


SST D6 - Sales tax: classification of: metal building materials piping and tubing (and fittings) builders hardware metal materials

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This document has been finalised.



Draft Taxation Ruling

Sales tax: classification of:

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

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CONTENTS OF THE RULING

CHAPTER	SUBJECT	PARAGRAPH
Chapter 1:	What this Ruling is about	1.1
	<i>Classification of goods</i>	1.5
	Identification of the goods	1.6
Chapter 2:	Date of effect	2.1
	<i>Preservation of ST 2000 series Rulings</i>	2.2
Chapter 3:	Metal building materials	3.1
	<i>Step 1 - Identify the goods</i>	3.3
	<i>Step 2 - Are the goods metal?</i>	3.4
	Essentially metal	3.6

CHAPTER	SUBJECT	PARAGRAPH
Chapter 3:	Metal building materials (cont)	
	<i>Step 3 - Are the goods building materials?</i>	3.7
	<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>	3.15
	Raw materials	3.15
	Of a kind ordinarily used	3.17
	<i>Step 5 - Are the goods specifically excluded?</i>	3.20
	<i>Goods included under paragraph (h) of subitem 39(1)</i>	3.22
	Girders, rods, bars, wire, sheets, mesh or lathing	3.22
	Definitions	3.24
	<i>Fabricated units made up of girders, etc or attachments for such fabricated units?</i>	3.26
	Fabricated units	3.26
	Attachments	3.28
Chapter 4:	Piping and tubing	4.1
	<i>Step 1 - Identify the goods</i>	4.3
	<i>Step 2 - Are the goods piping or tubing?</i>	4.4
	<i>Step 3 - Are the goods fittings, or parts for fittings, for piping or tubing?</i>	4.8
	<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>	4.12
	<i>Step 5 - Are the goods specifically excluded?</i>	4.15
	<i>Other exemption Items</i>	4.17
Chapter 5:	Builders hardware	5.1
	<i>Step 1 - Identify the goods</i>	5.3
	<i>Step 2 - Are the goods builders hardware?</i>	5.4
	<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>	5.9
	<i>Step 4 - Are the goods specifically excluded?</i>	5.11

<i>CHAPTER</i>	<i>SUBJECT</i>	<i>PARAGRAPH</i>
Chapter 6:	Metal materials	6.1
	<i>Step 1 - Identify the goods</i>	6.3
	<i>Step 2 - Are the goods metal materials?</i>	6.4
	Definitions	6.9
	<i>Step 3 - Are the goods specifically excluded?</i>	6.11
Chapter 7:	Your comments	7.1

ATTACHMENTS

Attachment A	Metal building materials - Guidelines for classification
Attachment B	Piping, tubing, and fittings (and parts for fittings) for piping and tubing - Guidelines for classification
Attachment C	Builders hardware - Guidelines for classification
Attachment D	Metal materials - Guidelines for classification
Attachment E	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
Attachment F	Examples of goods that are builders hardware

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:

- 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 paragraphs (h), (j) and (o) of subitem 39(1) and by Item 49 are always-exempt goods, that is, the goods are covered by the exemption Item no matter how, or by whom, the goods are dealt with. If goods are not covered by these exemption Items, they may still be exempt under another exemption Item in the legislation. Future Rulings in this series will discuss some of those other exemption Items.
- 1.4 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.

Classification of goods

- 1.5 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 Sales Tax Ruling ST (NS) 4, '*Classification of goods for sales tax purposes*'. 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 Chapters being considered in this Ruling, the principles relating to it are reproduced once only below.

Identification of the goods¹

- 1.6 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.
- 1.7 Another 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. In other words, this approach relies upon deciding the basic nature of the goods.
- 1.8 The identification should be made at the time of the assessable dealing, that is, at the time when liability to sales tax arises.

1. The principles covered under this heading are based on comments in **DFC of T v. Rotary Offset Press Pty Ltd** 71 ATC 4170; (1971) 2 ATR 411; (1971) 45 ALJR 518; **Rotary Offset Press Pty Ltd v. DFC of T** 72 ATC 4212; (1972) 3 ATR 319; (1972) 46 ALJR 609; **DFC of T v. Stewart & Anor** (1984) 154 CLR 385; (1984) 58 ALJR 191; (1984) 52 ALR 253; 84 ATC 4146; (1984) 15 ATR 387; **Thomson Australian Holdings Pty Ltd & Ors v. FC of T** (1988) 20 FCR 85; 88 ATC 4916; (1988) 19 ATR 1896; and **Diethelm Manufacturing Pty Ltd v. FC of T** (1993) 44 FCR 450; (1993) 116 ALR 420; 93 ATC 4703; (1993) 26 ATR 465.

