


# ***SST D9 - Sales tax: a guide to the classification of goods under the sales tax law***

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There is an Erratum notice for this document.

This document has been finalised.



## **Draft Taxation Ruling**

### **Sales tax: a guide to the classification of goods under the sales tax law**

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*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners. When officially released it will be a public Ruling for the purposes of section 77 of the Sales Tax Assessment Act 1992.*

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## Chapter 1: What this Ruling is about

- 1.1 Sales tax is a self-assessing tax. Essentially this means that the responsibility for determining and calculating the sales tax payable rests with the taxpayer. To assist taxpayers to self-assess, this Ruling sets out a step by step guide to classifying goods

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correctly. In this Ruling, *classifying* goods means determining the *rate* of sales tax (if any) which applies to the goods.

- 1.2 The Ruling is expressed in non-technical language wherever possible. If you wish to find the authority behind any of the principles stated in this Ruling, the footnotes refer to court decisions and other authorities on the topic, or give details of the particular legislation which applies.
- 1.3 If you act consistently with this Ruling, you need not seek confirmation of a particular classification of goods from the Australian Taxation Office (ATO).

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## Chapter 2: Structure of the legislation classifying goods

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- 2.1 Sales tax is imposed on *assessable goods*, which are the subject of an *assessable dealing*, unless an exemption applies.<sup>1</sup> Broadly, goods are assessable goods if they have been manufactured in Australia (*Australian goods*) or have been imported into Australia (*imported goods*). However, assessable goods do not include goods that have been applied to own use in Australia (*Australian-used goods*).<sup>2</sup> In simple terms, Australian-used goods refers to goods that have been used in Australia, such as secondhand goods. However, goods that have been used overseas, but not in Australia, are assessable goods.

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1. An assessable dealing is an act, event or transaction that triggers a sales tax liability. See section 16 of the *Sales Tax Assessment Act 1992* (STAA).

2. The terms in italics in this paragraph are defined in section 5 of the STAA.

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## *Schedules and rates of tax*

- 2.2 The main legislation dealing with classifying goods is the *Sales Tax (Exemptions and Classifications) Act 1992* (ST (E&C) Act).<sup>3</sup> The ST (E&C) Act includes a number of Schedules, each containing Items which list or describe goods.<sup>4</sup>
- 2.3 Sales tax is not payable on goods covered by any Item or subitem in Schedule 1.<sup>5</sup> Goods specified by the other Schedules are taxable at the rates set down for goods in that Schedule in the various Acts which impose sales tax.<sup>6</sup>
- 2.4 The rates of tax presently assigned to the Schedules are:
- Goods covered by Schedule 2 - 12%
  - Goods covered by Schedule 4 - 22%
  - Goods covered by Schedule 5 - 32%
  - Goods covered by Schedule 6 - 45%
  - Goods covered by Schedule 7 - 26%.<sup>7</sup>
- These rates may be varied from time to time. The current rate should be checked by referring to the appropriate Schedule of the ST (E&C) Act.<sup>8</sup>
- 2.5 The descriptions used in Items in the Schedules vary. Many descriptions are broad or generic, while others are narrow or specific. It is, therefore, possible for goods to be covered by more than one Item in more than one Schedule. Rules for finding out which rate of tax applies in such cases are set out in **Chapter 4**.

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3. Other relevant legislation includes the STAA, *Sales Tax Assessment Regulations* and the *Imposition Acts* (see Footnote 6).

4. In this Ruling, a reference to Schedules means a reference to Schedules of the ST (E&C) Act.

5. Section 24 of the STAA provides: 'An assessable dealing is not taxable if:  
 (a) the goods are covered by an exemption Item that is in force at the time of the dealing; and  
 (b) all the requirements of that Item have been met at or before the time of the dealing'.  
 See also sections 25, 26, 29, 30 and 31 of the STAA and section 4 of the ST (E&C) Act.

6. Sales tax is imposed by the Impositions Acts, being the *Sales Tax Imposition (Excise) Act 1992*, the *Sales Tax Imposition (Customs) Act 1992*, the *Sales Tax Imposition (General) Act 1992* and the *Sales Tax Imposition (In Situ Pools) Act 1992*.

7. See subsection 15(1) of the ST (E&C) Act. Schedules 3 and 8 have effectively been omitted from the ST (E&C) Act.

8. Refer subsection 15(1) of the ST (E&C) Act. In the past the Schedules to the ST (E&C) Act have been modified by seven Deficit Reduction Acts and three Modification Acts rather than being amended.

