


SST 14 - Sales tax: classification of:* structural building units and architectural building units * metal building materials * piping and tubing (and fittings) * builders hardware * metal materials

 This cover sheet is provided for information only. It does not form part of *SST 14 - Sales tax: classification of:* structural building units and architectural building units * metal building materials * piping and tubing (and fittings) * builders hardware * metal materials*

There is an Addendum notice for this document.

This document has been Withdrawn.

There is a Withdrawal notice for this document.

There is an Addendum notice for this document.

This document has been Withdrawn.

There is a Withdrawal notice for this document.



Taxation Ruling

Sales tax: classification of:

- structural building units and architectural building units
- metal building materials
- piping and tubing (and fittings)
- builders hardware
- metal materials

This document is a public Ruling for the purposes of section 77 of the Sales Tax Assessment Act 1992 and may be relied upon as if it had the force of law.

CONTENTS OF THE RULING

CHAPTER	SUBJECT	PARAGRAPH
Chapter 1:	What this Ruling is about	1.1
	<i>Classification of goods</i>	1.6
	Identification of the goods	1.7
Chapter 2:	Date of effect	2.1
	<i>Existing public rulings</i>	2.3
	ST 2000 series Rulings	2.3
	Sales Tax Determinations	2.5
	<i>Existing private rulings</i>	2.6
	<i>Obtaining a new private ruling</i>	2.8

SST 14

<i>CHAPTER</i>	<i>SUBJECT</i>	<i>PARAGRAPH</i>
Chapter 3:	Overview of Item 39	3.1
	<i>The opening words</i>	3.6
	Of a kind ordinarily used	3.7
	Raw materials	3.11
	Integral	3.12
	Construction or repair	3.14
	Buildings	3.18
	Fixtures	3.19
	Structures	3.22
	Other works that are attached to land	3.26
	<i>Exclusions to Item 39</i>	3.27
Chapter 4:	Structural building units and architectural building units	4.1
	<i>Step 1 - Identify the goods</i>	4.3
	<i>Step 2 - Are the goods structural building units or architectural building units?</i>	4.4
	Building units	4.5
	Structural or architectural	4.8
	<i>Step 3 - Are the goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land?</i>	4.11
	<i>Step 4 - Are the goods specifically excluded?</i>	4.13
Chapter 5:	Metal building materials	5.1
	<i>Step 1 - Identify the goods</i>	5.3
	<i>Step 2 - Are the goods metal building materials?</i>	5.4
	Metal	5.5
	Building materials	5.7
	<i>Examples of goods included under paragraph (h) of subitem 39(1)</i>	5.13
	Girders, rods, bars, wire, sheets, mesh and lathing	5.13
	Fabricated units made up of girders, rods, bars, wire, sheets, mesh or lathing	5.15
	Attachments for fabricated units	5.21

CHAPTER	SUBJECT	PARAGRAPH
	<i>Step 3- Are the goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land?</i>	5.25
	<i>Step 4 - Are the goods specifically excluded?</i>	5.27
Chapter 6:	Piping and tubing	6.1
	<i>Step 1 - Identify the goods</i>	6.3
	<i>Step 2 - Are the goods piping or tubing?</i>	6.4
	<i>Step 3 - Are the goods fittings, or parts for fittings, for piping or tubing?</i>	6.8
	<i>Step 4 - Are the goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land?</i>	6.14
	<i>Step 5 - Are the goods specifically excluded?</i>	6.17
	<i>Other exemption Items</i>	6.19
Chapter 7:	Builders hardware	7.1
	<i>Step 1 - Identify the goods</i>	7.3
	<i>Step 2 - Are the goods builders hardware?</i>	7.4
	<i>Step 3 - Are the goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land?</i>	7.13
	<i>Step 4 - Are the goods specifically excluded?</i>	7.15
Chapter 8:	Metal materials	8.1
	<i>Step 1 - Identify the goods</i>	8.4
	<i>Step 2 - Are the goods metal materials?</i>	8.5
	Effect of coating the metal	8.9
	Definitions	8.12
	<i>Step 3 - Are the goods specifically excluded?</i>	8.14

ATTACHMENTS

Attachment A	<i>Chapters 2 and 3 of Schedule 1</i>
Attachment B	<i>Effect on ST 2000 series rulings</i>
Attachment C	<i>Structural building units and architectural building units - Guidelines for classification</i>
Attachment D	<i>Metal building materials - Guidelines for classification</i>
Attachment E	<i>Piping, tubing, and fittings (and parts for fittings) for piping and tubing - Guidelines for classification</i>
Attachment F	<i>Piping or tubing of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land</i>
Attachment G	<i>Builders hardware - Guidelines for classification</i>
Attachment H	<i>Examples of goods that are builders hardware</i>
Attachment I	<i>Metal materials - Guidelines for classification</i>

Chapter 1: What this Ruling is about

- 1.1 This Ruling is the second Ruling in a series that explains the exemption Items in Chapter 2 - 'Building materials' - in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* (ST(E&C) Act). The first Ruling in the series was Taxation Ruling SST 5: '*Sales tax: classification of furniture, timber and joinery*'.
- 1.2 This Ruling provides a step by step guide to determine whether goods are:
- structural building units or architectural building units under paragraph (a) of subitem 39(1) in Schedule 1;
 - metal building materials under paragraph (h) of subitem 39(1) in Schedule 1;
 - piping, tubing, or fittings for piping and tubing under paragraph (j) of subitem 39(1) in Schedule 1;
 - builders hardware under paragraph (o) of subitem 39(1) in Schedule 1; or
 - metal materials under Item 49 in Schedule 1.
- 1.3 Goods covered by subitem 39(1) and Item 49 are *always-exempt goods*, that is, the goods are exempt no matter how they are used or who uses them. There is no need for a purchaser of the goods to quote a sales tax registration number or an exemption declaration when purchasing the goods.

- 1.4 Building materials not covered by subitem 39(1) or Item 49 are not necessarily subject to sales tax. The goods may be covered by another exemption Item in Schedule 1. Alternatively, a dealing in the goods may be covered by the 'prefabricated building or building section' provisions.¹ The exemption Items in Chapters 2 and 3 of Schedule 1 are set out at **Attachment A.2**
- 1.5 This Ruling is expressed in non-technical language wherever possible. The footnotes refer to relevant court decisions and other reference material used in preparing the Ruling.³

Classification of goods

- 1.6 Throughout this Ruling, a standard approach is used to explain the classification of goods under the Items dealt with. How to classify goods is explained in full in Taxation Ruling SST 11: '*Sales tax: a guide to the classification of goods under the sales tax law*'. The standard approach has a number of steps, of which the first is to identify the goods. As this step is identical for each of the exemption Items being considered in this Ruling, the principles relating to it are reproduced once only below.

Identification of the goods⁴

- 1.7 The first step in classifying goods for sales tax purposes is to identify the goods in an objective way. Objective identification means that the goods should be identified as a matter of fact, guided by popular usage and common knowledge. The actual intentions of the manufacturer, or the particular descriptions given to the goods by the manufacturer or others, are not necessarily conclusive.
- 1.8 One way to describe objective identification is to say that the identity of the goods should be determined according to their essential character. 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 and involves consideration of what the goods are made of and what they might be used for.

1. See section 39 of the *Sales Tax Assessment Act 1992* (STAA).

2. If an industry representative body considers there is a need for a public Ruling on a matter relating to the classification of building materials, they should send a request to their local Australian Taxation Office.

3. All definitions in this Ruling are from *The Macquarie Dictionary* unless otherwise indicated. However, in certain circumstances, definitions from *The Glossary of Building Terms* (4th ed, 1994, published jointly by the National Committee on Rationalised Building, Standards Australia and Suppliers Index Pty Ltd) have been used. It is considered that definitions from the Glossary represent an appropriate meaning of terms in the context of goods covered by Chapter 2 of this Ruling (?).

4. The principles covered under this heading are supported by case law. For more information see paragraphs 4.1 to 4.4 in Taxation Ruling SST 11: *Sales tax: a guide to the classification of goods under the sales tax law*.

- 1.9 The identification should be made at the time of the assessable dealing, that is, at the time when liability to sales tax arises.
- 1.10 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 3.7 to 3.10 in Chapter 3.
- 1.11 For example, paragraph (o) of subitem 39(1) exempts builders hardware if it is goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land. To determine whether particular goods are covered by the exemption, it is necessary to:
- establish whether the goods are builders hardware by determining their essential character; and then
 - determine whether the goods are a member of a class or genus of goods that is commonly used as raw materials in the manner stated.

Chapter 2: Date of effect

- 2.1 This Ruling is effective immediately. It replaces any other public or private rulings to the extent that they are inconsistent with this Ruling from 25 January 1999. However, if a person will pay less tax because of this Ruling, it can be acted on from the date of issue. The effect of this Ruling on existing public and private rulings is discussed in the following paragraphs.
- 2.2 Nothing in this Ruling may be taken as automatically authorising a refund before the date of effect. Credit claims will be considered on their individual merits.

*Existing public rulings***ST 2000 series Rulings**

- 2.3 At the time of the introduction of the new sales tax law in 1992, the previous classification Rulings in the ST 2000 series were generally preserved.⁵ As a result, a number of rulings that exempted goods as structural building units and architectural building units, metal building materials, piping, tubing or fittings for piping and tubing, builders hardware and metal materials were preserved. **Attachment B** sets out these rulings.
- 2.4 Effective from the date of effect of this Ruling, these ST 2000 series rulings are either modified or withdrawn, as set out in **Attachment B**.

Sales Tax Determinations

- 2.5 The following Sales Tax Determinations are consistent with the principles set out in this Ruling and continue to operate:

STD 95/8 - Classification of modular garden edging;

STD 98/4 - Classification of fireplaces, space heaters and flue kits.

Existing private rulings

- 2.6 Any private ruling under Items 82A or 86 and subitems 82(1), 84(1), or 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* or under paragraphs (a), (h), (j) or (o) of subitem 39(1), or Item 49 in Schedule 1 to the ST(E&C) Act that is inconsistent with the principles set out in this Ruling is withdrawn from the date of effect of this Ruling.
- 2.7 Any other private ruling under these Items will cease to be effective either five years from the date of issue of the private ruling, or the date of issue of this Ruling (whichever is later) or such earlier date as specified in the private ruling.⁶

Obtaining a new private ruling

- 2.8 If a person is currently relying on any ruling that is affected by this Ruling, they may either self-assess the classification of the goods by following the principles set out in this Ruling or seek a private ruling from the branch of the Australian Taxation Office (ATO) with which they normally deal. If the person decides to seek a private

5. See paragraph 5.7 of Taxation Ruling SST Ruling No 1: *Sales Tax: rulings and other advice on the Streamlined Sales Tax law*.

6. See paragraphs 5.5 to 5.7 in Taxation Ruling SST 11.

ruling, the request should be lodged, in writing, at least one month before the existing ruling expires.

- 2.9 Any new private ruling issued will cease to be effective five years from the date of issue of the Ruling, or such earlier date as specified in the Ruling.

Chapter 3: Overview of Item 39

- 3.1 Subitem 39(1) in Schedule 1 to the ST(E&C) Act exempts from sales tax:

'The following goods, if they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land'.

- 3.2 Subitem 39(1) then lists a number of goods in paragraphs (a) through to (p). Subitem 39(3) lists goods that are excluded from Item 39.

- 3.3 Therefore, for goods to be exempt under subitem 39(1), the goods must:

- be covered by one (or more) of paragraphs (a) through to (p);
- be goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land; and
- not be covered by any of the exclusions listed in subitem 39(3).

- 3.4 This Chapter examines the opening words to subitem 39(1) and certain of the exclusions listed in subitem 39(3).

- 3.5 As explained at paragraph 1.3, goods covered by subitem 39(1) are always-exempt goods.

The opening words

- 3.6 The following paragraphs examine the meaning of these words in subitem 39(1):
'...if they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land'.