Chapter 2: Date of effect

- 2.1 It is expected that this Ruling will take effect from 30 April 1997. It replaces all previous advice which is inconsistent with this Ruling. If a person will pay less tax because of this Ruling, it can be acted upon immediately. 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.

Preservation of ST 2000 series rulings

- 2.2 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.²

- 2.3 As a result, the following Rulings, in relation to metal building materials, piping, tubing, or fittings for piping and tubing, builders hardware and metal materials were preserved:

- ST 2064 Removable rotary clothes hoists;
- ST 2110 No longer relevant due to exclusion;
- ST 2114 Domestic satellite receiving equipment;
- ST 2120 Glass display doors for coolrooms and freezer rooms and inserts for cool rooms;
- ST 2178 Multi-directional audio/visual brackets;
- ST 2184 PVC swing doors, strip doors, strip partitioning and weldscreens;
- ST 2208 Dredging equipment;
- ST 2285 Parking security devices for use in connection with individual car parking positions;
- ST 2306 Seuster-roll-fast-door and associated drive motor, control box and optional controls;
- ST 2314 Air conditioning and ventilating duct work, fittings, accessories and attachments;
- ST 2373 Speed humps used in traffic speed control;
- ST 2391 Gripspan grating;
- ST 2412 Silvered sheet and plate glass, silvered glass products;
- ST 2439 Staples for use with tacking or stapling machines in the construction of buildings etc.;
- ST 2445 Builders' hardware: electronic door lock.

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

- 2.4 The above Rulings are modified by this Ruling. With the exception of ST 2391 mentioned below, where the goods were ruled as being exempt under subitem 84(1), item 82A, subitem 84(2) or item 86 in the First Schedule to the ST(E&C)Act, the exemption will continue under paragraphs (h), (j) and (o) of subitem 39(1) and under Item 49 in Schedule 1 respectively.
- 2.5 In ST 2391, Gripspan grating was ruled to be 'conditionally' exempt under subitem 84(1) when used in particular circumstances. Under paragraph (h) of subitem 39(1), goods are either exempt as always-exempt goods, or are not exempt. Therefore ST 2391 is not applicable to paragraph (h) of subitem 39(1) and will be withdrawn on finalisation of this Ruling.

Chapter 3: Metal building materials

- 3.1 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)'.*

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

Step 1 - Identify the goods

- 3.3 Paragraphs 1.6 to 1.8 explain that the first step in the classification of goods is to identify the goods in an objective way, or determine their essential character.

Step 2 - Are the goods metal?

- 3.4 For goods to be covered by paragraph (h) of subitem 39(1) in Schedule 1 to the ST(E&C)Act they must be metal. Even if the goods are covered by one of the three subparagraphs, they must still be identifiable as 'metal building materials'.³ The goods listed in the subparagraphs are examples of goods that can be described as metal building materials, that is, the goods are listed for the purpose of clarification to ensure that fabricated units identifiable as metal building materials are covered. However, the listed goods must still satisfy the overall description of metal building materials.
- 3.5 The word 'metal' is used as an adjective in the expression 'metal building materials', and so the expression is another way of saying 'building materials of metal'.⁴ Therefore, to be metal building materials, the goods must be:
- essentially metal; and
 - building materials.

Essentially metal

- 3.6 The goods must be essentially metal. Goods consisting of, for example, plastic or fibreglass, as well as metal, are not metal building materials unless those other components are so minor that the accuracy of the description is not affected.

Step 3 - Are the goods building materials?

- 3.7 Based on the context of paragraph (h) of subitem 39(1) in Schedule 1, the word 'including' does not expand the ordinary meaning of the term 'metal building materials' to encompass goods that are not objectively identifiable as metal building materials. The reasons for this view are that:
- paragraph (h) of subitem 39(1) is located in a Chapter entitled 'Building Materials'; and

3. Subitem 39(1) is structured differently from subitem 84(1) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*. For this reason, and the reasons outlined in paragraph 3.7, the interpretation of paragraph (h) of subitem 39(1) can be distinguished from the interpretation stated by Hill J in **FC of T v. Chubb Australia Ltd** (1995); 128 ALR 489; 95 ATC 4186; (1995) 30 ATR 285 and by Whitlam J in **Bowater Tutt Industries Pty Ltd v. FC of T** (unreported, 17 October 1996) and similar cases. In effect, we have followed the approach of Barry J in **Case Z26** 92 ATC 250; (1992) 23 ATR 1215, although this decision also was in respect of subitem 84(1).

