

Dear Sir/Madam,

## **Goods and Services Tax (GST) Treatment of Feminine Hygiene Products – Consultation on Draft Definition**

The purpose of this letter is to make a submission on behalf of Woolworths Group Ltd (**Woolworths**) in response to the consultation paper regarding the GST Treatment of Feminine Hygiene Products (**Consultation Paper**) which was published together with the Joint Media Release issued by The Hon. Josh Frydenberg MP, The Hon. Kelly O'Dwyer MP and The Hon. Greg Hunt MP (**Media Release**) on 8 October 2018. Treasury has requested public feedback and comments in response to the Consultation Paper.

Woolworths is one of Australia's largest retailers with over \$56 billion in sales last financial year and, as a large GST taxpayer, maintains a significant interest in the GST law. The group is comprised of a diverse mix of 3,240 retail stores, including 1,008 Australian food outlets such as supermarkets and Metro stores as well as 183 Big W stores. Woolworths' supermarkets stock approximately 150 feminine hygiene products and Big W stores stock approximately 75 feminine hygiene products.

Woolworths welcomes the proposed changes to the GST treatment of feminine hygiene products as outlined in the Consultation Paper and Media Release. The purpose of this submission is to help ensure that Treasury's objectives are achieved through the drafting of a definition of feminine hygiene products that is appropriate and workable from a GST compliance perspective.

### **Proposed definition of 'feminine hygiene products'**

Relevantly, the proposed definition has been drafted as follows:

*Feminine hygiene products refers to:*

- (a) products that are specifically designed to absorb or collect menstrual or vaginal blood, such as tampons, pads and menstrual cups; and*
- (b) panty liners and maternity pads specifically designed to absorb or collect menstrual or vaginal blood.*

In the table at page 3 of the Consultation Paper (**Table**), Treasury provides various examples of products that are intended to fall within the ambit of the definition.

### **Submissions**

It is important that the definition of feminine hygiene products in the Health Minister's declaration is sufficiently broad to encompass all products that are specifically designed and used for the purposes of feminine hygiene, and which should be GST-free in accordance with the policy objectives that are driving the proposed changes.

Woolworths has undertaken a preliminary review of its product lines and has identified the following five categories of products which are used by women specifically in connection with feminine hygiene:

1. **Panty liners** specifically designed for feminine hygiene purposes, but which do not necessarily indicate on their packaging that they are specifically designed to absorb or collect menstrual or vaginal blood, including for example:
  - Femfresh Silver Care Breathable Liners;
2. **Washes** specifically designed for feminine hygiene purposes, including for example:
  - Femfresh Triple Action Deodorising Wash;
  - Femfresh Daily Intimate Wash;
  - Femfresh Sensitive Wash; and
  - Vagisil Intimate Wash Fresh Plus.
3. **Wipes** specifically designed for feminine hygiene purposes, including for example:
  - Femfresh Feminine Wipes;
4. **Deodorant** specifically designed for feminine hygiene purposes, including for example:
  - Femfresh Intimate Hygiene Feminine Deodorant;
5. **Powder** specifically designed for feminine hygiene purposes, including:
  - Femfresh Talc Free Powder.

There may be other similar products and different brands stocked by Woolworths and other retailers. The examples above are listed so as to demonstrate the relevant issues and are discussed further below.

### *1. Panty liners*

Woolworths is concerned that the examples of products that will be GST-free from 1 January 2019, as set out in the Table, expressly exclude panty liners that are “products marketed for general hygiene”. As a practical matter, panty liners that are marketed to women will only ever be used for feminine hygiene purposes, even if the marketing or packaging of the products does not refer specifically to the collection of vaginal blood. It would be well within the spirit of the reform for all panty liners that are sold for feminine hygiene purposes to be GST-free.

For example, Femfresh Silver Care Breathable Liners are marketed as a gynecologically tested feminine hygiene product designed to “...minimise the reproduction of odour causing bacteria and help to maintain the natural balance of your most intimate area”. The products are marketed as “ultra absorbent”, “ultra thin” and “breathable”. They are very similar to pads but are, as panty liners are described in the Table, “a little lighter” and “thinner”. However, there is no specific reference to menstruation or the collection of vaginal blood on the packaging. Arguably, therefore, they are “marketed for general hygiene” and therefore, in accordance with the guidance in the Table, would not be GST-free in accordance with the proposed definition.