Of a kind ordinarily used

- 3.7 For goods to be covered by subitem 39(1), they do not necessarily have to be used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land. Instead, all that is required is that the goods be *of a kind ordinarily used* as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land.
- 3.8 The phrase *of a kind ordinarily used* means that the goods must be a member of a class or genus of goods that is commonly used, or has a common or settled use, as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land. It is not necessary that the goods are used principally or predominantly as raw materials.⁷
- 3.9 For example, if an article is commonly used as a raw material, but is mainly used for some other purpose, the article is goods of a kind *ordinarily* used as raw materials.
- 3.10 The use of the words *goods of a kind* entails the determination of a relevant genus. The wider the genus is stated, the more likely it will be found that 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.⁸

Raw materials

- 3.11 Goods are considered to be raw materials if:
- they are used in the construction or repair of property; and
 - the goods, or some essential element of them, become an integral part of the property.⁹

Integral

- 3.12 Something is said to be integral when it belongs as part of a whole, is necessary for the completeness or integrity of the whole, or forms an intrinsic portion or element as distinct from an attachment or appendage.¹⁰ The goods must become an integral

7. See 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 later repeated in *Chubb Australia Ltd v. FC of T* 95 ATC 4186; (1995) 30 ATR 285; (1995) 128 ALR 489, and followed by Lehane J in *CCA Beverages (Sydney) Pty Ltd v. FC of T* 97 ATC 4213; (1997) 35 ATR 77.

8. Although a wide genus was used in *Hygienic Lily Ltd v. DFC of T* (1987) 13 FCR 396; 87 ATC 4327; (1987) 18 ATR 619; (1987) 71 ALR 441, 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* where he compares the *Hygienic Lily* decision with the *Diethelm* and *Chubb* decisions (ATC at 4224; ATR at 89).

9. Refer to subsection 7(2) of the STAA.

10. Based on the ordinary meaning of 'integral' and comments by Brightman J in *Dixon (Inspector of Taxes) v. Fitch's Garage Ltd* [1975] 3 All ER 455 at 458.

part of property, such as a building, fixture or structure, rather than being integral to the use of the building, fixture or structure.

3.13 Therefore, in order to become an integral part of property, the goods must:

- become a part of property, such that they become a fixture; and
- be necessary for the completeness or integrity of property.

For example, a brick used in constructing a wall of a house is a fixture and is necessary for the completeness of the wall and thus becomes an integral part of the wall. Similarly, a door handle is an integral part of the door because a door is not complete without a door handle, and the door handle is a fixture. However, a waste bin screwed to an internal wall in a house does not become an integral part of the wall because, even if it was a fixture, it is not necessary for the completeness or integrity of the wall.

Construction or repair

3.14 The term '*construct*' means '*build*' and extends to rebuilding and reconstruction, which may involve renewal, renovation or remodelling. The term '*repair*' refers to '*restoring or renewing to a good or sound condition after decay or damage*'.

3.15 In the case of the construction of buildings, construction refers to activities undertaken up to the stage where the building is complete. It does not include activities associated with furnishing and equipping, or fitting out a building to suit the needs of a particular occupant or tenant. However, goods used in fitting out a building that are raw materials of a kind ordinarily used in the construction or repair of a building qualify for exemption if they fall within one of the paragraphs of Item 39, and are not caught by an exclusion.¹¹

3.16 For example, kitchen cupboards located in the kitchen area of an office building are used in the construction of the building, as the building has a kitchen area, regardless of who will occupy the building. However, desks placed in the building at the request of the occupant are not used in the construction of the building as they are specific to the use of the building by a particular occupant.

3.17 In the case of the construction of fixtures, structures and other works that are attached to land, construction refers to activities undertaken up to the stage where the fixture, structure or work is complete.

11. The comments in this and the preceding paragraph are based on the comments of Kitto J in *DFC of T v. Academy Plastics Pty Ltd* (High Court, unreported, 22 March 1956), which have been followed in a number of subsequent cases, and comments by Hill J in *Chubb*. Goods used in 'fitting out' a building may be 'of a kind' used in the construction or repair of a building - partitions used in fitting out a building for a particular occupant were held to be 'of a kind' as they replaced walls - refer to *Feltex Commercial Interiors Pty Ltd trading as Co Design v. FC of T* 90 ATC 4925; (1990) 21 ATR 920.

Buildings

- 3.18 The term '*building*' takes its ordinary meaning, being a substantial structure with a roof and walls, such as a shed, house or department store. However, in the context of subitem 39(1), the term refers to buildings that are constructed *in situ*, are not 'goods', and are intended to remain in position either permanently or for a substantial period of time. Transportable and portable buildings are not 'buildings' in the context of subitem 39(1).¹²

Fixtures

- 3.19 There is substantial case law to help decide whether goods become a fixture, and it is beyond the scope of this Ruling to examine in detail the nature of fixtures. If you want further details, please refer to the cases and other materials mentioned in the footnote.¹³
- 3.20 Fixtures are goods that have been attached to land so as to become part of the land. The goods are a fixture if they have been fixed with the intention that they will remain in position permanently or for an indefinite or substantial period. The goods are not a fixture if they are only intended to remain in position for some temporary purpose. The goods do not have to be directly attached to the soil.¹⁴
- 3.21 In determining whether goods have become a fixture, consideration has to be given to all relevant circumstances. No particular factor is more important than another and every case depends on its own facts. However, the intention at the time the article was attached to the land will have particular significance.

Structures

- 3.22 The term '*structure*' takes its ordinary meaning, being something built or constructed. As with the term '*fixture*', there is substantial case law on the nature of structures, and you are referred to the cases mentioned in the footnote.¹⁵

-
12. Buildings that retain their identity as goods are covered by the provisions relating to prefabricated buildings (section 39 of the STAA). In simple terms, tax is only payable on any taxable components incorporated into a prefabricated building. Most materials used in the manufacture of a prefabricated building are effectively treated as exempt from sales tax as they are 'of a kind' used in the construction or repair of buildings that are constructed *in situ*.
13. *Case 43/93* 93 ATC 470; *AAT Case 9043* (1993) 27 ATR 1141 provides a good summary of the cases in regard to fixtures. Important cases include *Australian Provincial Assurance Co Ltd v. Coroneo* (1938) SR (NSW) 700; *Belgrave Nominees Pty Ltd & Ors v. Barlin-Scott Airconditioning (Aust) Pty Ltd* [1984] VR 947; *NH Dunn Pty Ltd v. LM Ericsson Pty Ltd* (1979) 2 BPR 9241; *Eon Metals NL v. Commissioner of State Taxation (WA)* 91 ATC 4841; (1991) 22 ATR 601; and *Permanent Trustee Australia Ltd v. Esanda Corporation Ltd & Ors* (NSW SC (Eq Div), unreported, 2 August 1991). See also Halsbury's *Laws of England*, 4th ed, Volume 27 and Stoneham's text *The Law of Vendor and Purchaser*, Volume 6, at 257-258 (Sydney, Law Book Co of Australasia, 1964).
14. See comments by Lockhart J in *Feltex*.
15. See *South Wales Aluminium Co Ltd v. Assessment Committee for the Neath Assessment Area* [1943] 2 All ER 587; *Cardiff Rating Authority and Cardiff Assessment Committee v. Guest Keen Baldwin's Iron and*

3.23 A structure has the following features:

- it is generally built-up from its component parts at the place it is intended to occupy, that is, it is generally constructed *in situ*, although components may be prefabricated off-site;
- it is intended to remain in position either permanently or for a substantial period of time;¹⁶
- it is of substantial size;
- it is of a rigid construction; and
- it can exist above or below ground level.

3.24 As with determining whether something is a fixture, it is necessary to consider all of the facts and circumstances to determine whether something is a structure. Most, if not all, structures would also meet the tests for being fixtures.

3.25 Examples of structures include buildings, bridges, dams, wheat silos, carports, underground car parks and tunnels.

Other works that are attached to land

3.26 The phrase *other works that are attached to land* refers to constructions that are attached to land and cannot be described as buildings, fixtures or structures. The works must be attached directly to the land. In the context of subitem 39(1), the works must be constructed *in situ* and be intended to remain in position either permanently or for a substantial period of time. The phrase is intended to cover works where there is some doubt whether the work is correctly described as a building, fixture or structure.

Exclusions to Item 39

3.27 Subitem 39(3) excludes the following goods from exemption under Item 39:

- '(a) duct work, or channelling, of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;
- (aa) scaffolding;
- (ab) safes;
- (ac) racking and shelving;¹⁷

Steel Company Limited [1949] 1 KB 385; *Black v. Shaw and Official Assignee in Bankruptcy of Walter Shaw* (1914) 33 NZLR 194; and *Mills & Rockleys Ltd v. Leicester City Council* [1946] 1 All ER 424.

16. Although the scaffolding considered in *GKN Australia Ltd v. FC of T* 94 ATC 4417; (1994) 28 ATR 321 was accepted as a 'structure', this was by agreement of the parties. Therefore, this case has no precedent value for the concept that a structure can be of an impermanent nature.

17. The goods excluded by paragraphs (aa), (ab) and (ac) were added to the list of exclusions with effect from 9 May 1995 following decisions in the *Chubb* and *GKN* cases.

- (b) *fittings, accessories and attachments for goods covered by paragraph (a), (aa), (ab) or (ac), or goods designed to form part of goods covered by paragraph (a), (aa), (ab) or (ac);*
- (c) *pipng, tubing or channelling of a kind ordinarily used for slides or water slides;*
- (d) *pipng or tubing of a kind ordinarily used in, or in connection with, beer drawing plant;*
- (e) *rubber hose or rubber tubing, or any other hose or tubing of a kind ordinarily used for any of the purposes for which rubber hose or rubber tubing is ordinarily used;*
- (f) *liners and filtering equipment for swimming pools and spas, or goods designed to form part of swimming pools or spas;*
- (g) *tiles, or floor coverings, made of cork, linoleum, rubber, vinyls or similar materials;*
- (h) *carpeting (including carpet tiles or squares);*
- (i) *electrical fittings, accessories or equipment;*
- (j) *goods covered by item 5, 6 or 7 in Schedule 2.*

*In this subitem, "**rubber**" includes synthetic rubber.'*

- 3.28 Items 5, 6 and 7 in Schedule 2 cover, in simple terms, bathroom fittings and sanitary ware; water heating and hot water storage equipment of a kind installed as fixtures in domestic premises; and goods used in filtering water that are of a kind ordinarily installed as fixtures. Goods covered by Items 5, 6 or 7 are currently taxable at 12%.
- 3.29 Most of the exclusions to Item 39 are self-explanatory, and they are, therefore, not discussed any further. However, the following paragraphs provide more detail about some of the exclusions.
- 3.30 Paragraph (ac) excludes goods that are characterised as '*racking*' and goods that are characterised as '*shelving*'. '*Racking*' refers to a framework of bars, wires or pegs on which articles are arranged or deposited. '*Shelving*' refers to a slab of material fixed horizontally to a wall, or in a frame, for supporting objects; or shelf-like goods. Fittings, accessories and attachments for racking and shelving, or goods that form part of racking and shelving, such as supporting brackets for shelving, are also excluded.
- 3.31 Examples of racking and shelving that are excluded from Item 39 include pallet racking, warehouse shelving, supermarket gondolas, retail display shelving, telecommunications exchange racking, and household shelving.¹⁸

¹⁸ However, timber shelving that qualifies as being joinery and turnery of a kind ordinarily used as raw materials in the construction or repair of buildings or fixtures is exempt under paragraph (c) of Item 42 in Schedule 1 of the ST(E&C) Act - see Taxation Ruling SST 5.

- 3.32 Although paragraph (i) excludes electrical fittings, accessories and equipment, certain electrical fittings and accessories are covered by Item 43 in Schedule 1. Item 43 is reproduced in **Attachment A**.

Chapter 4: Structural building units and architectural building units

- 4.1 Paragraph (a) of subitem 39(1) in Schedule 1 to the ST(E&C) Act exempts from sales tax:

'The following goods, if they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land:

(a) structural building units or architectural building units'.