4. See comments by Whitlam J in the **Bowater Tutt Industries** case.

5. 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.

- paragraph (h) is collocated in Item 39 with other goods that are objectively identifiable as building materials.⁶
- 3.8 A building material is a material that becomes an integral part of the structure into which it goes. Building materials may also be described as the materials used by persons who contract for the construction of buildings and who supervise the workmen who build them, or more simply, materials designed for use by builders.⁷
- 3.9 The term *'integral'* is defined in the *Macquarie Dictionary* to mean *'1. of or pertaining to a whole; belonging as a part of the whole; constituent or component; 2. necessary to the completeness of the whole; 3. made up of parts which together constitute a whole'*.
- 3.10 The goods must be materials. The term *'material'* is defined in the *Macquarie Dictionary* to mean *'1. the substance or substances of which a thing is made or composed; 2. any constituent element of a thing; 3. anything serving as crude or raw matter for working upon or developing'*. Goods that are characterised as *'equipment'*, *'machinery'* or *'appliances'* are not *'materials'* and so are not metal building materials.
- 3.11 Goods that perform a specific function in relation to the use of a building, rather than being materials that might reasonably be used to build with, cannot be characterised as metal building materials. Goods are not materials, and so cannot be metal building materials if, before installation, the goods are sold as a discrete unit and have an effective function or operation.
- 3.12 Goods that are characterised as metal building materials are covered by paragraph (h) of subitem 39(1) even if the goods do not satisfy one of the three inclusion subparagraphs. The three inclusion subparagraphs, while not expanding the term metal building materials, do not restrict the term.
- 3.13 To summarise, for goods to be metal building materials, the goods must satisfy all of the following conditions:
- the goods are essentially metal;
 - the goods are a material used in building;
 - the goods are materials (goods that are not materials include equipment, machinery or appliances); and

6. 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.

7. See comments in **Case Z26** and comments in **Magna Stic Magnetic Signs Pty Ltd & Anor v. FC of T** (1991) 28 FCR 39; (1991) 98 ALR 604; 91 ATC 4216; (1991) 21 ATR 1367. The term *'building'* is defined in the *Glossary of Building Terms* (published jointly by the National Committee on Rationalised Building, Standards Australia and Suppliers Index Pty Ltd) as *'any roofed structure enclosing space and intended for use as a shelter or for recreational, industrial, commercial or other functions'*. However, the term *'building materials'* is regarded as referring to materials used in building structures rather than just roofed structures.

- the goods are not sold as a discrete unit that has an effective function or operation prior to installation.
- 3.14 If you can objectively identify the goods as metal building materials, go to Step 4. If you can not identify the goods as metal building materials, they are not covered by paragraph (h) 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?

Raw materials

- 3.15 Subsection 7(2) of the *Sales Tax Assessment Act 1992* states that goods are taken to be used as raw materials in constructing or repairing property if, and only if, the goods are dealt with in such a way in constructing or repairing the property that the goods, or some essential element of the goods, become an integral part of the property.
- 3.16 The phrase 'construction or repair' refers to building, and can extend to rebuilding and reconstruction (which may involve renewal, renovation or remodelling). However, goods are not raw materials merely because the goods are fixed or attached for convenience or as part of furnishing and equipping the building. The central question is whether the goods are used in the construction or repair of the building, fixture, structure or other work that is attached to land, so as to become an integral part of it.⁸ If the goods do become an integral part of buildings, fixtures, structures or other works that are attached to land, the goods will be regarded as raw materials.

Of a kind ordinarily used

- 3.17 The phrase 'of a kind ordinarily used' requires that the metal building materials be a member of a class of goods commonly or routinely used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land. The important question is not whether particular goods are used as, for example, a raw material in the construction of a building, but whether the goods belong to a class of goods that is commonly used as raw materials.⁹
- 3.18 If the goods are of a kind ordinarily used, the goods are exempt, even if the goods are not used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land. On the other hand, if the goods are not of a kind ordinarily used, the goods are not exempt even if they are used as

8. Based on comments by Hill J in the **Chubb** case.

9. Based on comments by the Federal Court in the **Diethelm Manufacturing** case and the **Chubb** case.

raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land.¹⁰

- 3.19 If you can objectively identify the goods as metal building materials of a kind ordinarily used as raw materials in the construction or repair of buildings,¹¹ fixtures, structures or other works that are attached to land, go to Step 5. If you can not identify the goods as 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, they are not covered by paragraph (h) of subitem 39(1).