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## *Schedule 1*

- 2.6 Schedule 1 of the ST (E&C) Act is divided into 15 separate Chapters with headings which can help the search for a relevant Item or group of Items. The Chapter heading may also be used to help in the interpretation of an Item within the Chapter.<sup>9</sup>
- 2.7 Schedule 1 contains numbered Items which may describe goods in the following ways:
- specifically, for example, newspapers (Item 101);
  - in broad terms, for example, goods for use by a person mainly in producing motion picture films ... (Item 25); or
  - as a class of goods, such as cylinders of a kind ordinarily used in marketing gases for industrial, medical or domestic use ... (Item 32).
- 2.8 The Items in Schedule 1 may be divided into *conditional* and *unconditional* Items. An Item is *conditionally* satisfied if, at the time of the assessable dealing, the goods are intended for use by a particular person or in a particular way as required by the exemption Item. For example, subitem 140(a) refers to goods for use by a public hospital, and Item 83 refers to gases for use exclusively by a hospital, medical practitioner or dentist. Schedule 1, in conjunction with Section 5 of the ST (E&C) Act, sets out use requirements, which are explained in **Chapter 3** of this Ruling.
- 2.9 Goods covered by conditionally exempt Items can only be purchased free of sales tax if the exemption user intends to use the goods in the way specified in the Item. The exemption user must quote a registration number (if registered) or an exemption declaration (if not registered) to the supplier.<sup>10</sup>
- 2.10 The only requirement for *unconditional* exemption is that the goods must satisfy the description in the Item. If the goods meet the description, they are 'always-exempt goods', regardless of who uses them or how they are used. Exemption under these sorts of Items can apply according to:

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9. For the purposes of subsection 13(1) of the *Acts Interpretation Act 1901 (Cth)*, Schedule 1 is deemed to be a part of the ST (E&C) Act (see subsection 13(2)). Subsection 13(1) deems Chapter headings to be part of the ST (E&C) Act, and thus part of Schedule 1. Prior to the introduction of the new sales tax law, the *Sales Tax (Exemptions and Classifications) Act 1935* specifically stated that Chapter headings did not affect the interpretation of any Item in the Schedules. See subsection 3(2) of that Act.

10. Refer to Sales Tax Bulletin No 13, 'Buying goods free of sales tax' for further information.

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- the character or description of the goods, for example, newspapers (Item 101) or tobacco (Item 160);
- a common or settled use for the goods, for example, goods of a kind ordinarily used as food for livestock (Item 161A); or
- how the goods are marketed, for example, goods of a kind marketed principally as ingredients for concrete (subitem 41(2)).

## *The taxing Schedules*

- 2.11 Unlike Items in Schedule 1, Items in the taxing Schedules 2 to 7 (see paragraphs 2.2 to 2.5) are not grouped into Chapters or under headings.
- 2.12 All Items in the taxing Schedules are *unconditional*, that is classification is based on the nature of the goods, rather than the use to which the goods are put.
- 2.13 If goods are not covered by Schedules 1, 2, 5, 6 or 7, they are covered by Schedule 4.

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## Chapter 3: Standard expressions of general application

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- 3.1 Many Items in the Schedules to the ST (E&C) Act refer to goods using standard expressions. Each of these expressions represents a particular concept and has the same meaning each time it appears.

### **Goods**

- 3.2 The term *goods* is used where the scope of the Item applies to all goods and not to a narrower class, for example where the Item is not limited to just equipment or



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appliances. Goods are any form of tangible personal property, but do not include second-hand property manufactured from Australian-used goods.<sup>11</sup>

- 3.3 Some goods are referred to as *always-exempt goods*.<sup>12</sup> If the goods meet the description of an exemption Item at the time of an assessable dealing, they are not taxable. This applies regardless of who uses them or how they are used at a later time. An example of always-exempt goods is postage stamps, in Item 107.
- 3.4 Where a narrower class than 'goods' is appropriate, terms such as 'machinery, implements and apparatus', 'instruments', 'materials' or 'equipment' are used to show that the exemption is only intended to apply to a more limited field of goods.
- 3.5 Where an exemption Item is restricted to imported goods, this is specifically stated. For example, Item 119 covers imported antiques. Some other Items state that the goods are only exempt if they are of Australian origin or manufacture. For example, subitem 65(1) covers primary products derived directly from operations carried on in Australia.<sup>13</sup>

## Raw materials

- 3.6 There are some exemption Items that refer to the expression 'raw materials'. Goods are considered to be raw materials if:
- they are used in manufacture of other goods, or in the construction or repair of property; and
  - the goods, or some essential element of them, become an integral part of the manufactured goods, or the property in its finished condition.<sup>14</sup>
- 3.7 Some subitems in Chapter 1 of Schedule 1 refer to eligible raw materials. This is a category of exempt raw materials for use in business or industry.<sup>15</sup>

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11. Refer to section 5 of the STAA.

12. Section 5 of the STAA defines the term *always-exempt goods*.

13. Refer to Schedule 1, Item 184 of the ST (E&C) Act: [Goods produced in New Zealand, Fiji, etc.]

14. Refer to section 7 of the STAA.

15. Refer to section 11 of the ST (E&C) Act.

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## Schedule 1 'use' requirements