- 4.2 This Chapter sets out four steps to help you to decide whether goods are exempt under paragraph (a) of subitem 39(1). At **Attachment C** is a flow chart showing those steps.

Step 1 - Identify the goods

- 4.3 Paragraphs 1.7 to 1.9 explain that the first step in the classification of goods is to identify the goods in an objective way or to determine the essential character of the goods.

Step 2 - Are the goods structural building units or architectural building units?

- 4.4 To be covered by paragraph (a) the goods must be characterised as either being structural building units or architectural building units. This means that the building units must be identified as being used for either structural or architectural purposes.

Building units

- 4.5 The term '*building units*' refers to units used in building. The term '*building*' refers to '*constructing something relatively complex by assembling and combining parts*'. The term '*unit*' refers to a '*single thing*'. The term '*building unit*' therefore covers single things that are characterised as being used in the *in situ* building of relatively

complex buildings, fixtures, structures and other works that are attached to land. Whether an activity is 'building' depends upon the complexity of the construction, which is a question that has to be examined on the evidence.¹⁹

- 4.6 The term '*building unit*' is defined in the *Glossary of Building Terms* as '*a building material which is formed as a single article complete in itself, and which is intended to be part of an assembly or building or structure*'. The Glossary then provides examples, being bricks, blocks and tiles.
- 4.7 The use of the term '*unit*' rather than '*goods*' coupled with the examples provided in the Glossary indicate that the term '*building units*' refers to single basic building materials. Therefore, goods such as equipment, machinery or appliances are not building units. A building unit can be made out of any material whatsoever, including masonry, metal, plastic or fibreglass.²⁰

Structural or architectural

- 4.8 The phrase '*structural building units*' refers to building units that are either load-bearing, form an essential part of a wall, floor or ceiling, or have the ability to resist forces.²¹ The phrase '*architectural building units*' refers to building units that relate to the design and decorative aspects of a building, fixture or structure. If an article can be characterised as a building unit, the ATO accepts that it is a structural building unit or an architectural building unit.
- 4.9 Examples of single basic building materials that are structural building units or architectural building units include building bricks, fire bricks, paving bricks and slabs, concrete columns, kitchen bench tops, concrete edging blocks, concrete fencing posts, concrete house stumps, chimney pots, ceramic wall tiles, and slate and marble floor tiles.
- 4.10 If you can objectively identify the goods as being structural building units or architectural building units, go to Step 3. Otherwise, the goods are not covered by paragraph (a) of subitem 39(1).

19. Factors to consider include whether the building industry regards the activity as building, the skills and qualifications of the person undertaking the activity and membership of trade associations by relevant persons.

20. In the context of subitem 39(1) and the other exemption Items in Chapter 2, paragraph (a) was inserted primarily to cover masonry materials. Building materials made of other materials, such as timber and metal, are covered by other exemption Items. The approach taken in *Case 27/93 93 ATC 324*; *AAT Case 8811* (1993) 26 ATR 1075 in relation to subitem 82(1) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* that 'the item is intended to deal with goods which have the general characteristic of masonry materials being building materials of non-metallic composition' cannot be applied to paragraph (a).

21. Refer to comments in *Feltex*.

Step 3 - Are the goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land?

- 4.11 Paragraphs 3.7 to 3.26 in Chapter 3 explain how to decide whether goods are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land.
- 4.12 If you have objectively identified the goods as structural building units or architectural building units and they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land, go to Step 4. Otherwise, the goods are not covered by paragraph (a) of subitem 39(1).

Step 4 - Are the goods specifically excluded?

- 4.13 Paragraphs 3.27 to 3.32 in Chapter 3 list the goods that are excluded from subitem 39(1) and discuss some of those goods. If the goods are excluded, they are not covered by paragraph (a) of subitem 39(1).
- 4.14 If the goods are **not** excluded, they are exempt from sales tax under paragraph (a) of subitem 39(1). As explained at paragraph 1.3 in Chapter 1, the goods are always-exempt goods and are exempt from sales tax regardless of how they are used or who uses them.

Chapter 5: Metal building materials

- 5.1 Paragraph (h) of subitem 39(1) in Schedule 1 to the ST(E&C) Act exempts from sales tax:

'The following goods, if they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land:

- (h) *metal building materials, including:*
- (i) *girders, rods, bars, wire, sheets, mesh and lathing;*
 - (ii) *fabricated units made up of goods covered by subparagraph (i);*
 - (iii) *attachments for fabricated units covered by subparagraph (ii)'.*

- 5.2 This Chapter sets out four steps to help you to decide whether goods are exempt under paragraph (h) of subitem 39(1). At **Attachment D** is a flow chart showing those steps.

Step 1 - Identify the goods

- 5.3 Paragraphs 1.7 to 1.9 explain that the first step in the classification of goods is to identify the goods in an objective way or to determine their essential character.

Step 2 - Are the goods metal building materials?

- 5.4 To be metal building materials, the goods have to be building materials composed only of metal.

Metal

- 5.5 The goods must be composed only of metal - the fact that goods are composed principally or mainly of metal is not sufficient.²² Therefore, goods composed wholly or partly of other materials such as plastic or fibreglass cannot be *metal* building materials.
- 5.6 However, an article that is characterised as being a metal building material may incorporate non-metal components, such as a paint coating, or fasteners, such as a fibre washer. Provided the non-metal components are so minor that the accuracy of the description *metal building materials* is not affected, such goods satisfy the *metal* element of being metal building materials.

Building materials

- 5.7 The goods must also be building materials. A building material is a material that is characterised as being used in building something. *Build* means to *construct something relatively complex by assembling and combining parts*. The term *building material* therefore covers materials that are characterised as being used in the *in situ* building of relatively complex buildings, fixtures, structures and other works that are attached to land. Whether an activity is building depends upon the

22. See the comment by Whitlam J in *Bowater Tutt Industries Pty Ltd v. FC of T* 96 ATC 5009 at 5013; (1996) 34 ATR 135 at 139: 'The word "metal" is a noun, which has been used as an adjective in the expression "metal building materials". That expression is another way of saying "building materials of metal". Once that is appreciated, there is no call to add a gloss in the case of fabricated units that they be composed "principally" of metal.'

complexity of the construction, which is a question that has to be examined on the evidence.²³

- 5.8 The term *material* refers to a basic single substance; the substance or substances of which a thing is made or composed; any constituent element of a thing; or anything serving as crude or raw matter for working upon or developing.
- 5.9 Goods that are characterised as equipment, machinery or appliances are not building materials as these types of goods cannot be properly described as '*materials*'. These types of goods perform a specific function rather than being materials that are used in building. This approach is supported by Court decisions as follows.
- 5.10 The Federal Court decided that fireboxes and smoke gathers were metal building materials as they had no 'being' in themselves. The Federal Court also decided that certain types of safes were metal building materials because they had no effective function or operation unless and until installed, and, when installed, formed an integral part of the wall. A Tribunal decided that a chain and an anchor were metal building materials as they were materials used in building an off-shore fixture.²⁴
- 5.11 Examples of goods that are metal building materials include metal fire boxes, prefabricated metal roof trusses, metal fencing, metal gates, metal columns and cast iron balustrades.
- 5.12 If you can objectively identify the goods as being metal building materials, go to Step 3. Otherwise, the goods are not covered by paragraph (h) of subitem 39(1).

Examples of goods included under paragraph (h) of subitem 39(1)

Girders, rods, bars, wire, sheets, mesh and lathing

- 5.13 Subparagraph (i) of paragraph (h) includes girders, rods, bars, wire, sheets, mesh and lathing that are made of metal. A fibreglass rod, or plastic mesh, for example, is not covered.
- 5.14 Whether the goods are identifiable as metal girders, rods, bars, wire, sheets, mesh or lathing will, in most cases, be self-evident. The following definitions may help in doubtful cases:²⁵

23. Factors to consider include whether the building industry regards the activity as building, the skills and qualifications of the person undertaking the activity and membership of trade associations by relevant persons.

24. Refer to the decisions in *Jetmaster Fireplaces Pty Ltd v. FC of T* 89 ATC 4464; (1989) 20 ATR 689; *Chubb*; and *Case Z26* 92 ATC 250; *AAT Case 8093* (1992) 23 ATR 1215 respectively. Safes are now excluded from subitem 39(1).

25. All definitions are from the *Glossary of Building Terms* except for the definitions of 'rod' and 'bar', which are from *The Macquarie Dictionary*.

- Girder - a large, long-span horizontal member or beam.
- Rod - a stick, wand, staff, shaft or the like.
- Bar - a relatively long and evenly shaped piece of some solid substance; an oblong piece of any solid material.
- Wire - a length of slender, flexible metal, usually of circular cross-section, ranging in thickness from a fine thread to one that can only just be bent manually.
- Sheet - a piece of material that is thin in relation to its length and width, usually rectangular and produced as an individual piece or cut from sheeting.
- Mesh - a woven network of interlocking wires welded, tied or knotted at the intersections, used for reinforcement.
- Lathing - a fabric made by slitting a sheet metal (usually mild steel) and then stretching it to form a diamond-shaped mesh.

Fabricated units made up of girders, rods, bars, wire, sheets, mesh and lathing

- 5.15 Subparagraph (ii) of paragraph (h) covers fabricated units made up of girders, rods, bars, wire, sheets, mesh or lathing. To be covered by this subparagraph, the goods must be fabricated units that are made up only of the materials listed. If the goods are also made up of other materials, even if those other materials are metal, the goods are not covered.
- 5.16 However, the fact that the goods also include minor components that are not one of the listed materials does not exclude a fabricated unit from being covered by subparagraph (ii), providing the unit can still be characterised as being made up of metal girders, rods, bars, wire, sheets, mesh or lathing. For example, the use of fasteners or other hardware items, such as hinges, does not exclude the fabricated unit from being covered.
- 5.17 The term '*fabricated*' refers to something that has been made. A '*unit*' is a '*single thing*'. The words '*fabricated unit*' being narrower in scope than '*fabricated goods*' suggest a basic single material rather than goods such as equipment, machinery or appliances.
- 5.18 In respect of subitem 84(1) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*, there was some support for the view that the phrase 'fabricated units composed of' extended the ordinary meaning of the phrase 'metal building materials' to cover goods that were not metal building materials.²⁶
- 5.19 However, in the context of paragraph (h) of subitem 39(1), the fabricated units should still be characterised as building materials. The reasons for this view are:

26. In *Chubb* see the comment by Hill J that 'These words of inclusion appear to extend the Item to goods where there may be doubt as to whether they are metal building materials, and to goods which would not ordinarily be so classified'.

- the structure of paragraph 39(1)(h);
- the fact that paragraph 39(1)(h) is located in a Chapter headed '*Building materials*'²⁷; and
- the fact that paragraph (h) is collocated in subitem 39(1) with other goods that are 'building materials'.²⁸

5.20 Therefore, the fabricated units must also meet the tests for 'building materials' as set out in paragraphs 5.7 to 5.11.

Attachments for fabricated units

5.21 Subparagraph (iii) of paragraph (h) covers attachments for fabricated units made up of girders, rods, bars, wire, sheets, mesh or lathing. To be covered by this subparagraph, the goods must be metal building materials that are attachments for fabricated units made up of the listed materials (that is, girders, rods, bars, wire, sheets, mesh or lathing). Attachments for other building materials are not covered by subparagraph (iii).

5.22 The word '*attachment*' is defined to mean, as far as is relevant, '*2. the state of being attached; ... 5. an adjunct or supplementary device*' and the word '*attach*' is defined to mean '*1. to fasten to; affix; join; ...*'. The attachment must be designed to be fastened, affixed or joined, to the fabricated unit and must also be supplementary to the fabricated unit, rather than being integral and essential to the unit.²⁹

5.23 The attachment does not have to be made of the materials listed in subparagraph (h)(i) of subitem 39(1) but it does have to be characterised as being metal building materials. Subparagraph (iii) covers *attachments for fabricated units* and not any goods that are attached to a fabricated unit. This means that the goods should be specifically designed to be an attachment for a fabricated unit. For example, a frame made from metal girders which is designed to be set into wet concrete has metal lugs welded to it to prevent the frame from being moved or dislodged from the concrete by vehicles passing over it. The frame is a fabricated unit made from one of the listed materials and the lugs are attachments designed for use with the fabricated units.