Step 5 - Are the goods specifically excluded?

- 3.20 If the goods are excluded by subitem 39(3), they are not covered by paragraph (h) of subitem 39(1) even if they can be characterised as metal building materials of a kind ordinarily used in the construction or repair of buildings, fixtures, structures or other works that are attached to land. If the goods are not excluded by subitem 39(3), they are covered by paragraph (h) of subitem 39(1) and are exempt from sales tax.

- 3.21 The excluded goods are:¹²

- Duct work or channelling of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;
- Scaffolding; safes; and racking and shelving;
- Fittings, accessories and attachments for, or goods designed to form part of:
 - duct work or channelling of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;
 - scaffolding; safes; and racking and shelving;
- Piping, tubing or channelling of a kind ordinarily used for slides or water slides;
- Piping or tubing of a kind ordinarily used in, or in connection with, beer drawing plant;
- 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;
- Liners and filtering equipment for swimming pools and spas, or goods designed to form part of swimming pools or spas;

10. This is a change from subitem 84(1) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*. Under that item, goods were exempt if they were for use in the construction or repair of, and wrought into, or attached to, so as to form part of, buildings or other fixtures; that is, the goods could be 'conditionally exempt'.

11. The term 'building' is defined in the *Glossary of Building Terms* as 'any roofed structure enclosing space and intended for use as a shelter or for recreational, industrial, commercial or other functions'. The term 'structure' is defined as 'a construction, not necessarily roofed, which performs a function or functions requiring rigidity'. A fixture is a something that was once a chattel which has become in law land through having been fixed to land (see comments by Jordan CJ in **Australian Provisional Assurance Co Ltd v. Coroneo** (1938) 38 SR (NSW) 700). Based on these definitions, a 'work attached to land' refers to a construction attached to land that cannot be described as a building, fixture or structure.

12. This is not a full list of goods excluded by paragraph (3), but the most relevant exclusions that are likely to apply to metal building materials, piping, tubing, fittings for piping or tubing or builders hardware.

- Electrical fittings, accessories or equipment;
- Bathroom fittings and sanitary ware; water heating and hot water storage equipment; and goods used in filtering water.

Goods included under paragraph (h) of subitem 39(1)

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

- 3.22 To be included under this Item, the girders, rods, bars, wire, sheets, mesh or lathing must be metal building materials 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. It does not matter what metal is used in making the goods.
- 3.23 If the goods are made of a material other than metal, for example, plastic, or fibreglass, the goods are not covered by paragraph (h) of subitem 39(1). The goods must be made essentially of metal (see Step 2).

Definitions

- 3.24 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:¹³
- 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.
- 3.25 If you can not objectively identify the goods as metal girders, rods, bars, wire, sheets, mesh or lathing, are they fabricated units made up of girders, rods, bars, wire, sheets, mesh or lathing or are they attachments for such fabricated units?

13. All definitions are from the *Glossary of Building Terms* except for the definitions of 'rod' and 'bar' which are from the *Macquarie Dictionary*. All other definitions in this Ruling are from the *Macquarie Dictionary* unless otherwise indicated. Definitions from the *Glossary of Building Terms* have been used in preference to definitions from the *Macquarie Dictionary* where possible as it is considered that the context of the terms, as they appear in the legislation, indicates that the Glossary is a more appropriate reference source.

Fabricated units made up of girders, rods, bars, wire, sheets, mesh or lathing or attachments for such fabricated units

Fabricated units

- 3.26 The term '*fabricate*' is defined in the *Macquarie Dictionary* to mean '*1. to make by art and labour; construct; 2. to make by assembling standard parts or sections*'. The fabricated units must be made only from the materials listed in subparagraph (h)(i) of subitem 39(1). If the units are made partly from other materials, the units are not covered by subparagraph (h)(ii) of subitem 39(1). Likewise, if the units are fabricated using components supplied by other persons, the units are not covered by subparagraph (h)(ii) even if the materials in the fabrication can be traced back to the listed materials unless those components are identifiable as being 'metal building materials' in their own right.¹⁴
- 3.27 Units produced from casts, such as a cast iron balustrade, are regarded as 'fabricated units' for the purposes of subparagraph (h)(ii).