- 3.8 A number of exemption Items contain a 'use' requirement. These Items are indicated by the basic form of words - 'goods for use by a person' and variations on that form such as 'goods for use by a person mainly for ...' and 'goods for use by a person exclusively as ...'. In each instance when the exemption depends on use, the Item refers to use by a person. This might be a nominated person<sup>16</sup> or body, or any person.
- 3.9 Exemption depends on an intention to use goods so as to satisfy the requirements of an exemption Item. An exemption applies if the exemption user has the intention, at the time of the assessable dealing, of satisfying an exemption Item. For example, Item 163 provides exemption for goods for use by a person exclusively as food for guide dogs for blind persons. To meet the requirements of this Item, the person must intend to use the food exclusively for this purpose. The food could not be intended for use to feed pet dogs.
- 3.10 In most cases, it is not necessary that the goods be intended for use solely in the way specified in order to qualify for exemption. There are three different degrees or levels of use in the exemption Items which depend on how often the goods are used. These are 'exclusive use', 'main use' and 'unquantified use'. It is important to note that a statutory period applies in relation to the period for which the goods must be intended to be used (see paragraph 3.16).
- 3.11 Some exemption Items require goods to be used 'exclusively' in a certain way. To qualify for exemption, the goods must be intended to be used entirely in the way stated by the Item. If any other use of the goods is intended, the goods are not exempt.
- 3.12 Some exemptions require that the goods be intended for use by a person 'mainly' in a certain way. 'Mainly' means to the extent of more than 50%.<sup>17</sup>
- 3.13 'Unquantified' use is where the Item states 'goods for use' without the 'for use' requirement being modified by 'exclusively' or 'mainly'. The 'unquantified use' test for exemptions depends on goods being for use in a certain way and the goods are exempt if they are to be used to a real or significant extent in the way required by the Item. An occasional or insubstantial use is not enough.<sup>18</sup>

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16. 'Person' is defined in Section 5 of the STAA to mean any of the following: 'a company, a partnership, a person in a particular capacity of trustee, a body politic or any other person'.

17. The term 'mainly' is defined in subsection 3(2) of the ST (E&C) Act.

18. See comments in DC of T v. Stewart & Anor (1984) 154 CLR 385; 84 ATC 4146; (1984) 15 ATR 387; 58 ALJR 191; (1984) 52 ALR 253.

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- 3.14 In some cases, exemption depends on the goods being for use in the manner required by the Item. For example, Item 97 refers to motor vehicles for use by an eligible disabled person for his or her personal transportation to and from gainful employment. Similarly, some exemptions depend on goods being used by a particular person or body, and the type of use or extent of use is not specified. For example, Item 130 refers to goods for use by the Reserve Bank of Australia.
- 3.15 A number of exemption Items for goods for use in business and industry are marked with the letter [R]. They are commonly known as business input exemption Items and are referred to as [R] Items. This means that only persons registered for sales tax are permitted to acquire goods free of sales tax under these Items by quoting a sales tax registration number.<sup>19</sup> Unregistered persons will have to buy goods covered by these Items at tax-inclusive prices and may be able to claim a credit. For example, Item 2 (marked [R]) refers to goods for use mainly in carrying out a primary production activity in the course of a primary production business.

## Statutory period

- 3.16 A statutory period applies to goods covered by conditionally exempt Items.<sup>20</sup> This is a minimum period for which the exemption user must intend to use the goods. The statutory period is usually two years, but may be less if the goods ordinarily have a shorter working life. In special circumstances the Commissioner may consider an alternative period to be appropriate. An example of where special circumstances may apply is where harsh conditions limit the usual working life of goods. A decision whether to approve an alternative period would be made after considering the full facts of each situation.

## Parts, fittings and other associated goods

- 3.17 Some exemption Items contain a note at the end of the Item or subitem in a form such as [Parts] or [Parts and fittings]. This means there is an exemption for parts or parts and fittings for the goods covered by the exemption Item (the main goods).
- 3.18 Where an exemption is for goods for use by a specified body, exemption extends to associated goods, such as parts, fittings, accessories and attachments for particular goods, as long as there is no restriction on the kinds of goods which qualify for exemption.

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19. Refer to section 9 and subsection 5(1) of the ST (E&C) Act.

20. The term '*statutory period*' is defined in section 5 of the STAA.

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- 3.19 Associated goods attract the same rate of tax or exemption from tax as the main goods, if certain conditions are satisfied.
- 3.20 If the main goods are **always-exempt goods**, the exemption for associated goods will apply if they satisfy one of two conditions:
- the goods are marketed exclusively as associated goods for the main goods. For example, spare parts which are recognisable in the market as parts for surgical x-ray apparatus (Item 82, Schedule 1); or
  - the associated goods are goods for use by the exemption user exclusively as parts, fittings or accessories for the main goods. Although intended for use exclusively with the main goods, this use is not necessarily their only application. For example, parts used to repair a wheelchair (Item 94, Schedule 1), could also be used to repair motor vehicles or machinery.
- 3.21 Some Items that provide exemption for parts, fittings and accessories may have a 'for use' requirement. The exemption is only available if the person intends using the associated goods exclusively for the goods covered by the exemption Item. For example, Item 17, Schedule 1 refers to cranes and winches for use by a person mainly for hauling log timber in the timber-getting industry. There is a note at the end of the Item reading [Parts, accessories and attachments]. This means that there is an exemption for goods for use by a person exclusively as parts, accessories or attachments for cranes and winches covered by the Item. Because of the interchangeable nature of many parts, exemption is only available if the parts are for use exclusively as parts for the cranes and winches.
- 3.22 The expression used in referring to parts for **taxable goods** (covered by Schedules 2 and 5) is 'goods marketed principally as parts for goods covered by ...'. Goods are therefore only treated as parts for taxable goods if they are clearly recognisable in the market as parts for those goods. As the Items in the taxing Schedules are 'non-conditional', parts for taxable goods do not have a 'for use' test.

