


# ***STNS 4 - Sales Tax: a guide to the classification of goods for sales tax purposes***

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## Taxation Ruling

### Sales Tax: a guide to the classification of goods for sales tax purposes

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*This document is a Ruling for the purposes of section 12D of the Sales Tax Procedure Act 1934 and, as a result, you may act upon it as if it had the force of law. The Ruling sets out principles which have general application, using examples to explain them. The examples given are current at the date of issue, but they should be treated only as illustrations of the general principles, as they may be affected by subsequent legislative changes.*

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## **Chapter 1: What this Ruling is about**

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- 1.1 Sales tax is a self-assessing tax. Essentially this means that the responsibility for determining and calculating the sales tax payable rests with the taxpayer<sup>1</sup>. To assist taxpayers self-assess, this Ruling sets out a step by step guide to *classifying* goods correctly<sup>2</sup>.
- 1.2 The Ruling is expressed in non-technical language wherever possible. If you wish to find the authority behind any of the principles stated in this Ruling, the footnotes refer to court decisions and other authorities on the point, or give details of the particular legislation which applies.
- 1.3 If you act consistently with this Ruling, you need *not* seek confirmation of a particular classification of goods from the Taxation Office.

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<sup>1</sup>. An overview of Sales Tax and a taxpayer's responsibilities is given in the Ruling ST (NS) 2, entitled *Scheme of the Sales Tax Legislation*.

<sup>2</sup>. In this Ruling, *classifying* goods means determining the rate of sales tax (if any) which applies to the goods.

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## Chapter 2: Date of Effect

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- 2.1 Sales Tax Rulings are altered from time to time, by the publication of revised Rulings and in other ways. Where the advice given in a Sales Tax Ruling is altered, that alteration may take effect at some specified time in the future. Usually this occurs when the advice which is altered was based on a long established interpretation and is likely to have a significant effect.
- 2.2 This Ruling does not specifically address any material previously published for general information and is effective immediately.

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## Chapter 3: Structure of the legislation classifying goods

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### *Schedules and rates of tax*

- 3.1 The main legislation dealing with classifying goods is the Sales Tax (Exemptions and Classifications) Act 1935 (referred to in this Ruling as the *E & C Act*). The *E & C Act* includes a number of *Schedules*, each containing *items* which list or describe goods. Generally speaking, sales tax is not payable on goods covered by any item or subitem of the First Schedule<sup>3</sup>.
- 3.2 Goods specified by the other Schedules are taxable at the rates set down for goods in that Schedule in the various Acts which impose sales tax<sup>4</sup>. These Acts are sometimes referred to as *Rating Acts* (because of their effect) and are officially named the *Sales Tax Acts*.

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<sup>3</sup>. Subsection 5(1) of the *E & C Act* provides: "Notwithstanding anything contained in any Sales Tax Assessment Act, sales tax shall not, subject to this section, be payable upon the sale value of any goods covered by any item or sub-item in the first column of the First Schedule, under any Act specified in the second column of that Schedule opposite that item or sub-item." The effect of the columns in the *E & C Act* is explained further in paragraphs 3.7 and 3.8. See also section 20 of Sales Tax Assessment Act (No. 1) 1930 and its equivalents in other Assessment Acts.

<sup>4</sup>. Subsection 6B(1) of the *E & C Act* states: "The goods specified in a Schedule other than the First Schedule are so specified for the purposes of the Acts imposing sales tax upon goods so specified."

3.3 The rates of tax presently assigned to the Schedules under the *Sales Tax Acts* are:

- goods covered by the Second Schedule - 30%;
- goods covered by the Third Schedule - 10%; and
- goods covered by the Fourth or Fifth Schedule - 20%.

Goods not covered by any of the Schedules are taxed at the rate of 20%<sup>5</sup>. This is often referred to as the *general rate*.

3.4 The descriptions used in items in the Schedules vary. Many descriptions are broad or generic, while others are narrow or specific. It is therefore possible for goods to be covered by more than one item in more than one Schedule. Rules for finding out which rate of tax applies in such cases are set out in Chapter 4.

### *The First Schedule*

3.5 The First Schedule of the *E & C Act* is divided into 15 separate Divisions with headings which can assist with finding a relevant item or group of items. However, the headings cannot be used to affect the interpretation of any item<sup>6</sup>.

3.6 The First Schedule contains numbered items which describe goods either specifically (for example, *newspapers*, item 54), or in broad terms (for example, *goods for use... in the production of motion picture films...*, item 107). Other items describe a class of goods (for example, *Cylinders of a kind used in the marketing of gases for industrial, medical or domestic use...*, subitem 99A(1)).