27. For the purposes of subsection 13(1) of the *Acts Interpretation Act 1901*, Schedule 1 is deemed to be part of the *Sales Tax (Exemptions and Classifications) Act 1992* (ST(E&C) Act) (see subsection 13(2)). Subsection 13(1) deems Chapter headings to be part of the ST(E&C) Act, and so part of Schedule 1. 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.

28. See *K Mart Australia Ltd v. FC of T* 96 ATC 4155; (1996) 31 ATR 524. The collocation or context can affect the meaning of a term and give it a connotation different from that which might otherwise be attributed if the term appeared in isolation.

29. See the comments by the Tribunal in *Case 41/94* 94 ATC 378; *AAT Case 9536* (1994) 29 ATR 1118 affirmed by the Federal Court in *Bowater*.

- 5.24 The exemption applies to goods that are characterised as being attachments for fabricated units whether or not they are attached to the fabricated unit at the time of the assessable dealing. If an attachment is sold separately to the fabricated unit, it may be treated as being covered by subparagraph (iii) regardless of whether or not it will be attached to a fabricated unit at some later time.

Step 3 - Are the goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land?

- 5.25 Paragraphs 3.7 to 3.26 in Chapter 3 explain how to decide whether goods are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land.
- 5.26 If you can objectively identify the goods as being goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land, go to Step 4. Otherwise, the goods are not covered by paragraph (h) of subitem 39(1).

Step 4 - Are the goods specifically excluded?

- 5.27 Paragraphs 3.27 to 3.32 in Chapter 3 list the goods which are excluded from subitem 39(1) and discuss some of those goods. If the goods are excluded, they are not covered by paragraph (h) of subitem 39(1).
- 5.28 If the goods are **not** excluded, they are exempt from sales tax under paragraph (h) of subitem 39(1). As explained at paragraph 1.3 in Chapter 1, the goods are always-exempt goods and are exempt from sales tax regardless of how they are used or who uses them.

Chapter 6: Piping and tubing

- 6.1 Paragraph (j) of subitem 39(1) in Schedule 1 to the ST(E&C) Act exempts from sales tax:

'The following goods, if they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land:

(j) piping, tubing, and fittings (and parts for fittings) for piping and tubing'.

- 6.2 This Chapter sets out five steps to help you to decide whether goods are exempt under paragraph (j) of subitem 39(1). At **Attachment E** is a flow chart showing those steps.

Step 1 - Identify the goods

- 6.3 Paragraphs 1.7 to 1.9 explain that the first step in the classification of goods is to identify the goods in an objective way or to determine the essential character of the goods.

Step 2 - Are the goods piping or tubing?

- 6.4 A 'pipe' is 'a hollow cylinder of metal, wood or other material, for the conveyance of water, gas, steam, etc., or for some other purpose; a tube'. 'Piping' is 'pipes collectively'. A 'tube' is 'a hollow usually cylindrical body of metal, glass, rubber, or other material, used for conveying or containing fluids, and for other purposes'. 'Tubing' is 'tubes collectively'.³⁰ The piping or tubing can be made of any material.
- 6.5 Paragraph (j) of subitem 39(1) is not limited to piping or tubing used for conveying gas, electricity or liquid, but extends to piping or tubing used for any purpose. For example, a section of rectangular steel tubing, even if slotted and punched, is tubing within the meaning of the Item, regardless of how the tubing is used.
- 6.6 The piping or tubing must be objectively identifiable as piping or tubing. Once pieces of piping or tubing are welded or otherwise attached to other goods, the goods may lose their identity as piping or tubing. Provided the goods retain their characteristic of piping or tubing despite the addition of attachments, the goods are still piping or tubing for the purposes of paragraph (j).³¹
- 6.7 If you can objectively identify the goods as piping or tubing, go to Step 4. If you cannot identify the goods as piping or tubing, go to Step 3.

30. These terms are defined in *The Macquarie Dictionary*.

31. Based on comments in *Case 43/93* 93 ATC 470; *AAT Case 9043* (1993) 27 ATR 1141; and *GKN*.

Step 3 - Are the goods fittings, or parts for fittings, for piping or tubing?

- 6.8 The term '*fitting*' means '*anything provided as equipment, parts, accessories, etc.*'. However, the exemption does not apply to goods merely because they are fitted to piping or tubing.
- 6.9 The exemption covers two types of goods:
- goods which are commercially known as 'pipe fittings', for example, unions, bends, elbows, tees, junctions and couplings; and
 - other goods which are characterised as being 'fittings for piping or tubing', being goods that are specifically designed to be fitted to piping or tubing and are integral or accessory to the piping or tubing (i.e., their purpose is to ensure the efficient and appropriate operation of the piping and tubing).³²
- 6.10 For example, in respect of piping or tubing that is used for the flow of liquids, goods that control and monitor the flow of that liquid are fittings. Examples of such fittings include valves, meters, gauges and taps.
- 6.11 However, goods that may be fitted to piping or tubing but perform a function in their own right and do not act as an accessory to the piping or tubing are not 'fittings for piping or tubing'. Examples of such goods include water heaters, water treatment equipment, water filters and thermometers.
- 6.12 '*Parts*', in relation to fittings for piping or tubing, refers to goods which are commonly described as spare parts for fittings for piping or tubing.³³
- 6.13 If you can objectively identify the goods as fittings, or parts for fittings, for piping or tubing, go to Step 4. If you cannot identify the goods as fittings, or parts for fittings, for piping or tubing, they are not covered by paragraph (j) of subitem 39(1).

Step 4 - Are the goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land?

- 6.14 Paragraphs 3.7 to 3.26 in Chapter 3 explain how to decide whether goods are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land.

32. This definition of fittings is consistent with the approach used by the Court in *Reece Pty Ltd v. FC of T* 97 ATC 5005; (1997) 37 ATR 197.

33. See *DFC of T v. Fowler Rex (NSW) Pty Ltd* (1967) 118 CLR 160; (1967) 40 ALJR 510; (1967) 14 ATD 395; and *DFC of T v. Polaroid (Australia) Pty Ltd* 71 ATC 4249; (1971) 2 ATR 653; (1971) 46 ALJR 32.

- 6.15 **Attachment F** contains a list of goods that are piping or tubing of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land. This list is not exhaustive; other goods are covered if they meet the terms of the exemption Item.
- 6.16 If you have objectively identified the goods as piping, tubing, or fittings (or parts for fittings) for piping and tubing and they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land, go to Step 5. Otherwise, the goods are not covered by paragraph (j) of subitem 39(1).

Step 5 - Are the goods specifically excluded?

- 6.17 Paragraphs 3.27 to 3.32 in Chapter 3 list the goods which are excluded from subitem 39(1) and discuss some of those goods. If the goods are excluded, they are not covered by paragraph (j) of subitem 39(1).
- 6.18 If the goods are **not** excluded, they are exempt from sales tax under paragraph (j) of subitem 39(1). As explained at paragraph 1.3 in Chapter 1, the goods are always-exempt goods and are exempt from sales tax regardless of how they are used or who uses them.

Other exemption Items

- 6.19 If the goods are not covered by paragraph (j) of subitem 39(1), they may be 'conditionally' exempt under subitems 39(4) or 39(5) or under Item 50. The text of these Items is reproduced in **Attachment A**.
- 6.20 Goods are only exempt from sales tax under subitems 39(4) or 39(5) or under Item 50 if the user of the goods intends to use the goods in the way specified in the Item and quotes a registration number (if the user is registered) or an exemption declaration (if the user is not registered) to the supplier.³⁴

34. Refer to Sales Tax Bulletin 13: *'Purchasing goods free of sales tax'* for further information on buying goods free of sales tax. Note that for certain goods covered by Item 50, the ATO has dispensed with the requirement to quote a registration number or an exemption declaration.

Chapter 7: Builders hardware

- 7.1 Paragraph (o) of subitem 39(1) in Schedule 1 to the ST(E&C) Act exempts from sales tax:

'The following goods, if they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land:

(o) builders hardware'.

- 7.2 This Chapter sets out four steps to help you to decide whether goods are exempt under paragraph (o) of subitem 39(1). At **Attachment G** is a flow chart showing those steps.

Step 1 - Identify the goods

- 7.3 Paragraphs 1.7 to 1.9 explain that the first step in the classification of goods is to identify the goods in an objective way or to determine their essential character.

Step 2 - Are the goods builders hardware?

- 7.4 The term 'builders hardware'³⁵ refers to hardware that is characterised as being designed for use by builders.
- 7.5 The term 'builder' means *'a person who builds; a person who contracts for the construction of buildings and supervises the workmen who build them'*. The term 'build' means *'to construct (something relatively complex) by assembling and combining parts'*.
- 7.6 In the context of paragraph (o) of subitem 39(1), builders are persons who construct relatively complex buildings, fixtures and structures *in situ*. Whether a person carrying out a particular activity can be characterised as a 'builder' depends on the complexity of the construction, which is a question that has to be examined on the

35. The apostrophe in the phrase *builders hardware* has been omitted from paragraph 39(1)(o) but the interpretation of the term has not changed from the interpretation attached to subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*.

evidence.³⁶ For example, a person who constructs a transmission tower *in situ* can be described as a 'builder', whereas a person who installs a traffic sign cannot reasonably be described as a 'builder', although in both cases a fixture results.³⁷

- 7.7 The term 'hardware' refers to building materials, metal ware and locks.
- 7.8 Therefore, the term 'builders hardware' refers to building materials, metal ware and locks that are characterised as being designed for use by builders, being persons who are involved in the *in situ* construction of relatively complex buildings, fixtures and structures.³⁸
- 7.9 Builders hardware is not limited to goods made out of metal but extends to goods made out of materials other than metal, such as plastic and fibreglass.
- 7.10 It is important to decide whether the particular goods are characterised as being designed for use by builders, not simply whether the class of goods is characterised as being used by builders. For example, not all screws are necessarily builders hardware simply because particular types of screws are characterised as being used by builders.³⁹
- 7.11 **Attachment H** contains a list of goods⁴⁰ that are builders hardware. This list is not exhaustive, and other goods are builders hardware if they meet the definition as explained above. However, for the goods to be exempt from sales tax, Steps 3 and 4 still have to be satisfied.
- 7.12 If you can objectively identify the goods as builders hardware, go to Step 3. If you cannot identify the goods as builders hardware, they are not covered by paragraph (o) of subitem 39(1).

36. Factors to consider include whether the building industry regards the activity as building; the skills and qualifications of the person undertaking the activity; and membership of trade associations by relevant persons. See also Taxation Ruling TR 95/22, which explains that a 'building worker' is a person who is employed either on-site or off-site in the capacity of a foreman, supervisor, leading hand, tradesperson, apprentice, general construction worker, labourer or plant operator within the building and construction industry. Hardware designed for use by these persons is builders hardware.

37. However, if hardware used in the installation of the sign was characterised as being builders hardware because of its other uses, and was exempt under paragraph (o) of subitem 39(1), it would be exempt if used on the sign because goods covered by subitem 39(1) are always-exempt goods.

38. The comments in this and the preceding paragraphs are based on definitions in *The Macquarie Dictionary* and the *Glossary of Building Terms* and in the following court cases: *Academy Plastics; Feltex; Magna Stic Magnetic Signs Pty Ltd & Anor v. FC of T* (1991) 28 FCR 39; 91 ATC 4216; (1991) 21 ATR 1367; (1991) 98 ALR 604; and *Precision Measures Ltd v. FC of T* 92 ATC 4099; (1992) 23 ATR 30.

39. The ATO may issue public Rulings on particular goods that are members of a wider class if there is sufficient industry demand.