## Marketing test

- 3.23 Some goods are either exempt or classified at a particular rate on the basis of their marketing. Standard expressions 'goods marketed for ...' or 'goods marketed as ...' indicate these cases. 'Marketed' is modified either by the word 'principally' or, in the case of associated goods and raw materials, 'exclusively'. 'Principally' is defined to include 'exclusively'.<sup>21</sup> Marketing involves an examination of the activities of the sellers of the relevant goods. Consideration may be given to the name, price,

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21. Subsection 3(2) ST (E&C) Act.

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labelling, packaging, advertising and distribution of the goods. The intention of consumers may also be relevant. In Schedule 1, the expression 'marketed principally' indicates always-exempt goods.

## Covered by

- 3.24 'Covered by' is an expression that indicates goods, or parts for goods, that are only exempt if they fall within the description of the Item. For example, subitem 85(2), Schedule 1 exempts cases and wipers for goods *covered by* subitem (1). Therefore, cases and wipers for spectacles and eye-glasses are exempt in accordance with this Item, but cases and wipers for other goods are not.

## Of a kind ordinarily used

- 3.25 Some goods are exempt because they are goods of a kind ordinarily used in a particular way. Other goods are classified at a certain rate because of the way in which they are ordinarily used. This description envisages a settled or common use of a class of goods rather than an individual product. The exemption or classification may apply even if the goods are used in more than one way. The important question is not whether particular goods are used in the way specified in the Item, but whether the goods belong to a class or genus of goods that is commonly used in that way.<sup>22</sup> In Schedule 1, the expression 'goods of a kind ordinarily used' indicates always-exempt goods.
- 3.26 For example, Item 7 in Schedule 1 of the ST (E&C) Act exempts field wire fencing and gates of a kind ordinarily used in the agricultural industry. Fencing and gates that belong to this class of goods will be exempt even if they are sold for use in situations other than in the agricultural industry.
- 3.27 In measuring ordinary use, it is the actual ordinary use of the goods by users or buyers of the goods, as opposed to the ordinary use contemplated by manufacturers or vendors, which determines if goods fall within the description of the Item.<sup>23</sup>
- 3.28 The use of the words *goods of a kind* involves determining what class or genus the goods belong to. The more the class or genus is expanded, the more likely it is that

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22. See the comments by Gummow J in *Hygienic Lily Ltd v. DC of T* (1987) 13 FCR 396; 87 ATC 4327; (1987) 18 ATR 619; (1987) 71 ALR 441. See also comments by Hill J in *Diethelm Manufacturing Pty Ltd v. FC of T* (1993) 44 FCR 450; 93 ATC 4703; (1993) 26 ATR 465; (1993) 116 ALR 420 and Hill J in *FC of T v. Chubb Australia Ltd* (1995) 56 FCR 557; 95 ATC 4186; (1995) 30 ATR 285; (1995) 128 ALR 489.

23. This paragraph is based on comments in *Diethelm Manufacturing Pty Ltd v. FC of T*.

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the class of goods is commonly used in the way stated in the Item. Recent judicial direction suggests that a narrow rather than a wide genus should be used.<sup>24</sup>

## **The following goods ...**

- 3.29 A number of Items begin with the phrase 'the following goods ...' requiring that the goods be used for a certain purpose or in a particular way. Under the opening words is a list of goods. The goods in the list have to fall within the description of the opening words if they are to be brought within the Item.<sup>25</sup> The phrase is also used in cases where a common condition or description applies to a group of goods.

## **Consisting of**

- 3.30 The term 'consisting of' is used to refer to the composition of goods. For example, subitem 12(2), Schedule 2 covers flavoured beverages that consist principally of soy milk or rice milk. The term 'contains' is also a reference to the composition of goods.

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## **Chapter 4: Steps to sales tax classification**

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### *Step 1: Identify the goods*

#### **Objective identification - essential character**

- 4.1 The first step to classifying goods for sales tax purposes is to identify the goods in an objective way. Objective identification means that the goods should be identified

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24. Although a wide genus was used in *Hygienic Lily Ltd v. DFC of T*, a narrow genus has been used in the more recent decisions of *Diethelm* and *Chubb*. See also the comments by Lehane J in *CCA Beverages (Sydney) Pty Ltd v. FC of T* 97 ATC 4213; (1997) 35 ATR 77 where he compares the *Hygienic Lily* decision with the *Diethelm* and *Chubb* decisions.

25. See the comments by Davies J in *O R Cormack Pty Ltd v. FC of T* 92 ATC 4121; (1992) 23 ATR 151.

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as a matter of fact, guided by popular usage and common knowledge.<sup>26</sup> The actual intentions of the manufacturer,<sup>27</sup> or the particular description given to the goods by the manufacturer or others,<sup>28</sup> are not necessarily conclusive.