Attachments

- 3.28 The word '*attachment*' is defined in the *Macquarie Dictionary* to mean, as far as is relevant, '*2. the state of being attached; ... 4. an adjunct or supplementary device*' and the word '*attach*' is defined to mean '*1. to fasten to; affix; join; ...*'.
- 3.29 The attachment must be attached; that is, fastened, affixed or joined, to the fabricated unit. The attachment does not have to be made of the materials listed in subparagraph (h)(i) of subitem 39(1), but as Step 2 explains, the attachment should be characterised as being metal building materials.
- 3.30 To be treated as an attachment, the goods must be subject to a separate assessable dealing (for example, a separate sale) from the fabricated unit. For example, in the case of a metal tank coated with fibreglass, the fibreglass is not an attachment, as it forms an integral part of the fabricated unit rather than being a mere attachment, and is therefore not subject to a separate assessable dealing. In this example, the fabricated unit would not be covered by subparagraph (h)(ii) of subitem 39(1) as it is not fabricated essentially from the metal materials listed.
- 3.31 Goods that are not 'fabricated units' for the purpose of subparagraph (ii) or 'attachments' for the purpose of subparagraph (iii) are not covered by paragraph (h) of subitem 39(1).

14. See comments in **Case 41/94** 94 ATC 378; **Case 9536** (1994) 29 ATR 1118, which were affirmed by Whitlam J in the **Bowater Tutt Industries** case. Goods consisting of other components, other than the listed materials, will not be covered unless those other components are so minor that the accuracy of the description is not affected.

Chapter 4: Piping and tubing

- 4.1 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'.

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

Step 1 - Identify the goods

- 4.3 Paragraphs 1.6 to 1.8 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?

- 4.4 The term '*piping*' means '*pipes collectively*'. The term '*pipe*' means '*a hollow cylinder of metal, wood or other material, for the conveyance of water, gas, steam, etc., or for some other purpose; a tube*'. The term '*tubing*' means '*material in the form of a tube; tubes collectively; a piece of tube*'. The term '*tube*' means '*a hollow usually cylindrical body of metal, glass, rubber, or other material, used for conveying or containing fluids, and for other purposes*'.¹⁵ Based on these definitions, the piping or tubing can be made of any material.
- 4.5 The terms '*piping*' and '*tubing*' are not limited to piping or tubing used for conveying gas, electricity or liquid, but extend 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.
- 4.6 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

15. These terms are defined in the *Macquarie Dictionary*.

goods may lose their identity as piping or tubing. Providing the goods retain their characteristic of piping or tubing despite the addition of attachments, the goods are still accepted as being piping or tubing for the purposes of the exemption Item.¹⁶

- 4.7 If you can objectively identify the goods as piping or tubing, go to Step 4. If you can not identify the goods as piping or tubing, go to Step 3.

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

- 4.8 The term '*fitting*' is defined in the *Macquarie Dictionary* to mean, as far as is relevant, '*5. anything provided as equipment, parts, accessories, etc.*'. However, the phrase '*fittings for piping or tubing*' means goods that are nothing more than fittings for piping or tubing in the sense that the goods are actually fitted to the piping so as to become an integral part of the piping or tubing, but does not include:

- goods, the functions of which are not integral but accessorial to the piping or tubing, for example, gauges; and
- goods, the functions of which are such that they fall into a distinctive commercial classification which is not designated merely, if at all, by any uses which they may have in connection with piping or tubing, for example, thermometers.

- 4.9 Examples of goods that the ATO accepts as being fittings for piping or tubing include:¹⁷

- air valve frames and covers;
- clear outs;
- cocks;
- connectors, couplings, junctions;
- faucets;
- floor wastes;
- grates;
- gullies;
- hydrant pit frames and covers;
- hydrants and hydrant covers;
- inspection boxes and doors;
- meters and meter covers;
- pipe heads;
- shoes;
- stop blocks;
- syphonic connections;

16. Based on comments in **Case 43/93** 93 ATC 470; **Case 9043** (1993) 27 ATR 1141; and **GKN Australia Ltd v. FC of T** 94 ATC 4417; (1994) 28 ATR 321.