40. The goods listed in Attachment H are based on the list contained in subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*, and Sales Tax Bulletin No 16: '*How it [the Sales Tax law] affects the sign industry*' on Signwriters.

Step 3 - Are the goods of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land?

- 7.13 Paragraphs 3.7 to 3.26 in Chapter 3 explain how to decide whether goods are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land.
- 7.14 If you have objectively identified the goods as builders hardware and they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land, go to Step 4. Otherwise, the goods are not covered by paragraph (o) of subitem 39(1).

Step 4 - Are the goods specifically excluded?

- 7.15 Paragraphs 3.27 to 3.32 in Chapter 3 list the goods which are excluded from subitem 39(1) and discuss some of those goods. If the goods are excluded, they are not covered by paragraph (o) of subitem 39(1).
- 7.16 If the goods are **not** excluded, they are exempt from sales tax under paragraph (o) of subitem 39(1). As explained at paragraph 1.3 in Chapter 1, the goods are always-exempt goods and are exempt from sales tax regardless of how they are used or who uses them.

Chapter 8: Metal materials

- 8.1 Subitem 49(1) in Schedule 1 to the ST(E&C) Act exempts from sales tax:

'The following metal materials, if they are made wholly of metal other than precious metal:

- (a) ingots, blooms, billets, slabs, bars, rods or plate;*
- (b) corrugated, flat or perforated sheet;*
- (c) strip, circles or angles (including perforated angles);*
- (d) channel (including perforated channel);*
- (e) wire or mesh;*

(f) *rolled or extruded sections.*

This subitem applies whether or not the materials are covered with paint or a similar protective coating.'

8.2 Subitem 49(1) exempts the listed materials, regardless of whether or not the materials are going to be used in a building or structural application. For example, the subitem exempts a slab of metal for use by an appliance manufacturer as a raw material.

8.3 This Chapter sets out three steps to help you to decide whether goods are exempt under subitem 49(1). At **Attachment I** is a flow chart showing those steps.

Step 1 - Identify the goods

8.4 Paragraphs 1.7 to 1.9 explain that the first step in the classification of goods is to identify the goods in an objective way or to determine their essential character.

Step 2 - Are the goods metal materials?

8.5 Subitem 49(1) covers a list of materials that must be made wholly from metal.⁴¹ Goods which are not made of metal or are made of a combination of metal and other materials are not covered. For example, a corrugated fibreglass sheet is not covered by subitem 49(1).

8.6 The opening words to the subitem exclude materials made of precious metal. Precious metals are gold, silver, platinum, palladium, rhodium, ruthenium, iridium and osmium.⁴²

8.7 The phrase *the following metal materials* means that the list of materials in paragraphs (a) to (f) is an exhaustive list; that is, only the listed goods are covered by the exemption item. Therefore, goods that are 'metal materials' but are not listed in paragraphs (a) to (f) are not covered.

8.8 To be metal materials, the goods must be characterised as being one of the metal materials listed; that is, the goods must retain their identity as metal materials, rather than taking on the characteristic of either another article or a component for another article. Once goods have been formed or fabricated to become an inherently

41. But see paragraphs 8.9 to 8.11 on the effect of coating the metal.

42. See the *New Encyclopaedia Britannica*, 15th ed (1995), volume 21 at 489.

new article and have lost their original character as metal materials in the process, the goods are no longer covered by the exemption Item.⁴³

Effect of coating the metal

- 8.9 Providing the goods can be characterised as being one of the metal materials listed, the exemption is not affected if the metal has been treated, or has been coated with paint or another form of protective coating, to protect the metal.
- 8.10 For example, the following metal materials are exempt provided they can be characterised as being one of the listed metal materials and are not covered by one of the exclusions listed in subitem 49(2):
- steel that has been alloyed with chromium to form stainless steel;
 - iron that has been coated with zinc to form galvanised iron;
 - metal that has been coated through an electrolysis process to form electroplated metal;
 - metal that has been painted or powder coated as a protection against rust or other corrosive agents;
 - metal that has been anodised; and
 - wire that has been coated with PVC providing that the purpose of the coating is to protect the wire from rust, acid or other corrosive agents, and is not for the purpose of insulation for electrical purposes.
- 8.11 The process of coating metal does not, in itself, constitute manufacture. Even though the metal is exempt, the coating is exempt only if it is covered by an exemption Item.⁴⁴

Definitions

- 8.12 Whether goods can be characterised as one of the listed materials is, in most cases, self-evident. The following definitions may help in doubtful cases:⁴⁵
- Angle (section) - a metal section of rolled steel, aluminium, etc., which is shaped like the letter 'L' made up with legs of equal or unequal length.[#]
 - Bar - a relatively long and evenly shaped piece of some solid substance; an oblong piece of any solid material.
 - Billet - a bar or slab of iron or steel, especially when obtained from an ingot by forging, etc.

43. Based on comments in *Case Y2 91 ATC 104*; *AAT Case 6507* (1990) 21 ATR 3843; and *Case 43/93*; and by the Federal Court in *GKN*.

44. For example, subitem 44(1) in Schedule 1 exempts paints and other coatings in liquid, paste or powder form, if the paints or coatings are of a kind marketed principally for application to buildings or fixtures. In certain circumstances, the coating may qualify for exemption under Items 19 or 194 in Schedule 1.

45. All definitions are from *The Macquarie Dictionary*, except for those marked #, which are from the *Glossary of Building Terms*.

- Bloom - semi-finished steel ingot rolled to reduced size.
- Channel (section) - a metal section of rolled steel, aluminium, etc., which is shaped like three sides of a rectangle.[#]
- Corrugated iron - a type of sheet iron or steel strengthened for use in construction by being formed into a series of alternating grooves and ridges.
- Extruded section - section formed into a desired cross-sectional shape by ejecting through a shaped opening.
- Ingot - the casting obtained when melted metal is poured into a mould with the expectation that it be further processed; a cast metal mass, formed by rolling, etc., or by smelting and casting to shape.
- Mesh - a woven network of interlocking wires welded, tied or knotted at the intersections, used for reinforcement.[#]
- Perforated - pierced with a hole or holes.
- Plate - a thin, flat sheet or piece of metal, especially of uniform thickness.
- Rod - a stick, wand, staff, shaft, or the like.
- Rolled-steel sections - structural steel sections, in a variety of shapes including rolled steel joists, channels, angles and flat plate, made by hot-rolling in a continuous process.[#]
- Sheet - a piece of material that is thin in relation to its length and width, usually rectangular and produced as an individual piece or cut from sheeting.[#]
- Slab - a broad, flat, somewhat thick piece of solid material.
- Strip - a relatively long, narrow band of material.
- Wire - a length of slender, flexible metal, usually of circular cross-section, ranging in thickness from a fine thread to one that can only just be bent manually.[#]

8.13 If you can objectively identify the goods as metal materials, go to Step 3. If you cannot identify the goods as metal materials, they are not covered by subitem 49(1).

Step 3 - Are the goods specifically excluded?

8.14 Subitem 49(2) excludes the following goods:

- '(a) materials insulated for electrical purposes;*
- (b) liners for swimming pools or spas, or goods designed to form part of swimming pools or spas;*
- (c) channelling of a kind ordinarily used for slides or water slides;*
- (d) piping or tubing;*
- (e) duct work, or channelling, of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;*
- (ea) scaffolding;*
- (eb) safes;*
- (ec) racking and shelving;*

- (f) fittings, accessories, attachments or components for goods covered by paragraph (e), (ea), (eb) or (ec);*
- (g) goods covered by item 6 in Schedule 2.'*

- 8.15 Item 6 in Schedule 2 covers, in simple terms, water heating and hot water storage equipment of a kind installed as fixtures in domestic premises; and goods used in filtering water that are of a kind ordinarily installed as fixtures. Goods covered by Item 6 in Schedule 2 are currently taxable at 12%.
- 8.16 The coverage of most of the exclusions to Item 49 is self-explanatory and, therefore, they are not discussed any further. An explanation of the exclusion referring to 'racking and shelving' is at paragraphs 3.30 and 3.31 in Chapter 3.
- 8.17 If the goods are excluded by subitem 49(2), they are not covered by subitem 49(1), even if they are characterised as being metal materials.
- 8.18 If the goods are **not** excluded, they are exempt from sales tax under subitem 49(1). As explained at paragraph 1.3 in Chapter 1, the goods are always-exempt goods and are exempt from sales tax regardless of how they are used or who uses them.

ISSN- 10532 - 0731

Previously released in draft form as SST D6 and SST D10

ATO References

NO NAT 98/12606-6
NAT 97/7741-5
NAT 97/154-5

Price \$5.20

FOI Index Detail

reference no I 1017877

Subject references

- builders hardware
- classification
- fittings for piping and tubing
- metal building materials
- metal materials
- piping and tubing
- structural building units and architectural building units

legislative references

- STAA 7(2)
- STAA 77
- ST(E&C) Act 1935
- ST(E&C) Act 1935 Subsection 3(2)
- ST(E&C) Act 1935 Subitem 82(1) of First Schedule
- ST(E&C) Act 1935 Subitem 82A
- ST(E&C) Act 1935 Subitem 84(1)
- ST(E&C) Act 1935 Subitem 84(2)
- ST(E&C) Act 1935 Item 86
- ST(E&C) Act 1992
- ST(E&C) Act 1992 Item 39 of Schedule 1
- ST(E&C) Act 1992 Subitem 39(1)
- ST(E&C) Act 1992 Paragraph 39(1)(a)
- ST(E&C) Act 1992 Paragraph 39(1)(h)
- ST(E&C) Act 1992 Subparagraph 39(1)(h)(i)
- ST(E&C) Act 1992 Subparagraph 39(1)(h)(ii)
- ST(E&C) Act 1992 Subparagraph 39(1)(h)(iii)
- ST(E&C) Act 1992 Paragraph 39(1)(i)
- ST(E&C) Act 1992 Paragraph 39(1)(j)
- ST(E&C) Act 1992 Paragraph 39(1)(o)
- ST(E&C) Act 1992 Subitem 39(3)
- ST(E&C) Act 1992 Subitem 39(4)
- ST(E&C) Act 1992 Subitem 39(5)
- ST(E&C) Act 1992 Item 42(c) of Schedule 1
- ST(E&C) Act 1992 Item 43
- ST(E&C) Act 1992 Subitem 44(1)

case references

- **Academy Plastics Pty Ltd; DFC of T v.** (unreported, 22 March 1956)
- **Australian Provisional Assurance Co Ltd v. Coroneo** (1938) 38 SR (NSW) 700
- **Belgrave Nominees Pty Ltd & Ors v. Barlin-Scott Airconditioning (Aust) Pty Ltd** [1984] VR 947
- **Black v. Shaw and Official Assignee in Bankruptcy of Walter Shaw** (1914) 33 NZLR 194
- **Bowater Tutt Industries Pty Ltd v. FC of T** 96 ATC 5009; (1996) 34 ATR 135
- **Cardiff Rating Authority and Cardiff Assessment Committee v. Guest Keen Baldwin's Iron and Steel Company Limited** [1949] 1 KB 385
- **CCA Beverages (Sydney) Pty Ltd v. FC of T** 97 ATC 4213; (1997) 35 ATR 77
- **Chubb Australia Ltd; FC of T v.** 95 ATC 4186; (1995) 30 ATR 285; (1995) 128 ALR 489
- **Diethelm Manufacturing Pty Ltd v. FC of T** (1993) 44 FCR 450; 93 ATC 4703; (1993) 26 ATR 465; (1993) 116 ALR 420
- **Dixon (Inspector of Taxes) v. Fitch's Garage Ltd** [1975] 3 All ER 455
- **Eon Metals NL v. Commissioner of State Taxation (WA)** 91 ATC 4841; (1991) 22 ATR 601
- **Feltex Commercial Interiors Pty Ltd trading as Co Design v. FC of T** 90 ATC 4925; (1990) 21 ATR 920
- **Fowler Rex (NSW) Pty Ltd; DFC of T v.** (1967) 118 CLR 160; (1967) 40 ALJR 510; (1967) 14 ATD 395
- **GKN Australia Ltd v. FC of T** 94 ATC 4417; (1994) 28 ATR 321
- **Hygienic Lily Ltd v. DFC of T** (1987) 13 FCR 396; 87 ATC 4327; (1987) 18 ATR 619; (1987) 71 ALR 441
- **Jetmaster Fireplaces Pty Ltd v. FC of T** 89 ATC 4464; (1989) 20 ATR 689
- **K Mart Australia Ltd v. FC of T** 96 ATC 4155; (1996) 31 ATR 524
- **Magna Stic Magnetic Signs Pty Ltd & Anor v. FC of T** (1991) 28 FCR 39; 91 ATC 4216; (1991) 21 ATR 1367; (1991) 98 ALR 604
- **Mills & Rockleys Ltd v. Leicester City Council** [1946] 1 All ER 424
- **NH Dunn Pty Ltd v. LM Ericsson Pty Ltd** (1979) 2 BPR 9241