- 4.2 Another way to describe objective identification is to say that the identity of goods should be determined according to their essential character.<sup>29</sup> This means deciding what the goods essentially are, as distinct from merely identifying one of a number of characteristics the goods might have. This approach relies upon deciding what is the basic nature of the goods. This involves consideration of what the goods are made of and what they might be used for.
- 4.3 Where an Item uses the expression *goods of a kind ordinarily used*, determining the essential character of the goods may not be the best way of deciding whether the goods are covered by the Item. Instead, it is necessary to decide whether the goods are a member of a class or genus of goods that is commonly used in the manner stated in the Item. This approach is discussed in more detail at paragraphs 3.25 to 3.28.<sup>30</sup>

## Time of identification

- 4.4 The identification must be made at the time of the assessable dealing, that is, at the time when liability to sales tax arises.<sup>31</sup>

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26. See the comments by Stephen J in *Rotary Offset Press Pty Ltd v. DFC of T* 72 ATC 4212 at 4213; (1972) 3 ATR 319; 46 ALJR 609.

27. For example, in *DFC of T v. Rotary Offset Press Pty Ltd* 71 ATC 4170 at 4175; (1971) 2 ATR 411 at 417; 45 ALJR 518 at 522, Gibbs J commented: 'The question whether a periodical is "advertising matter" seems to me to depend on whether the periodical, viewed objectively and without regard to the actual intentions of those publishing it, answers that description.'

28. This derives from the principle that 'a misdescription does not alter the nature of the thing being described' according to Gibbs J in the first *Rotary Offset* case.

29. See the comments of Davies J in *Thomson Australian Holdings Pty Ltd & Ors v. FC of T* (1988) 20 FCR 85 at 86-87; 88 ATC 4916 at 4916-4917; (1988) 19 ATR 1896 at 1897-1898.

30. Compare the judgments of Hill J and French J in *Diethelm*, and a discussion of the alternative methods by Hill J in *FC of T v. Chubb Australia Ltd*. French J determined whether goods were of a kind ordinarily used by determining the essential character of the goods whereas Hill J made the determination based on whether the goods were members of a class or genus. Although both approaches have judicial support, the approach used by Hill J seems to have more support and is the approach followed in this Ruling.

31. See *DC of T v. Stewart & Anor* (1984) 154 CLR 385 at 401; 84 ATC 4146 at 4155; (1984) 15 ATR 387 at 398; 58 ALJR 191 at 198; (1984) 52 ALR 253 at 266: '... what is required is an objective characterization of the goods themselves in the light of all the relevant circumstances. That characterization must be made as at the time when liability to sales tax would otherwise attach.'

**Specific and general descriptions**

- 4.5 Items in the ST (E&C) Act may describe goods specifically or in more general terms. Consequently, it is important to establish all the reasonably apt descriptions, whether narrow or broad, by which goods can be identified. For example, a sterling silver spoon may be identifiable as:
- a spoon;
  - more generally as -
    - an article used for preparing, serving or consuming food or beverages; or
    - an article used to assist with cooking; or
  - even more generally as goods made of a precious metal.

**Separate goods or a single article?**

- 4.6 Collections of individual articles sold together are classified separately, with each article being classified according to its own identity. Tool kits, bath sets and manicure kits, for example, are classified according to the component articles.
- 4.7 If taxable and exempt goods, or goods that are taxed at different rates, are packaged and sold together for one inclusive price, then the goods are treated separately for the purpose of calculating the taxable value. The value of each item is the same value for which that item could reasonably have been expected to have sold for separately.<sup>32</sup>
- 4.8 However, where goods are sold in kit form for the components to be assembled by the purchaser into a single article, the goods are identifiable as one article and are classified accordingly. Examples of kits or collections of articles which are classified as one article include: furniture kits, boat kits, clock kits, model aeroplane building kits, kites, dog kennels and wheelbarrows.<sup>33</sup>
- 4.9 The sales tax legislation specifically requires that component parts of some goods be treated separately. Sections 39, 46, 47 and 48 of the STAA either exempt certain

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32. Refer to section 95 of the STAA. The calculation of taxable value is discussed in Taxation Ruling SST 6.

33. See the comment by Barry J in the *Betterways Panels Ltd v. Commissioners of Customs and Excise* [1964] 1 All ER 948 that if a person buys an article in parts, the essence of the transaction remains the same, i.e., it is the purchase of a complete article.



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components of the goods, such as solar panels, or reduce the taxable value of the goods, such as prefabricated buildings.

## *Step 2: Look at the legislation*

### **Locating the Items**

- 4.10 As shown in paragraph 4.5, there may be a number of ways to describe a given article. Having found the descriptions, the next step is to examine the legislation to find Items or provisions which may fit them. As stated in paragraph 2.6, Schedule 1 is divided into chapters. Schedules 1, 2 and 5 have a Table of Contents listing each Item.
- 4.11 Using the spoons example, an examination of the legislation reveals:
- there is no Item in any Schedule to the ST (E&C) Act which applies specifically to spoons;
  - Schedule 2, subitem 1(1)(b) covers goods of a kind ordinarily used in connection with preparing, serving or consuming food or beverages;
  - Schedule 2, subitem 1(1)(d) covers goods of a kind ordinarily used in connection with cooking, preserving or storing food or beverages; and
  - Schedule 5, subitem 5(1) applies to goods consisting principally of a precious metal.
- 4.12 As shown, there are several provisions which might apply. If the goods are not covered by Schedules 1, 2, 5, 6 or 7, they would be covered by Schedule 4.