3.7 The exemption for goods covered by an item may apply under one or more of the Sales Tax Assessment Acts (referred to in this Ruling as *Assessment Acts*). The *Assessment Acts* to which each item applies are indicated in a column alongside the item. Most items list *Assessments Acts* (Nos. 1 to 9), with the practical effect that no sales tax is payable on the goods.

3.8 Some items list only a few *Assessment Acts*, with the consequence that sales tax is payable under *Assessment Acts* not listed. For example, subitem 49(1), *compressed air*, applies only to *Assessment Acts* (Nos. 1 to 4) and *Assessment Act* (No 9). The practical effect of this limitation is that compressed air produced in Australia is exempt, but imported compressed air is not.

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<sup>5</sup>. See section 4 of Sales Tax Act (No.1) 1930 and its counterparts in the other Rating Acts.

<sup>6</sup>. Subsection 3(2) of the *E & C Act* provides: "The heading to any Schedule or to any Division in any Schedule shall not be read as affecting the interpretation of that Schedule or of any item in that Schedule."

- 3.9 The exemption items in the First Schedule may be divided (for ease of discussion) into *conditional* items and others. The term *conditional* refers to an item where the words used in it show that exemption under the item is conditional upon the intended or proposed use of the particular goods in question. The Ruling does not deal in detail with the principles for classifying goods which may be exempt if used in a certain way or by a particular person or organisation. These are considered in more depth in Ruling ST (NS) 3 entitled "**Use**" in Sales Tax Legislation.
- 3.10 In other items, exemption does not depend upon the use to which the goods in question will be put, but upon an attribute or common feature of the goods. Exemption under these sorts of items can apply according to:
- the character or description of the goods (for example, *newspapers*, item 54, or *tobacco*, subitem 37(1));
  - whether the goods are of a type or class which is used in a particular way (for example, *materials of a kind used... as ingredients of concrete*, subitem 89(4)); or
  - whether goods are marketed in a particular way (for example, *goods marketed exclusively or principally as food for birds*, item 108).

Ruling ST (NS) 3 also provides some further information on these sorts of items.

### *The taxing Schedules*

- 3.11 Unlike items in the First Schedule, items in the *taxing Schedules* (that is, the Second to the Fifth Schedules - see paragraphs 3.2 and 3.3) are not grouped into Divisions or under headings. The items in the taxing schedules apply to all Assessment Acts unless otherwise specified or necessarily implied<sup>7</sup>.
- 3.12 As with the First Schedule, some items in the taxing Schedules are conditional upon the use to which the goods will be put. The principles for interpreting these items are the same as when exemption depends on the use of goods.

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<sup>7</sup>. An example of a limitation "necessarily implied" would be subitem 5(1) of the Third Schedule, which refers to *cider manufactured in Australia*.

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## Chapter 4: Steps To Sales Tax Classification

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### *Step 1: Identify the goods*

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

- 4.1 The first step to classifying goods for sales tax purposes is to *identify* the goods, in an objective way. *Objective* identification means that the goods should be identified as a matter of fact, guided by popular usage and common knowledge<sup>8</sup>. Neither the actual intentions of the manufacturer<sup>9</sup>, nor the particular description given to the goods by the manufacturer or others<sup>10</sup> are necessarily conclusive.
- 4.2 Another way to describe objective identification is to say that the identity of goods should be determined according to their *essential character*. This means deciding what the goods essentially are, as distinct from merely identifying one of a number of characteristics they might have. In other words, this approach relies upon deciding what is the basic nature of the goods. This may involve, amongst other things, a consideration of what the goods are made of or what they might be used for<sup>11</sup>.

#### **Time of identification**

- 4.3 The identification must be made at the taxing point, that is, at the time when liability to sales tax arises<sup>12</sup>.

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<sup>8</sup>. See the remarks of Stephen J in **Rotary Offset Press Pty Ltd v. D.F.C. of T.** 72 ATC 4212 at page 4213; 3 ATR 319 at page 320.

<sup>9</sup>. For example, in **D.F.C. of T. v. Rotary Offset Press Ltd** 71 ATC 4170; 2 ATR 411, Gibbs J commented (at p 4175; 417): "The question whether a periodical is "advertising matter" seems to me to depend on whether the periodical, viewed objectively and without regard to the actual intentions of those publishing it, answers that description."