- **Permanent Trustee Australia Ltd v. Esanda Corporation Ltd & Ors** (NSW SC (Eq Div), unreported, 2 August 1991)
- **Polaroid (Australia) Pty Ltd; DFC of T v.** 71 ATC 4249; (1971) 2 ATR 653; (1971) 46 ALJR 32
- **Precision Measures Ltd v. FC of T** 92 ATC 4099; (1992) 23 ATR 30
- **Reece Pty Ltd. v. FC of T** 97 ATC 5005; (1997) 37 ATR 197
- **South Wales Aluminium Co Ltd v. Assessment Committee for the Neath Assessment Area** [1943] 2 All ER 587
- **Case 27/93** 93 ATC 324; **AAT Case 8811** (1993) 26 ATR 1075
- **Case 41/94** 94 ATC 378; **AAT Case 9536** (1994) 29 ATR 1118
- **Case 43/93** 93 ATC 470; **AAT Case 9043** (1993) 27 ATR 1141
- **Case Y2** 91 ATC 104; **AAT Case 6507** (1990) 21 ATR 3843
- **Case Z26** 92 ATC 250; **AAT Case 8093** (1992) 23 ATR 1215

ATTACHMENT A

Chapters 2 and 3 of Schedule 1 of the Sales Tax (Exemptions and Classification) Act 1992

'Chapter 2: Building materials

Item 39: [Materials for repair or construction of buildings, etc]

(1) The following goods, if they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land:

- (a) structural building units or architectural building units;
- (b) boards, sheets and linings;
- (c) wall ties;
- (d) dampcourse and materials for dampcourse;
- (e) roofing materials (including skylights);
- (f) wall, roof and ceiling ventilators;
- (g) flooring for buildings, for application in a plastic condition;
- (h) metal building materials, including:
 - (i) girders, rods, bars, wire, sheets, mesh and lathing;
 - (ii) fabricated units made up of goods covered by subparagraph (i);
 - (iii) attachments for fabricated units covered by subparagraph (ii);
- (i) plaster, plaster products and goods having structural uses similar to plaster and plaster products;
- (j) piping, tubing, and fittings (and parts for fittings) for piping and tubing;
- (k) glass (including wired glass) and glass substitutes;
- (l) leadlights and other lights panels or squares having similar uses and made principally of glass and metal;
- (m) pavement lights, and components for the on-site construction of pavement lights;
- (n) doors and door frames;
- (na) windows, shutters, window frames, louvre frames, window sashes, window screens and window fittings;
- (o) builders hardware;
- (p) bonding, setting and sealing agents.

(2) Boards, sheets and linings for use by a person exclusively in the construction or repair of buildings or other fixtures.

(3) This item does not cover:

- (a) duct work, or channelling, of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;
- (aa) scaffolding;
- (ab) safes;
- (ac) racking and shelving;
- (b) fittings, accessories and attachments for goods covered by paragraph (a), (aa), (ab) or (ac) or goods designed to form part of goods covered by paragraph (a), (aa), (ab) or (ac);
- (c) piping, tubing or channelling of a kind ordinarily used for slides or water slides;
- (d) piping or tubing of a kind ordinarily used in, or in connection with, beer drawing plant;
- (e) rubber hose or rubber tubing, or any other hose or tubing of a kind ordinarily used for any of the purposes for which rubber hose or rubber tubing is ordinarily used;
- (f) liners and filtering equipment for swimming pools and spas, or goods designed to form part of swimming pools or spas;
- (g) tiles, or floor coverings, made of cork, linoleum, rubber, vinyls or similar materials;
- (h) carpeting (including carpet tiles or squares);
- (i) electrical fittings, accessories or equipment;
- (j) goods covered by item 5, 6 or 7 in Schedule 2.

In this subitem, "**rubber**" includes synthetic rubber.

(4) Goods for use by a person exclusively as raw materials in the construction or on-site repair of piping or tubing covered by paragraph (1)(j).

(5) Manholes or inspection shafts for use by a person exclusively in connection with piping or tubing covered by paragraph (1)(j).

Item 40: [Stone, gravel, etc]

- (1)** Stone (including synthetic stone) and decomposed rock.
- (2)** Gravel, seashell, sand, clay and soil.
- (3)** Crushed metals or crushed bricks.
- (4)** Furnace slag, clinker and ashes (whether crushed or uncrushed).
- (5)** Screenings, toppings and dust.

Item 41: [Concrete, cement, etc]

- (1)** Concrete, cement and lime.
- (2)** Goods of a kind marketed principally as ingredients for concrete or for cement, mortar or plaster mixtures.

Item 42: [Timber]

Timber, including:

- (a) timber (other than joinery or turnery) that has been cut into lengths, trimmed or shaped at an end or ends, or mortised, tenoned, bevelled, chamfered, checked or bored;
- (b) floorings, linings, mouldings, weatherboards, parquet blocks, plywood, veneers and sawdust;
- (c) joinery and turnery of a kind ordinarily used as raw materials in the construction or repair of buildings or fixtures.

Item 43: [Electrical fittings, etc]

(1) The following goods, if they are of a kind ordinarily used as part of fixed electrical installations in consumers' premises:

- (a) electrical fittings (including electronically operated electrical fittings);
- (b) electrical accessories (including electronically operated electrical accessories);
- (c) electrical materials (including electrical conduit).

[Parts]

(2) Subitem (1) does not cover:

- (a) bell equipment, burglar alarm equipment, fire alarm equipment and recording equipment;
- (b) electronic equipment (other than electronically operated electrical fittings and accessories);
- (c) electrically operated appliances, apparatus and machines;
- (d) engines, alternators, primary and secondary batteries and other generating equipment;
- (e) brackets, canopies, chains, hooks and galleries;
- (f) candelabra, chandeliers and electroliers;
- (g) pendants, shades, bowls and reflectors;
- (h) electric light globes, lamps and tubes;
- (i) condensers, converters, starters and transformers;
- (j) neon signs and other luminous discharge lighting equipment, including fluorescent light equipment;
- (k) sensors, thermostats, light dimmers or other equipment for controlling appliances;
- (l) light boxes;
- (m) flexible cables;
- (n) goods, or parts for goods, referred to in subitem 6(3) in Schedule 2;
- (o) goods covered by subitem 6(4) in Schedule 2.

(3) The following goods, if they are of a kind ordinarily used in connection with fixed electrical installations in consumers' premises:

- (a) adaptors;
- (b) plugs;
- (c) electrical safety devices for the protection of persons.

[Parts]

Item 44: [Paints, putties, wallpaper, etc]

(1) Paints and other coatings in liquid, paste or powder form, if the paints or coatings are of a kind marketed principally for application to buildings or fixtures. This subitem does not cover polishes or mop oils.

(2) Goods ordinarily used as pigments, thinners or driers for goods covered by subitem (1).

(3) Putties, and fillers, of a kind marketed principally for application to buildings or fixtures.

(4) Goods for use by a person exclusively as ingredients for goods covered by subitem (1), (2) or (3).

(5) Wallpaper.

Item 45: [Wire netting and barbed wire]

Wire netting and barbed wire.

Item 46: [Concrete fencing posts]

Concrete fencing posts.

Item 47: [Bitumen, etc]

(1) Bitumen, bituminous emulsions and tar.

(2) Asphalt, and other mixtures or compositions, of a kind ordinarily used in a plastic or fluid condition as raw materials in constructing roads, paths, buildings or fixtures.

Item 48: [Welding rods, solder, etc]

(1) Welding and brazing electrodes, rods and wires.

(2) Solder consisting principally of lead and tin.

Item 49: [Metal materials]

(1) The following metal materials, if they are made wholly of metal other than precious metal:

- (a) ingots, blooms, billets, slabs, bars, rods or plate;
- (b) corrugated, flat or perforated sheet;
- (c) strip, circles or angles (including perforated angles);
- (d) channel (including perforated channel);
- (e) wire or mesh;
- (f) rolled or extruded sections.

This subitem applies whether or not the materials are covered with paint or a similar protective coating.

(2) Subitem (1) does not cover:

- (a) materials insulated for electrical purposes;
- (b) liners for swimming pools or spas, or goods designed to form part of swimming pools or spas;
- (c) channelling of a kind ordinarily used for slides or water slides;
- (d) piping or tubing;
- (e) duct work, or channelling, of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;
- (ea) scaffolding;
- (eb) safes;
- (ec) racking and shelving;
- (f) fittings, accessories, attachments or components for goods covered by paragraph (e), (ea), (eb) or (ec);
- (g) goods covered by item 6 in Schedule 2.

Chapter 3: Irrigation, water supply etc

Item 50: [Piping, tubing, etc for irrigation, water supply, etc]

(1) Piping or tubing for use by a person mainly for purposes of irrigation, water supply, drainage or sewerage, but not including:

- (a) rubber hose or rubber tubing;
- (b) any hose or tubing of a kind ordinarily used for any of the purposes for which rubber hose or rubber tubing is ordinarily used.

In this subitem, "**rubber**" includes synthetic rubber.

(2) Channelling or guttering for use by a person mainly for purposes of irrigation, water supply, drainage or sewerage, but not including channelling or guttering for use for a water slide.

(3) Goods for use by a person exclusively as fittings for goods covered by subitem (1) or (2), or as parts for goods covered by this subitem.

(4) Goods for use by a person exclusively as raw materials in the construction or on-site repair of:

- (a) piping or tubing covered by subitem (1); or
- (b) channelling or guttering covered by subitem (2).

(5) Manholes or inspection shafts for use by a person exclusively in connection with:

- (a) piping or tubing covered by subitem (1); or
- (b) channelling or guttering covered by subitem (2).

Item 51: [Pumping equipment for water supply, etc]

Pumping equipment for use by a person mainly for purposes of water supply or sewerage, not including goods covered by paragraph 5(1)(i) in Schedule 2.

[Parts and fittings]

Item 52: [Water boring equipment, etc]

- (1) Water bore casings.

[Parts and fittings]

- (2) Water boring plant and equipment.

[Parts and fittings]

- (3) Tools for use by a person mainly in connection with water boring plant or equipment.

Item 53: [Water tanks and stands]

Water tanks or stands for water tanks, but not including:

- (a) water tanks of a kind ordinarily attached to motor vehicles;
- (b) goods covered by item 5 or 6 in Schedule 2.

[Parts and fittings]

Item 54: [Preparations and equipment to reduce water evaporation]

- (1) Preparations or materials marketed principally for use in reducing evaporation of water in reservoirs, dams, channels or streams.

- (2) Equipment for use by a person mainly for applying goods covered by subitem (1).

[Parts]

ATTACHMENT B

Effect on ST 2000 series rulings

The following ST 2000 series rulings are withdrawn or modified as set out below. The withdrawal or modification is effective from the date of effect of this Ruling.