## *Step 3: Interpret the relevant provisions*

### **Elements of interpretation**

- 4.13 The third step to classifying goods is to interpret the Items or provisions discovered through Step 2 above. The elements in this step include:
- deciding whether the Item in question uses words or expressions in any special way. Some words are defined in the legislation;

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- if there is no special meaning, establishing the ordinary meaning of the expression used; and
- if Items in more than one Schedule could apply, determining which Schedule applies.<sup>34</sup>

## Is there a statutory definition?

- 4.14 In the previous paragraph, the first element in determining the meaning of a provision is described as finding out whether the word or expression has a special meaning in sales tax legislation. Often when a word is intended to have a special meaning, it is defined in the law.
- 4.15 Definitions of words relevant to the classification of goods appear in various places in the legislation, including:
- in the body of the ST (E&C) Act; for example, subsection 3(2) defines *agriculture*;
  - within Items in the Schedules; for example, Item 70 in Schedule 1 defines *milk products* for the purpose of that Item;
  - in the STAA; for example, section 5 defines *goods* and subsection 12A(9) defines *pool*; and
  - in the Sales Tax Assessment Regulations; for example, regulation 4 defines *eligible Australian traveller*.

A term defined in the STAA has the same meaning in the ST (E&C) Act.<sup>35</sup>

- 4.16 Terms may also be defined in legislation other than the sales tax legislation. For example, Item 4 in Schedule 1 defines *remote area* to have the same meaning as in the *Income Tax Assessment Act 1936*.

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34. An example of the consideration of these elements can be found in the decision of Beaumont and O'Loughlin JJ in *Magna Stic Magnetic Signs Pty Ltd & Anor v. FC of T* (1991) 28 FCR 39 at ; 91 ATC 4216 at 4221-4224; (1991) 21 ATR 1367 at ; (1991) 98 ALR 604 at. See also subsection 15(2) of the ST (E&C) Act which states: 'If in a particular case, goods are covered by more than one of those Schedules, then the Schedule with the lower rate applies'.

35. Subsection 3(1) of the ST (E&C) Act provides: 'Terms that are used in this Act have the same meanings as in the Assessment Act, unless the contrary intention appears'.

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## References to the Customs Tariff

- 4.17 A number of exemptions are tied to goods covered by an item of the Customs Tariff. In order to work out the scope of such Items, you will need to look at the *Customs Tariff Act 1995* and sometimes the by-laws.
- 4.18 Some Items in the Schedules are wide enough to apply to any goods which satisfy the conditions of the Item. Other Items only apply to a narrower class of goods, for example machinery, implements and apparatus or anthropological specimens.

## Does the context suggest a particular meaning?

- 4.19 When examining the legislation for Items which might apply, it is important to take account of the context in which the Items appear. For example, Item 100, Schedule 1 exempts books, leaflets, periodicals, magazines and printed music. The context of the Item indicates that it relates only to printed matter. Electronic books do not come within the dictionary definition or the common understanding of the term 'book' and so are not covered by this Item.<sup>36</sup>

## The ordinary meaning

- 4.20 When there is no statutory definition of a word or expression in the Item, the next question is: what is the ordinary meaning of the word or expression? In some industries or trades, words may have particular meanings given to them. These meanings are not normally preferred to the ordinary dictionary definition.<sup>37</sup> Similarly, scientific meanings of words are unlikely to be preferred to the ordinary meanings.<sup>38</sup>
- 4.21 However, the meaning and usage of a word in trade may be preferred over the ordinary meaning in certain circumstances, particularly where the construction of an Item suggests a trade meaning rather than an ordinary meaning should be used. For

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36. See *DC of T (NSW) v. Zest Manufacturing Company Pty Ltd* (1949) 79 CLR 166, concerning an equivalent Item to Item 161A in Schedule 1. See also the comment made by the Court in *K Mart Australia Limited v. FC of T* 96 ATC 4155 at 4161; (1996) 31 ATR 524 at 531 that '... the collocation or context can affect the meaning of a term and give it a connotation different to that which might otherwise be attributed if the term appeared in isolation.' See also *Re Uno Tech Pty Ltd v. FC of T* 94 ATC 2016; *AAT Case 9374* (1994) 28 ATR 1006. The conclusion about context is drawn from the whole of the surrounding text and not simply the Chapter heading.

37. See *Herbert Adams Pty Ltd v. FC of T* (1932) 47 CLR 222; *Feltex Commercial Interiors Pty Ltd trading as Co Design v. FC of T* 90 ATC 4925; (1990) 21 ATR 920. See also *Zeroz Pty Ltd v. DFC of T* 97 ATC 4277; (1997) 35 ATR 349.