<sup>10</sup>. This derives from the principle that "... a misdescription does not alter the nature of the thing being described..." according to Gibbs J in the **Rotary Offset** case at p 4176.

<sup>11</sup>. See the comments of Davies J in **Thomson Australian Holdings Pty Ltd v. F. C. of T.** 88 ATC 4916 at page 4917; (1987) 19ATR 1896 at pages 1897-8.

<sup>12</sup>. See **D.F.C. of T. v. Stewart & Anor** 84 ATC 4146 at page 4155; 15 ATR 387 at page 398: "... what is required is an objective characterisation of the goods themselves in the light of all the circumstances. That characterisation must be made at the time when liability to sales tax would otherwise attach...".

### Specific and General descriptions

4.4 Items in the *E & C Act* may describe goods specifically or in more general terms. Consequently, it is important to note all the reasonably apt descriptions, whether narrow or broad, by which goods can be identified. For example, a sterling silver spoon may be identifiable as:

- a *spoon*;
- more generally as *cutlery*; and
- even more generally as *goods made of a precious metal*.

### Separate goods or a single article?

4.5 Collections of individual articles sold together are classified separately, each article according to its own identity. Tool kits and manicure kits, for example, would therefore be classified according to the component articles.

4.6 However, where goods are sold in kit form with the object of their being assembled by the purchaser into a single article, the goods are identifiable as one article and are classified accordingly. Examples of kits or collections of articles which are classified as one article would include furniture kits and children's toys (for example, model aeroplane building kits).

4.7 The Sales Tax legislation specifically requires that component parts of some goods be treated separately. For example, sections 6A, 6AA, 6AB and 6AD of the *E & C Act* either exempt certain components of other goods (for example solar panels) or provide for a limited tax liability (for example, taxable goods used in prefabricated buildings).

## *Step 2: Look at the Legislation*

### Locating the items

4.8 As shown in paragraph 4.4, there may be several reasonably apt descriptions for a given article. Once we have found the descriptions, the next step is to examine the legislation to find items or provisions which may fit them.

4.9 An examination of the legislation in the spoons example would reveal:

- there is no item in any Schedule to the *E & C Act* which applies specifically to *spoons*;

- subitem 1(d) in the Third Schedule refers to *cutlery*; and
- subitem 2(1) in the Second Schedule applies to *goods made wholly or principally of a precious metal*.

4.10 Therefore, we have found two provisions which might possibly apply. Of course, if the goods did not fit an item in any Schedule, they would be classified as taxable at the general rate<sup>13</sup>.

### *Step 3: Interpret the Relevant Provisions*

#### **Elements of interpretation**

4.11 The third step to classifying goods is to interpret the items or provisions discovered through *Step 2* above. The elements in this step include:

- deciding whether the item in question uses words or expressions in any special way (for example, is the word defined in the legislation?)
- if there is no special meaning, establishing the ordinary meaning of the expression used; and
- if items in more than one Schedule could apply, determining which Schedule applies<sup>14</sup>.

#### **Is there a statutory definition?**

4.12 In the previous paragraph, the first element of determining the meaning of a provision is described as finding out whether the word or expression has a special meaning in sales tax legislation. Often when a word is intended to have a special meaning it is defined in the statute.

4.13 Definitions of words relevant to the classification of goods appear in various places in the legislation, including:

- in the body of the *E & C Act*<sup>15</sup>;

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<sup>13</sup>. See paragraphs 3.2 and 3.3.

<sup>14</sup>. An example of the consideration of these elements can be found in the decision of Beamont and O'Loughlin JJ in **Magna Stic Magnetic Signs Pty Ltd & Anor v F.C. of T.** 91 ATC 4216 at page 4223; (1991) 21 ATR 1367 at page 1373.

<sup>15</sup>. For example, section 2 of the *E & C Act* defines *airport shop goods*: subsection 6B(2) defines *container* for the purposes of the Second and Third Schedules.

- at the start of the First Schedule<sup>16</sup>;
- within items in the Schedules<sup>17</sup>;
- in the *Assessment Acts*<sup>18</sup>; and
- in the Sales Tax Regulations<sup>19</sup>.

Something defined in an *Assessment Act*, has the same meaning in the *E & C Act*<sup>20</sup>.

### Does the context suggest a particular meaning?

- 4.14 When examining the legislation for items which might apply, it is important to take account of the *context* in which the items appear. For example, a court has ruled that, in an item exempting *foods for livestock*, the word *livestock* did not include fish because of the context of the item<sup>21</sup>. Another example might be that of subitem 51(1), (which exempts *Books, leaflets, periodicals, magazines and printed music...*). The context of the subitem indicates that it relates to printed matter and it would not therefore be correct to say that subitem was apt to describe an electronic device, even if that device may be described as performing the functions of a book<sup>22</sup>.