ST 2064 Removable Rotary Clothes Hoists

The ATO has, for a long time, accepted that rotary clothes hoists of the kind affixed to land are exempt from sales tax, either under paragraph (o) of subitem 39(1) in Schedule 1 to the ST(E&C) Act or subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*. These types of hoists are affixed to a concrete base in the ground, and become a fixture. They are commonly installed by builders (or contractors to builders) during the construction of 'house and land' packages and therefore can be characterised as being 'builders hardware'.

For the reasons expressed in ST 2064, removable rotary clothes hoists are also accepted as being builders hardware and are in the same class of rotary clothes hoists. Therefore removable rotary clothes hoists are exempt under paragraph (o) of subitem 39(1) in Schedule 1.

ST 2064 is withdrawn.

ST 2110 Towel and Facial Tissue Dispensers

The dispensers referred to are excluded from Item 39 by virtue of exclusion paragraph (3)(j). Such dispensers are currently taxable at 12%.

ST 2110 ceased to be effective from 23 August 1988 and is now withdrawn.

ST 2114 Domestic Satellite Receiving Equipment

Paragraph 5 refers to certain components being exempt under item 82A, or subitems 84(1) or 86(1) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*. These goods are exempt under paragraphs (j) and (h) of subitem 39(1) and Item 49 in Schedule 1 respectively.

ST 2114 is modified.

ST 2120 Glass Display Door for Coolrooms and Freezer Rooms and Inserts for Coolrooms

Paragraphs 11 and 12 refer to certain goods being exempt under subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*. These goods are exempt under paragraph (o) of subitem 39(1) in Schedule 1.

ST 2120 is modified.

ST 2178 Multi-Directional Audio/Visual Brackets

Brackets which satisfy the steps set out in Chapter 7 of this Ruling are exempt under paragraph (o) of subitem 39(1) in Schedule 1. Other brackets are not covered by paragraph (o).

ST 2178 is withdrawn.

ST 2184 PVC Swing Doors, Strip Doors, Strip Partitioning and Weldscreens

The goods ruled to be exempt under subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* in paragraphs 5 and 6 of ST 2184 are exempt under paragraph (o) of subitem 39(1) in Schedule 1.

ST 2184 is modified.

ST 2208 Dredging Equipment

The piping referred to in paragraph 8 that was ruled to be exempt under subitem 82A(1) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* is exempt under paragraph (j) of subitem 39(1) in Schedule 1.

ST 2208 is modified.

ST 2285 Parking Security Devices for Use in Connection with Individual Car Parking Positions

Parking security devices that are marketed direct to builders and architects and are of a kind used as raw materials in the construction of car parks are exempt under paragraph (o) of subitem 39(1) in Schedule 1. Parking security devices that do not satisfy the steps set out in Chapter 7 of this Ruling are not covered by paragraph (o).

ST 2285 is withdrawn.

ST 2306 Seuster-Roll-Fast-Door and Associated Drive Motor, Control Box and Optional Controls

The Seuster-Roll-Fast-Door was ruled to be exempt as 'builders hardware' under subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*. As the article is a 'door' it is covered by paragraph (n) of subitem 39(1) in Schedule 1.

ST 2306 is modified.

ST 2314 Air Conditioning and Ventilating Duct Work, Fittings, Accessories and Attachments

Goods ruled to be exempt in paragraphs 14 and 16 under subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* are exempt under paragraph (o) of subitem 39(1) in Schedule 1.

ST 2314 is modified.

ST 2339 Interlocking Paving Tiles, Special Soft Safety Tiles and Strips

The tiles ruled to be exempt in paragraphs 5 and 6 under subitem 82(1) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* are exempt under paragraph (a) of subitem 39(1) in Schedule 1.

ST 2339 is withdrawn.

ST 2361 Spray Painting Booths

The galvanised metal trays that form the floor of the booths, ruled to be exempt in paragraph 14 under subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* are now exempt under paragraph (o) of subitem 39(1) in Schedule 1.

ST 2361 is modified.

ST 2373 Speed Humps used in Traffic Speed Control

Prefabricated speed humps, of any materials, are structural or architectural building units. As they are used as raw materials in the construction of a road or carpark, etc., they are exempt under paragraph (a) of subitem 39(1) in Schedule 1.

ST 2373 is modified.

ST 2391 Gripspan Grating

Gripspan grating was ruled to be conditionally exempt under subitem 84(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* when it was used in the construction or repair of buildings or other fixtures. When used in other circumstances, it was taxable. It has been established that Gripspan grating satisfies the steps in Chapter 7 of this Ruling and is exempt under paragraph (o) of subitem 39(1) in Schedule 1.

ST 2391 ceased to be effective from 1 January 1993 and is now withdrawn.

ST 2412 Silvered Sheet and Plate Glass, Silvered Glass Products

Mirror tiles whether attached by adhesives or adhesive tapes are exempt under paragraph (a) of subitem 39(1) in Schedule 1. Mirror doors for built in wardrobes are exempt under paragraph (n) of subitem 39(1) in Schedule 1.

ST 2412 is modified

ST 2439 Staples for use with Tacking or Stapling Machines in the Construction of Buildings, etc

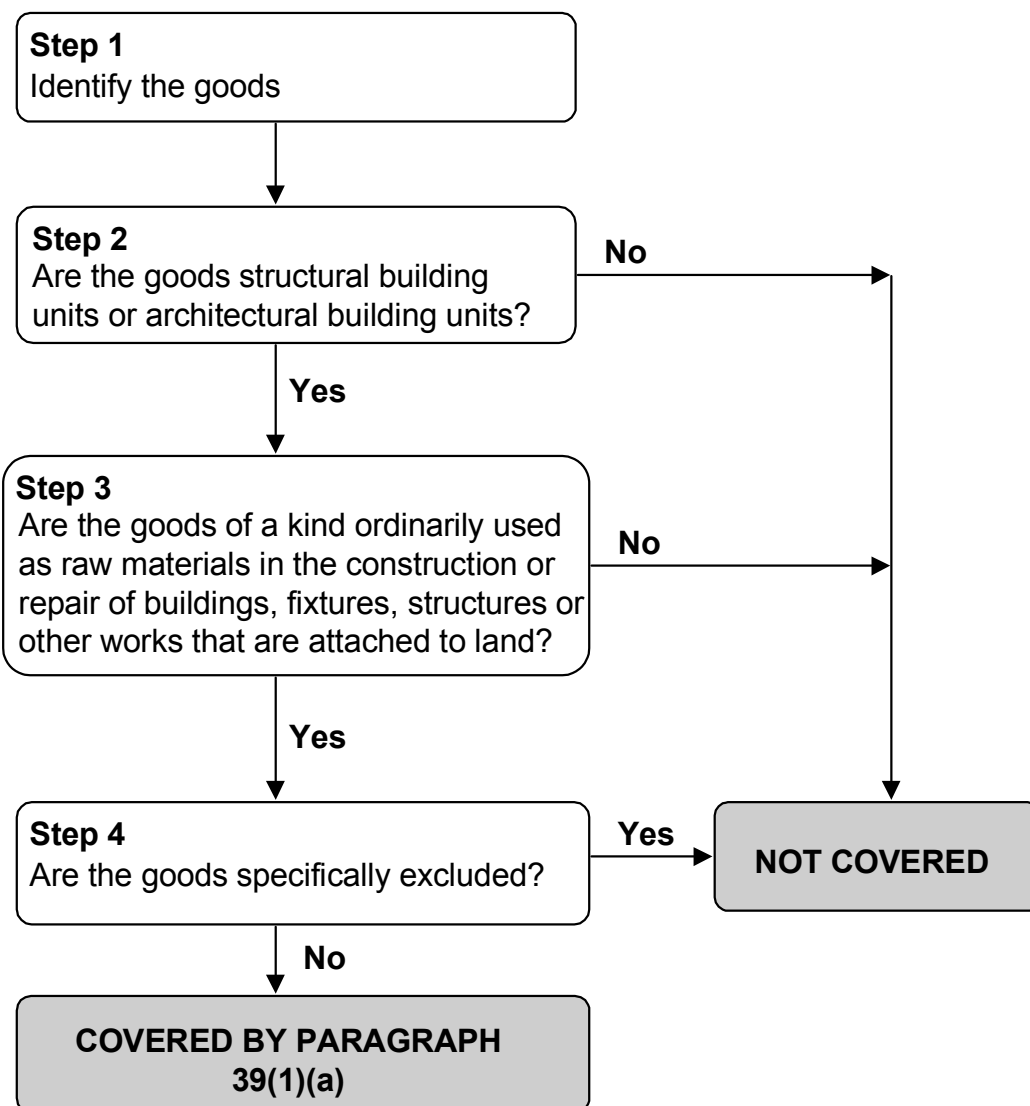
The Truss Industry Staples and Plasterboard Staples are exempt under paragraph (o) of subitem 39(1) in Schedule 1.

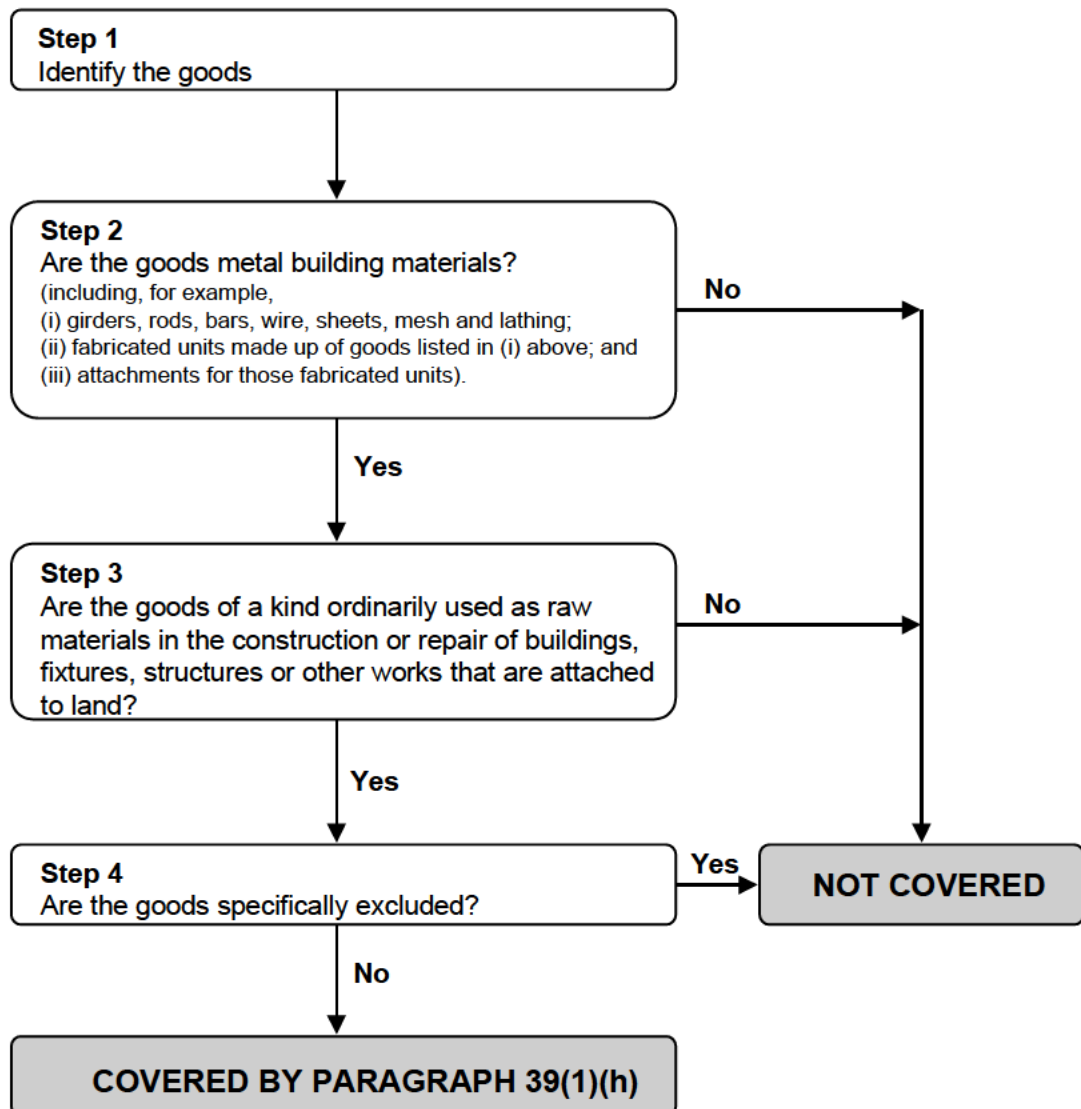
ST 2439 is withdrawn.