38. For example, see *Nomad Industries of Australia Pty Ltd & Anor v. FC of T* 86 ATC 4036; (1986) 17 ATR 193.

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example, when classifying goods in Chapter 2 of Schedule 1, which is directed at exemptions for persons in the building industry, a trade meaning may be preferred to a dictionary definition.<sup>39</sup>

## *Other assistance with interpretation*

4.22 In some circumstances, it is possible to go beyond the words used and the context of an Item to determine its meaning. These other sources of assistance with interpretation are often referred to as extrinsic material.<sup>40</sup> Extrinsic material, for example, the Second Reading Speech or the explanatory memorandum to a Bill, may be used to:

- confirm that the meaning of the provision is the ordinary meaning conveyed by the words used, taking into account the context and the purpose or object underlying the Act; or
- determine the meaning of the provision when:
  - the provision is ambiguous or obscure; or
  - the ordinary meaning conveyed by the text is one that leads to a result that is manifestly absurd, unreasonable or inconsistent with the Act as a whole.<sup>41</sup>

## *Which Item or Schedule applies?*

4.23 The rating or taxing Schedules specify the rates of tax which apply to dealings with particular goods. In calculating the amount of tax on a taxable dealing, the rate that is used is the rate applicable under the ST (E&C) Act. Where the only reasonably apt descriptions of the goods being classified all occur in the same Schedule,

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39. See comments by Hill J in *Pepsi Seven-Up Bottlers Perth Pty Ltd & Anor v. FC of T* 95 ATC 4746; (1995) 31 ATR 445; (1995) 132 ALR 632 which outlines six principles for deciding where trade meanings may be used. See also *Collector of Customs v. Agfa-Gevaert Ltd* 96 ATC 5240; (1997) 35 ATR 249.

40. See *Cooper Brookes (Wollongong) Pty Ltd v. Commissioner of Taxation* (1981) 147 CLR 297; 81 ATC 4292; (1981) 11 ATR 949; 55 ALJR 434; (1981) 35 ALR 151 which provides support for the use of extrinsic materials in certain circumstances. This case also supports the view that 'no part of an act can be considered in isolation from its context - the whole must be considered'.

41. The material which may be referred to and the extent of its use is covered in section 15 AB of the *Acts Interpretation Act 1901*.

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determining which particular Item applies may not be that important. However, it may become important if one of the Items is later amended.

- 4.24 The example of the sterling silver spoon given in paragraph 4.5 shows that it is possible for goods to be covered by more than one Item or subitem in more than one Schedule. In these circumstances, it is critical to know which Item, Schedule and rate of tax applies.
- 4.25 Where goods are covered by an exemption Item in Schedule 1, the other Schedules need not be considered because these goods are exempt from tax by virtue of the STAA.<sup>42</sup> Where goods are described in Items in more than one taxing Schedule (for example, in Items in both Schedules 2 and 5), then the rate of tax which applies will be the lowest rate.
- 4.26 It is essential to examine the entire wording of an Item to determine whether it applies to goods. Many Items have exclusions attached to them.

## *Step 4: Apply the legislation to the goods*

- 4.27 The final step to determining the sales tax classification of goods is to apply the principles outlined above to the facts of the particular case and, by that process, classify the goods.

## *An example of the steps to classification*

- 4.28 The four steps taken to classify the goods outlined in Chapter 4 are now demonstrated using the example of the sterling silver spoon introduced at paragraph 4.5.

### **Step 1: Identify the goods**

- 4.29 As set out in paragraph 4.5, the sterling silver spoon may fall within four reasonable descriptions, ranging from the specific to the general, namely:
- a spoon;

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42. This is because goods covered by Schedule 1 are exempt notwithstanding that they might also be covered in another Schedule, see sections 24, 25 and 26 of the STAA and section 4 and subsection 15(2) of the ST (E&C) Act. These sections displace the usual rule that more specific legislation overrides more general legislation: see the remarks in *Jetmaster Fireplaces Pty Ltd v. FC of T* 89 ATC 4464; (1989) 20 ATR 689 per Einfield J at ATC 4472; ATR 698.

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- more generally as -
  - . an article used for preparing, serving or consuming food or beverages; or
  - . an article used to assist with cooking; or
- even more generally as goods made of a precious metal.

## **Step 2: Look at the legislation**

- 4.30 In paragraph 4.11 we saw that there is no Item in any Schedule specifically applying to spoons. However, there are Items dealing with our other three descriptions, subitems 1(1)(b) and 1(1)(d) in Schedule 2 and subitem 5(1) in Schedule 5.

## **Step 3: Interpret the Items**

- 4.31 Next, we must look closely at each of these Items to see whether they provide any guidance as to which is the proper classification. None of the Items contains definitions or other indications that the words used are to be given special meanings. However, subitem 1(3)(a) in Schedule 2 states this Item (that is, Item 1) does not cover goods covered by an Item in Schedule 5. Therefore, the spoons cannot be classified under subitems 1(1)(b) and 1(1)(d) in Schedule 2 if the spoons are covered by Item 5(1) of Schedule 5.
- 4.32 An examination of subitem 5(1) in Schedule 5 shows that the goods reasonably fall within the description given by the Item. Note that, if not for the exclusion in subitem 1(3)(a) of Schedule 2, the goods would be classified under Item 1 of Schedule 2 as that has the lower rate (see also paragraph 4.25).