### The Ordinary Meaning

- 4.15 When there is no statutory definition of a word or expression in the item, the next question is: what is the ordinary meaning of the word or expression? Trade meanings of words will not normally be preferred to the ordinary dictionary

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<sup>16</sup>. For example subclause 1(1) of the *E & C Act* defines *confectionery*.

<sup>17</sup>. For example, item 105 in the First Schedule defines a *transmitter* for the purposes of that item.

<sup>18</sup>. For example, subsection 3(1) of *Assessment Act* (No. 1) defines *goods* and *swimming pool*.

<sup>19</sup>. For example, subregulation 4(1) of the Sales Tax Regulations defines *aids to manufacture*.

<sup>20</sup>. Subsection 3(1) of the *E & C Act* provides: "Any expression used in this Act shall, unless the contrary intention appears, have the same meaning as in the relevant Sales Tax Assessment Act."

<sup>21</sup>. See *D. C. of T. (NSW) v Zest Manufacturing Company Pty Ltd* (1949) 79 CLR 166, concerning subitem 6(4) of the First Schedule.

<sup>22</sup>. The conclusion about context is drawn from the whole of the surrounding text and not simply the Division heading (see footnote 6).

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meanings<sup>23</sup>. Similarly, scientific meanings of words are unlikely to be preferred to the ordinary meanings<sup>24</sup>.

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<sup>23</sup>. See **Herbert Adams Pty Ltd v F.C. of T.** (1932) 47 CLR 222; **Feltex Commercial Interiors Pty Ltd trading as Co. Design v F.C. of T.** 90 ATC 4925; (1990) 21 ATR 920.

<sup>24</sup>. For example, see **Nomad Industries of Australia Pty Ltd v F.C of T.** 86 ATC 4036; 17ATR 193.

### The Current Meaning

- 4.16 While terms may take on a particular historical meaning because of the context in which they appear, as a general rule, the current meaning of a given word can be applied. For example, item 54 exempts *newspapers*, which now differ considerably from those that existed when the item was enacted. Nevertheless, goods which meet the modern description of *newspapers* are classified under that item.
- 4.17 However, giving the words in the legislation their ordinary, current meaning is different from saying that the items apply to modern equivalents of the goods specified. For example, subitem 90(a), exempts *timber... which has been mortised, tenoned, bevelled, chamfered, checked, bored... or cut into lengths*, but the item cannot be extended to materials other than timber simply because those materials are the modern equivalent of timber, or are now used by builders as a substitute for timber. Thus, chipboard is covered by subitem 90(a) (as it meets the current definition of *timber*), but plastics or carbon fibre products are not.

### "Namely", "Viz.", "Including"

- 4.18 Many items in the *E & C Act* refer to goods of a particular description and follow that description with:
- the words *namely* or *viz* (which is another way of saying *namely*); and
  - a list of more particularly described goods.

One example is item 42 which exempts *surgical appliances (and parts therefor)*, *viz.*, then lists the relevant goods. In such cases, only those goods which are **both** within the opening words and also within the given list will qualify for exemption.

- 4.19 Other items refer to goods of a particular description and follow it with a list preceded by the word *including*. An example is subitem 84(2), which refers to *builders' hardware... including...*, then lists specific goods. In these cases, the goods listed are more like examples than an exhaustive statement of the goods covered by the item. Goods which are listed and also satisfy the opening words or terms will be exempt. However, as the list is not exhaustive, goods apart from those listed will also be covered provided they satisfy the opening words.

### Other assistance with interpretation

4.20 In some circumstances, it is possible to go beyond the words used and the context of an item to determine its meaning. These other sources of assistance with interpretation are often referred to as *extrinsic* material. Extrinsic material (for

example, the Second Reading Speech or the Explanatory Memorandum to the Bill) may be used to:

- confirm that the meaning of the provision is the ordinary meaning conveyed by the words used, taking into account the context and the purpose or object underlying the Act; or
- determine the meaning of the provision when:

the provision is ambiguous or obscure; or

the ordinary meaning conveyed by the text is one that leads to a result that is manifestly absurd or is unreasonable<sup>25</sup>.