17. This list is not intended to be exhaustive, but is inserted as a guide only. The list is based on the list contained in subitem 82A(2) in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*.

- taps;
- traps;
- valve pit frames and covers;
- valves; and
- valve covers.

4.10 'Parts', in relation to fittings for piping or tubing, describe those things which would commonly be described as spare parts for fittings for piping or tubing.¹⁸

4.11 If you can objectively identify the goods as fittings, or parts for fittings, for piping or tubing, go to Step 4. If you can not 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?

4.12 Paragraphs 3.15 to 3.19 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.

4.13 **Attachment E** contains a list of goods that are accepted as being 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.

4.14 If you have objectively identified the goods as piping, tubing, or fittings (and 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. If you can not identify the goods as 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, they are not covered by paragraph (j) of subitem 39(1).

Step 5 - Are the goods specifically excluded?

4.15 If the goods are excluded by subitem 39(3), they are not covered by paragraph (j) of subitem 39(1). If the goods are not excluded by subitem 39(3), they are covered by paragraph (j) and are exempt from sales tax.

4.16 Paragraphs 3.20 to 3.21 in Chapter 3 explain which goods are excluded.

18. 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** (1971) 46 ALJR 32; 71 ATC 4249; (1971) 2 ATR 653.

Other exemption Items

4.17 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 Item 50.

4.18 Subitem 39(4) exempts:

'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).'

4.19 Subitem 39(5) exempts:

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

4.20 Item 50 exempts:

'(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).'

4.21 Goods are only exempt from sales tax under subitems 39(4) or 39(5), or 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.¹⁹

Chapter 5: Builders hardware²⁰

5.1 Paragraph (o) of subitem 39(1) in Schedule 1 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*'.

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

Step 1 - Identify the goods

5.3 Paragraphs 1.6 to 1.8 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?

5.4 The Courts have looked at the term 'builders hardware' on a number of occasions and have made the following comments:²¹

- The exemption Item for builders hardware appears in a group of Items, all of which are used in or are associated with the building or repair of buildings and fixtures;
- The goods must be more than appropriate for use by builders. The goods must have a sufficient association with builders and with the construction and repair

19. Refer to Sales Tax Bulletin 13, *'Buying goods free of sales tax'* for further information on buying goods free of sales tax.

20. The apostrophe in the phrase *builders hardware* has been omitted from paragraph 39(1)(o) but the interpretation of the Item has not changed.

21. See **DFC of T v. Academy Plastics Pty Ltd** (unreported, 22 March 1956); **Feltex Commercial Interiors Pty Ltd trading as Co Design v. FC of T** 90 ATC 4925; (1990) 21 ATR 920; **Magna Stic Magnetic Signs** case; and **Precision Measures Ltd v. FC of T** 92 ATC 4099; (1992) 23 ATR 30.

of buildings and fixtures to gain the character of builders hardware. Builders hardware may cover goods designed for use by builders and is on occasions used by builders when they are constructing buildings;

- The Item covers builders hardware, not hardware. Therefore the Item covers materials designed for use by builders, being materials, tools, etc. The hardware must therefore have the character of hardware pertaining to builders. Goods which are used for many purposes, some which have no connection with builders or buildings are not builders hardware;
- Builders hardware denotes the building materials, metal ware, tools and locks used by persons who contract for the construction of buildings and who supervise the workmen who build them;
- The words of the Item cannot properly be applied to every article which is intended to be affixed to the fabric of a building so as to be held in a position which is suitable for its convenient use.²²

5.5 Based on these comments, goods are builders hardware if the goods satisfy all of the following conditions:

- The goods can be characterised as hardware pertaining to builders;
- The goods have a sufficient association with builders and with the construction or repair of buildings and fixtures so that the goods can be characterised as builders hardware; and
- The goods are building materials, metal ware, tools and locks used by persons who contract for the construction of buildings and who supervise the workmen who build them.²³

5.6 Builders hardware is not limited to goods made out of metal. Goods made out of materials other than metal can be builders hardware. For example, goods made out of plastic or fibreglass can be builders hardware.

5.7 **Attachment F** contains a list of goods²⁴ that are accepted as being builders hardware. This list is not exhaustive, and other goods are builders hardware if the goods meet the abovementioned conditions. However, for the goods to be exempt from sales tax, Steps 3 and 4 still have to be satisfied

22. See **Academy Plastics** case; **Feltex Commercial Interiors** case; **Magna Stic Magnetic Signs** case; and **Precision Measures** case.