## **Step 4: Apply the legislation to the goods**

- 4.33 Having concluded that the goods are classified under an Item in Schedule 5, we determine the rate applicable to that Schedule. As set out in paragraph 2.4, goods covered by Schedule 5 are currently taxed at the rate of 32%.

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## Chapter 5: Previous advice affected by this Ruling

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### *General date of effect*

- 5.1 Sales Tax Rulings are altered from time to time by the publication of revised Rulings and in other ways. Where the advice given in a Sales Tax Ruling is altered, that alteration may take effect at some specified time in the future. Usually this occurs when the advice which is altered was based on a long established interpretation and is likely to have a significant effect.
- 5.2 Sales Tax Ruling ST (NS) 4, which was issued on 9 January 1992, set out the principles for classifying goods under the *Sales Tax (Exemptions and Classifications) Act 1935* and related legislation. As explained in paragraph 5.10 of SST Ruling No 1 (*Rulings and other advice on the Streamlined Sales Tax law*), this Ruling continued to apply under the ST (E&C) Act and related legislation until replaced by a subsequent private or public ruling that conflicts with it.
- 5.3 This Ruling replaces ST (NS) 4 and takes into account legislative changes and recent court decisions. As the Ruling does not alter the principles for classifying goods explained in ST (NS) 4, it is effective immediately upon release of the final Ruling.

### *Private Rulings*

- 5.4 Private rulings that form the basis of an ongoing liability apply for 5 years from commencement (or such shorter period requested by the taxpayer), provided that the facts on which they were based remain the same. During that period, the ruling may be reviewed at the instigation of either the taxpayer or the ATO and altered by a subsequent ruling. At the end of the period, the ruling lapses if not renewed. This is referred to as a *sunset clause*.
- 5.5 In line with this new approach to sunset clauses, this Ruling gives notice that private rulings on classification of goods that issued after *[issue date of final Ruling]* cease to be effective 5 years from their date of issue, or an earlier date specified in the ruling. When a private ruling lapses, a taxpayer may choose to:
- classify goods on the basis of the principles set out in this Ruling; or

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- request a new private ruling.

Requests for replacement private rulings may be lodged with their Service Branch of the ATO at least one month before their expiry.

- 5.6 Private rulings on the classification of goods issued before *[5 years before the issue date of the final Ruling]* cease to be effective on *[issue date of the final Ruling]*. Written requests for replacement private rulings (if they are necessary) may be lodged with the Service Branch of the ATO. A copy of the previous private ruling and an explanation of the basis on which it should be continued should be included with the request.
- 5.7 Where a private ruling is altered or withdrawn by the ATO subsequently issuing either another private ruling to that taxpayer or a public ruling, three months' notice is usually given before the withdrawal takes effect. Usually this occurs when the advice which is altered was based on a long established interpretation and is likely to have a significant effect. However, taxpayers should note that legislative changes automatically withdraw rulings based on the former legislation, from the date of effect of the legislative change.

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## Chapter 6: Your comments

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- 6.1 If you wish to comment on this Draft Sales Tax Ruling, please send your comments by **22 August 1997** to:

Contact Officer: Janet Morrison  
Telephone: (03) 9215 3449  
Facsimile: (03) 9215 3440  
Address: Ms Janet Morrison  
Australian Taxation Office  
PO Box 9806  
DANDENONG VIC 3175.



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**Commissioner of Taxation**

25 June 1997

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ISSN 1039-0731

ATO References  
NAT 97/3779-1

Price \$2.50

FOI Index Detail  
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- classification of goods

*legislative references*

Acts Interpretation Act 1901

- Subsection 13(1), 13(2)
- Section 15AB

Sales Tax Assessment Act 1992

- Section 5 & 7
- Subsection 12A(9),
- Sections 24, 25, 26, 29, 30, 31, 32, 39, 46, 47 & 48

Sales Tax (Exemptions &amp; Classifications) Act 1992

- Subsections 3(1), 3(2), 5(1), 15(1) & 15(2)
- Sections 4, 9, 11 & 15
- Items 17, 25 & 32, Schedule 1
- Subitem 41(2), 85(1), 85(2) & 140(a), Schedule 1
- Item 42, Schedule 1
- Subitem 65(1), Schedule 1
- Items 2, 7, 70, 82, 83, 94, 97, 100, 101, 107, 119, 130, 160, 161A, 163, 167 & 184, Schedule 1
- Items 1, 1(1)(b), 1(1)(d), 1(3)(a), Schedule 2
- Items 5, 5(1), Schedule 5
- Item 50, Schedule 1

Sales Tax Imposition (Excise) Act 1992

Sales Tax Imposition (Excise) Act 1992

Sales Tax Imposition (Excise) Act 1992

Sales Tax Imposition (Excise) Act 1992

Customs Tariff Act 1995

Sales Tax Assessment Regulations 1992

- Regulation 4

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- Nomad Industries of Australia Pty Ltd & Anor v. FC of T 86 ATC 4036; (1986) 17 ATR 193
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- Re Uno Tech Pty Ltd v. FC of T 94 ATC 2016; AAT Case 9374 (1994) 28 ATR 1006
- Rotary Offset Press Pty Ltd; DFC of T v. 71 ATC 4170; (1971) 2 ATR 411; 45 ALJR 518
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