### Which Item or Schedule Applies?

- 4.21 Where the only reasonably apt descriptions of the goods being classified all occur in the same Schedule, determining which particular item applies may not be that important. However, the example of the sterling silver spoon shows that it is possible for goods to be covered by items in more than one Schedule. In these circumstances, it will be vital to know which item (and, therefore, which Schedule and rate of tax) applies.
- 4.22 Where goods are covered by an exemption item in the First Schedule, the other Schedules need not be considered unless that particular exemption item so directs<sup>26</sup>. Where goods are described in items in more than one *taxing* Schedule (for example, in items in both the Second and Third Schedules), the item which most accurately reflects the intention of the legislation in enacting it will apply. Usually this will mean that the more specific provision will apply. There is no general principle that either the lower or higher taxing Schedule should apply<sup>27</sup>.

### *Step 4: Apply the Legislation to the Goods*

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<sup>25</sup>. The material which may be referred to and the extent of their use is covered in section 15AB of the Acts Interpretations Act 1901.

<sup>26</sup>. This is because goods covered by the First Schedule are exempt notwithstanding that they might also be covered in another Schedule, see subsection 5(1) of the *E & C Act*. That subsection displaces the usual rule that more specific legislation overrides more general legislation: see the remarks in **Jetmaster Fireplaces Pty Ltd v. F. C. of T.** 89 ATC 4464; (1989) 20 ATR 689, per Einfield J at p 4472 (ATR 698).

<sup>27</sup>. See the discussion in **Plessey Australia Pty Ltd v. F. C. of T.** 89 ATC 5163 at p 5168; (1989) 20 ATR 1538 at page 1543.

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

*An example of the steps to classification*

- 4.24 Using the sterling silver spoon example introduced at paragraph 4.4, the steps taken to classify the goods are as follows:

*Step 1: Identify the goods*

As set out in paragraph 4.4, there are three reasonable descriptions of the sterling silver spoon ranging from the specific to the general, namely:

- a spoon
- an item of cutlery; or
- goods made of a precious metal.

*Step 2: Look at the legislation*

In paragraph 4.9 we saw that there is no item in any Schedule specifically applying to spoons. However, there are items dealing with our other two descriptions, subitem 1(d) in the Third Schedule (referring to *cutlery*) and subitem 2(1) in the Second Schedule (referring to *goods made ... of a precious metal*).

*Step 3: Interpret the items*

Next we must look closely at each of the two items to see whether they provide any guidance as to which is the proper classification. Neither of the items contain definitions or other indications that the words used are to be given special meanings. However, the opening words of item 1 in the Third Schedule expressly **exclude** goods covered by an item in the Second Schedule.

Therefore, the spoons **cannot** be classified under subitem 1(d) of the Third Schedule. Note that, if not for this exclusion, the goods would be classified under item 1 as that description is the more specific.

An examination of the remaining item shows that the goods reasonably fall within the description given by the item.

*Step 4: Apply the legislation to the goods*

Having concluded that the goods are classified under an item in the Second Schedule, we determine the rate applicable to that Schedule. As set out in paragraph 3.3, goods covered by the Second Schedule are currently taxed at the rate of 30%.

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## Chapter 5: Previous advice affected by this ruling

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- 5.1 This Ruling replaces any other advice that you may have been given to the extent that the previous advice is inconsistent with this Ruling. All private rulings previously issued are therefore amended to the extent they are inconsistent with this Ruling.

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*case references*

- Feltex Commercial Interiors Pty Ltd trading as Co. Design v F.C. of T. 90 ATC 4925; (1990) 21 ATR 920; Herbert Adams Pty Ltd v F.C. of T. (1932) 47 CLR 222; Jetmaster Fireplaces Pty Ltd v. F. C. of T. 89 ATC 4464; (1989) 20 ATR 689; Magna Stic Magnetic Signs Pty Ltd & Anor v F.C. of T. 91 ATC 4216; (1991) 21 ATR 1367; Plessey Australia Pty Ltd v. F. C. of T. 89 ATC 5163; (1989) 20 ATR 1538; D.F.C. of T. v. Rotary Offset Press Ltd 71 ATC 4170; 2 ATR 411; Rotary Offset Press Pty Ltd v. D.F.C. of T. 72 ATC 4212; 3 ATR 319; D.F.C. of T. v. Stewart & Anor 84 ATC 4146; 15 ATR 387; Thomson Australian Holdings Pty Ltd v. F. C. of T. 88 ATC 4916; (1987) 19ATR 1896; D. C. of T. (NSW) v Zest Manufacturing Company Pty Ltd (1949) 79 CLR 166.