23. Tools, although builders hardware, are not exempt under paragraph (o) of subitem 39(1) as they are not 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.

24. The goods listed in Attachment F are based on the list contained in subitem 84(2) in the First Schedule, and Sales Tax Bulletin No 16 on Signwriters.

- 5.8 If you can objectively identify the goods as builders hardware, go to Step 3. If you can not identify the goods as builders hardware, they are not covered by paragraph (o) of subitem 39(1).

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?

- 5.9 Paragraphs 3.15 to 3.19 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.
- 5.10 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. If you can not identify the goods as 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, they are not covered by paragraph (o) of subitem 39(1).

Step 4 - Are the goods specifically excluded?

- 5.11 If the goods are excluded by subitem 39(3), they are not covered by paragraph (o) of subitem 39(1). If the goods are not excluded, they are covered by paragraph (o) of subitem 39(1) and are exempt from sales tax.
- 5.12 Paragraphs 3.20 to 3.21 in Chapter 3 explain which goods are excluded.

Chapter 6: Metal materials

- 6.1 Item 49 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.'

6.2 This Chapter sets out three steps to help you to decide whether goods are exempt under Item 49. At **Attachment D** is a flow chart showing those steps.

Step 1 - Identify the goods

6.3 Paragraphs 1.6 to 1.8 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?

6.4 The Item 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 Item exempts a slab of metal for use by an appliance manufacturer as a raw material.

6.5 The listed materials must be made wholly from metal. 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 Item 49.

6.6 The opening words to the Item exclude goods made of precious metal. Precious metals are gold, silver, platinum, palladium, rhodium, ruthenium, iridium and osmium.²⁵

6.7 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 answer to the description 'metal materials' but are not listed in paragraphs (a) to (f) are not covered.

6.8 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 new article and the components have lost their original character as metal materials in the process, the goods are no longer covered by the exemption Item.²⁶

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

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

Definitions

6.9 Whether goods can be characterised as one of the listed materials will in most cases be self evident. The following definitions may help in doubtful cases:²⁷

- 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.;
- 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 - 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.[#]

6.10 If you can objectively identify the goods as metal materials go to Step 3. If you can not identify the goods as metal materials, they are not covered by Item 49.

Step 3 - Are the goods specifically excluded?

6.11 Item 49 also specifically excludes a number of goods, namely:

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

- Materials insulated for electrical purposes;
- Liners for swimming pools or spas, or goods designed to form part of swimming pools or spas;
- Channelling of a kind ordinarily used for slides or water slides;
- Piping or tubing;
- Duct work or channelling of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;
- Scaffolding; safes; and racking and shelving;
- Fittings, accessories, attachments or components for:
 - Duct work or channelling of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;
 - Scaffolding; safes; and racking and shelving;
- Water heaters, storage tanks, filters, etc.

6.12 If the goods are excluded, they are not covered by Item 49, even if they are characterised as being metal materials. If the goods are not excluded, they are covered by Item 49 and are exempt from sales tax.

Chapter 7: Your comments

7.1 If you wish to comment on this Draft Sales Tax Ruling, please send your comments by **7 March 1997** to:

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Telephone: (03) 9215 3346

Facsimile: (03) 9215 3440

Address: Mr C Davis
PO Box 9806
DANDENONG VIC 3175.

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- fittings for piping and tubing
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- piping and tubing

legislative references

- Sales Tax Assessment Act 1992
Section 77
- Sales Tax (Exemptions & Classifications) Act 1992
Subitem 39(1) of Schedule 1
Item 49 Schedule 1
Item 50 Schedule 1
Item 86 Schedule 1

