper bottles.
3. The product is marketed and promoted as a cold and flu inhibitor and preventative tonic.
4. The product label states that at the first sign of infection take four to six drops in a little warm water. Continue dose three to four times per day for three to five days or until symptoms have subsided.
5. Promotional literature for the product states that it is “useful in the treatment of colds and flu. It can also be taken as a preventative tonic for persons who are easily susceptible to colds.”

Decision

EPG Compound is taxable at 7% (or 15 % as applicable) pursuant to section 165 of the ETA.

Rationale

EPG Compound is not a beverage nor is it an ingredient, as it is not consumed as such by an average consumer but is consumed for its beneficial effects of easing or preventing the symptoms of a cold and the flu.

This is evident in that EPG is consumed in dosages (by the drop) and is packaged in a manner similar to a drug (eyedropper bottles).