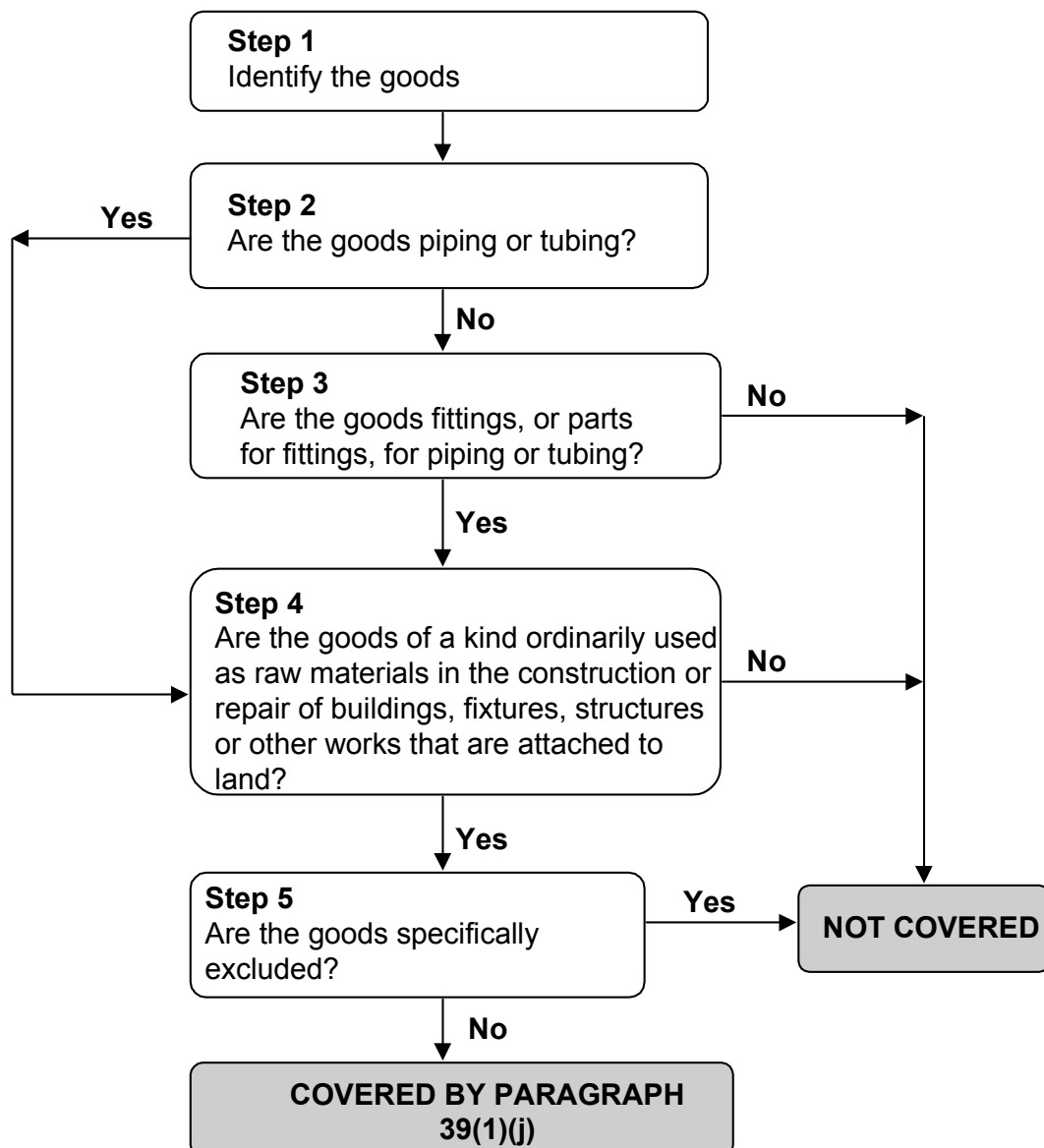
ST 2445 Builders Hardware: Electronic Door Lock

The electronic deadbolt is exempt under paragraph (o) of subitem 39(1) in Schedule 1.

ST 2445 is withdrawn.

ATTACHMENT C**Structural building units and architectural building units****Guidelines for classification under paragraph (a) of subitem 39(1) in Schedule 1**

ATTACHMENT D**Metal building materials****Guidelines for classification under paragraph (h) of subitem 39(1)
in Schedule 1**

ATTACHMENT E**Piping, tubing, and fittings (and parts for fittings) for piping and tubing****Guidelines for classification under paragraph (j) of subitem 39(1)
in Schedule 1**

ATTACHMENT F**Piping or tubing of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land****Copper**

- Copper piping and tubing with nominal size of 10mm or greater, other than plating, polishing or capillary grade. (Note : Nominal size is the approximate size of the outside diameter of piping achieved by rounding off.)

Brass

- SWV (soil, waste and vent) brass tubing, that is, in nominal sizes of 32mm to 100mm described as in 'half hard' condition and sold by length.

Aluminium

- All square and rectangular aluminium hollow sections.
- Cylindrical aluminium tube manufactured and marketed specifically as downpipe.

Stainless Steel

- Series 300 stainless steel piping and tubing.

Steel

- All galvanised steel circular piping.
- Conveyor idler tubing.
- Circular steel piping with wall thickness of 2.0mm or greater, including black, primed, bright and semi-bright but not including oval steel tubing or chrome plated piping.
- Galvanised steel square and rectangular piping and tubing irrespective of size.
- Square and rectangular steel tubing with wall thickness of 1.6mm or greater, including black, primed, bright and semi-bright but not including chrome plated.

PVC

- Gas pipe.
- Pressure and non-pressure pipe.
- Sewer drain pipe.
- Soil, waste and vent pipe.
- Storm water pipe.

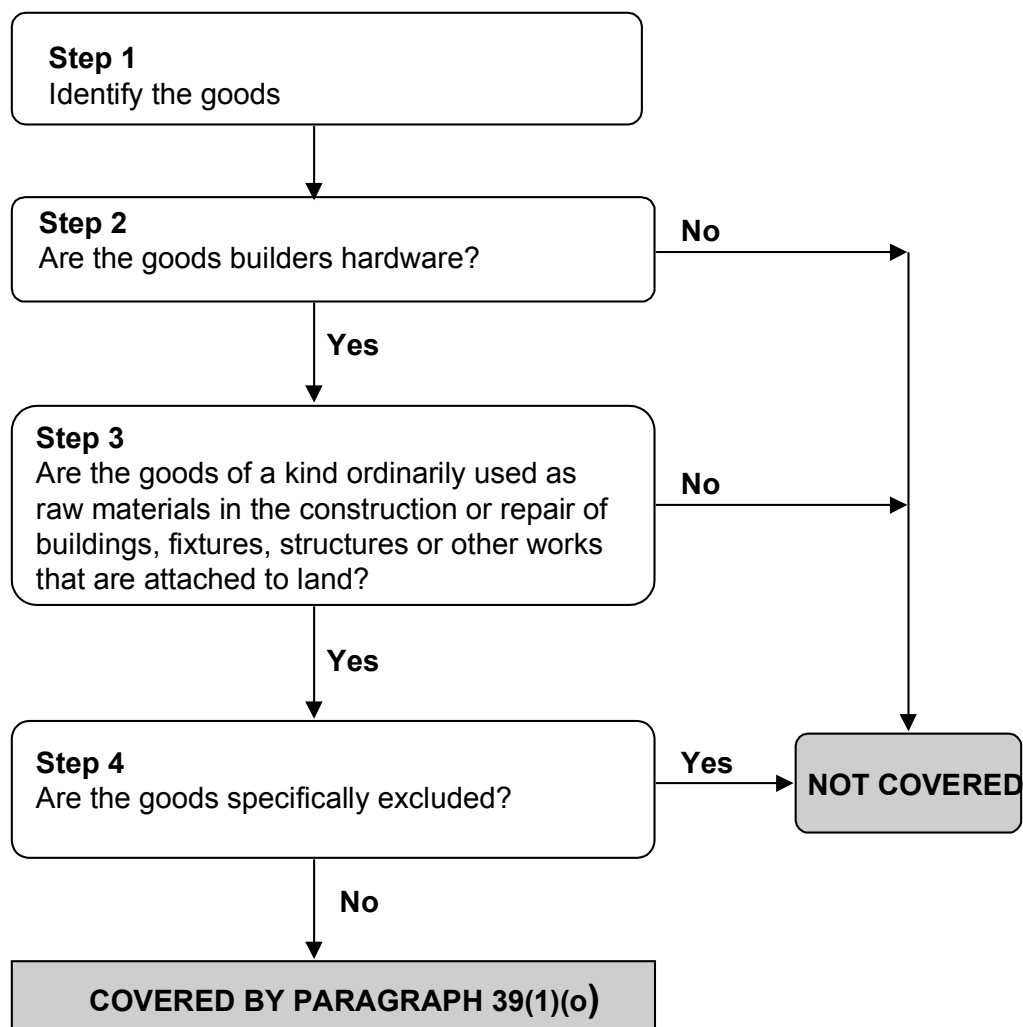
Miscellaneous

- Asbestos cement pressure and non-pressure pipe.

SST 14

- Asbestos cement storm water drain pipe.
- Corrugated Duraduct and Duroval produced from galvabond but not including uncorrugated Duraduct and Duroval which are produced from galvabond and are galvanised to a minimum standard of 275 grams per square metre and which have external corrugations not more than 4mm in depth.
- Duraweld pressure piping.
- Painted/unpainted black steel, stainless steel or aluminium Duraduct and Duroval.
- Polyethylene pipe.

Note: This list is not exhaustive. Other goods are covered, if they meet the terms of the exemption Item.

ATTACHMENT G**Builders hardware****Guidelines for classification under paragraph (o) of subitem 39(1)
in Schedule 1**

ATTACHMENT H

Examples of goods that are builders hardware

The following goods if of a type designed for use by builders:

- Bolts, brackets, brads;
- Catches, clips, clouts, corrugated fasteners;
- Decking spikes, door bells, door and cabinet handles, door knockers, doorsheaves and tracks, door stops and stoppers, door and cupboard catches, door and gate springs, door closers, tracks and fittings for sliding doors, drawer pulls, dryvins;
- Flush rings;
- Gate loops;
- Hasps, hinges, hooks, hooks and eyes;
- Kick plate, knobs;
- Latches, letter boxes, locks, locksets, loxins;
- Metal frames for support of wash basins;
- Nails, nuts;
- Padbolts, panel pins;
- Rivets;
- Standard direction and instruction signs which are installed in buildings and other fixtures and are permanently attached and non-personalised, for example, *first aid*, *car park* and pictorial signs such as *female/male* symbols for toilets;
- Statutory signs which are permanently attached and are required by *law* to be installed in a building before it can be occupied, for example, *electrical switchboard*, *fire exit*, *pump room*, *evacuation procedure*;
- Staples, screws, scruins, spikes; and
- Washers.

Note: This list is not exhaustive. Other goods are builders hardware if they meet the definition as explained in paragraphs 7.4 to 7.10 of this Ruling. However, for the goods to be exempt from sales tax, Steps 3 and 4 as explained in paragraphs 7.13 to 7.16 still have to be satisfied.

ATTACHMENT I**Metal materials****Guidelines for classification under subitem 49(1) in Schedule 1**