Woolworths submits that this is not the outcome intended by the reform. It would be arbitrary to treat products like the Femfresh Liners as taxable in circumstances where other products which are almost identical will be GST-free, simply on the basis that, arguably, the “products are marketed for

general hygiene". This creates an artificial distinction between like products that are all purchased and consumed for feminine hygiene purposes; a distinction that is drawn on the basis of how the products are marketed or described on their packaging rather than the purpose the products serve and how they are likely to be used.

It is important that all products "specifically designed to absorb or collect menstrual or vaginal blood" fall within the definition, irrespective of how they are marketed.

In light of the above, Woolworths submits that all panty liners that are specifically designed for feminine hygiene purposes should be GST-free and this should be clearly reflected in the definition of 'feminine hygiene products' and any accompanying explanatory material.

## **2. Washes**

Woolworths submits that the definition of 'feminine hygiene products' should be expanded to include washes that are specifically manufactured and designed for feminine hygiene purposes. The characterisation of the products as "feminine hygiene products" should be determined with reference to the nature and recommended use of the products.

For example, the Femfresh Triple Action Deodorising Wash, Daily Intimate Wash, Sensitive Wash and Vagisil Intimate Wash Fresh Plus are gynaecologically tested feminine hygiene products specifically designed for use in and around the vaginal area. This is expressed in the product description for the Femfresh Wash products, which states that they are "pH-balanced for the intimate area" and "have been specifically designed for your intimate skin...so it doesn't disrupt the natural workings of your body, like some soaps and shower gels". Similarly, the product description for Vagisil Intimate Wash Fresh Plus states that the product is "...specially designed for the unique needs of the intimate skin [and is] gynaecologist tested...". These products are easily distinguishable from other body scrubs, soaps, gels and shampoos which are designed for general dermal health and/or the masking of body odour.

These are clearly feminine hygiene products. They have been developed for use in the sensitive vaginal area to alleviate irritation and odour and improve cleanliness. Their purpose is ancillary to that of pads, tampons, panty liners and maternity pads. It is appropriate and in the spirit of the reform to include these products within the scope of the definition.

## **3. Wipes**

Woolworths submits that the definition of 'feminine hygiene products' should be expanded to include feminine hygiene wipes. These products are designed and used specifically for the purposes of promoting feminine hygiene. This is reflected in the nature and recommended use of the products.

For example, Femfresh Feminine Wipes are a gynaecologically tested feminine hygiene product designed to "...gently cleanse, freshen and deodorise" the vaginal area. They are specifically designed for the purposes of promoting feminine hygiene and this is their only recommended use.

These products should fall within the scope of the definition of feminine hygiene products. Their purpose is ancillary to that of products such as pads, tampons, panty liners and maternity pads. Their sole recommended use is the maintenance of feminine hygiene. It would be appropriate and within the spirit of the reform to treat these products as GST-free.

#### ***4. Deodorants***

Woolworths submits that the definition of 'feminine hygiene products' should be expanded to include vaginal deodorants. These products are designed and used specifically to promote feminine hygiene.

For example, the 'Femfresh Intimate Hygiene Feminine Deodorant' is specifically designed to eliminate odours and promote freshness in the vaginal area. The product description indicates that the product "has been dermatologically and gynaecologically tested and is suitable for everyday use". The name and recommended use of the product clearly indicate that its sole purpose is the maintenance of feminine hygiene.

These products should fall within the scope of the definition of feminine hygiene products. The use of these products is ancillary to that of pads, tampons, panty liners and maternity pads. Maintaining feminine hygiene is the sole recommended purpose of the products. It would be appropriate and within the spirit of the reform to treat these products as GST-free.

#### ***5. Powders***

Woolworths submits that the definition of 'feminine hygiene products' should be expanded to include powders that are specifically manufactured and designed for feminine hygiene purposes. This should be determined with reference to the nature and recommended use of the products.

For example, Femfresh Talc-Free Powder is a gynaecologically tested feminine hygiene product. The product description provides that it is "...suitable for intimate feminine use" and is to be applied "...after bath or shower to absorb residual moisture". The purpose of the product is clearly for the purpose of maintaining feminine hygiene, as illustrated by the gynaecological testing and recommended use of the product.

Maintaining feminine hygiene is the sole purpose of these products. It would be appropriate and within the spirit of the reform to include these products within the definition of 'feminine hygiene products'.

#### ***6. Other ancillary products***

As previously indicated, the categories listed above are not exhaustive and other ancillary products may be developed over time. The definition of 'feminine hygiene products' should be broad enough to adapt to these categories and other types of products that are specifically designed for feminine hygiene as they are developed and introduced to the market.