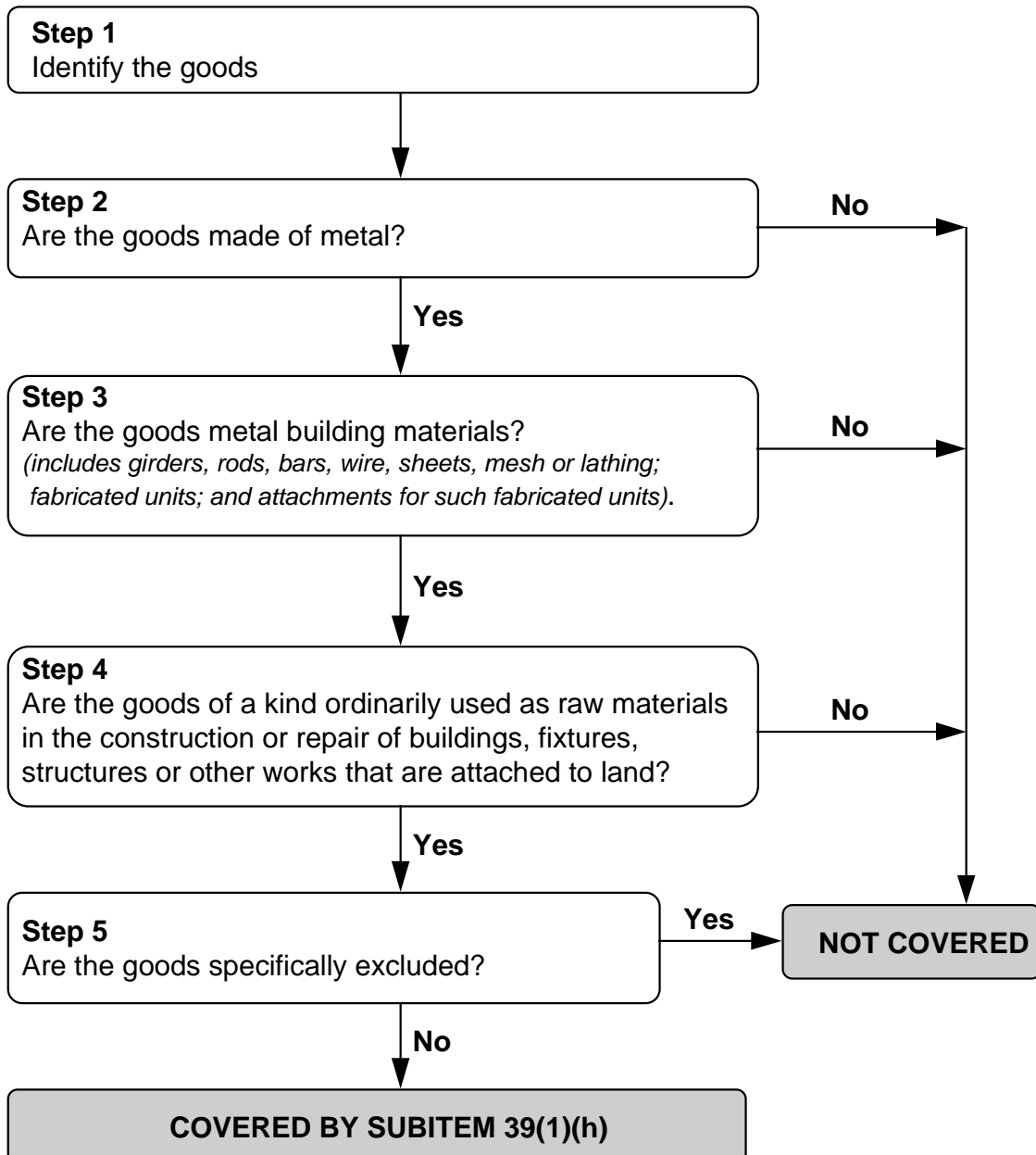
case references

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Australian Provisional Assurance Co Ltd v. Coroneo (1938) 38 SR (NSW) 700
Bowater Tutt Industries Pty Ltd v. FC of T (unreported, 17 October 1996)
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 93 ATC 4703; (1993) 26 ATR 465; (1993) 44 FCR 450; (1993) 116 ALR 420
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GKN Australia Ltd v. FC of T 94 ATC 4417; (1994) 28 ATR 321
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 91 ATC 4216; (1991) 21 ATR 1367; (1991) 28 FCR 39; (1991) 98 ALR 604
Polaroid (Australia) Pty Ltd; DFC of T 71 ATC 4249; (1971) 2 ATR 653; (1971) 46 ALJR 32
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Rotary Offset Press Pty Ltd v. DFC of T 72 ATC 4212; (1972) 3 ATR 319; (1972) 46 ALJR 609
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Case 41/94 94 ATC 378; **Case 9536** (1994) 29 ATR 1118
Case 43/93 93 ATC 470; **Case 9043** (1993) 27 ATR 1141
Case Y2 91 ATC 104; **Case 6507** (1990) 21 ATR 3843
Case Z26 92 ATC 250; **Case 8093** (1992) 23 ATR 1215

ATTACHMENT A

METAL BUILDING MATERIALS

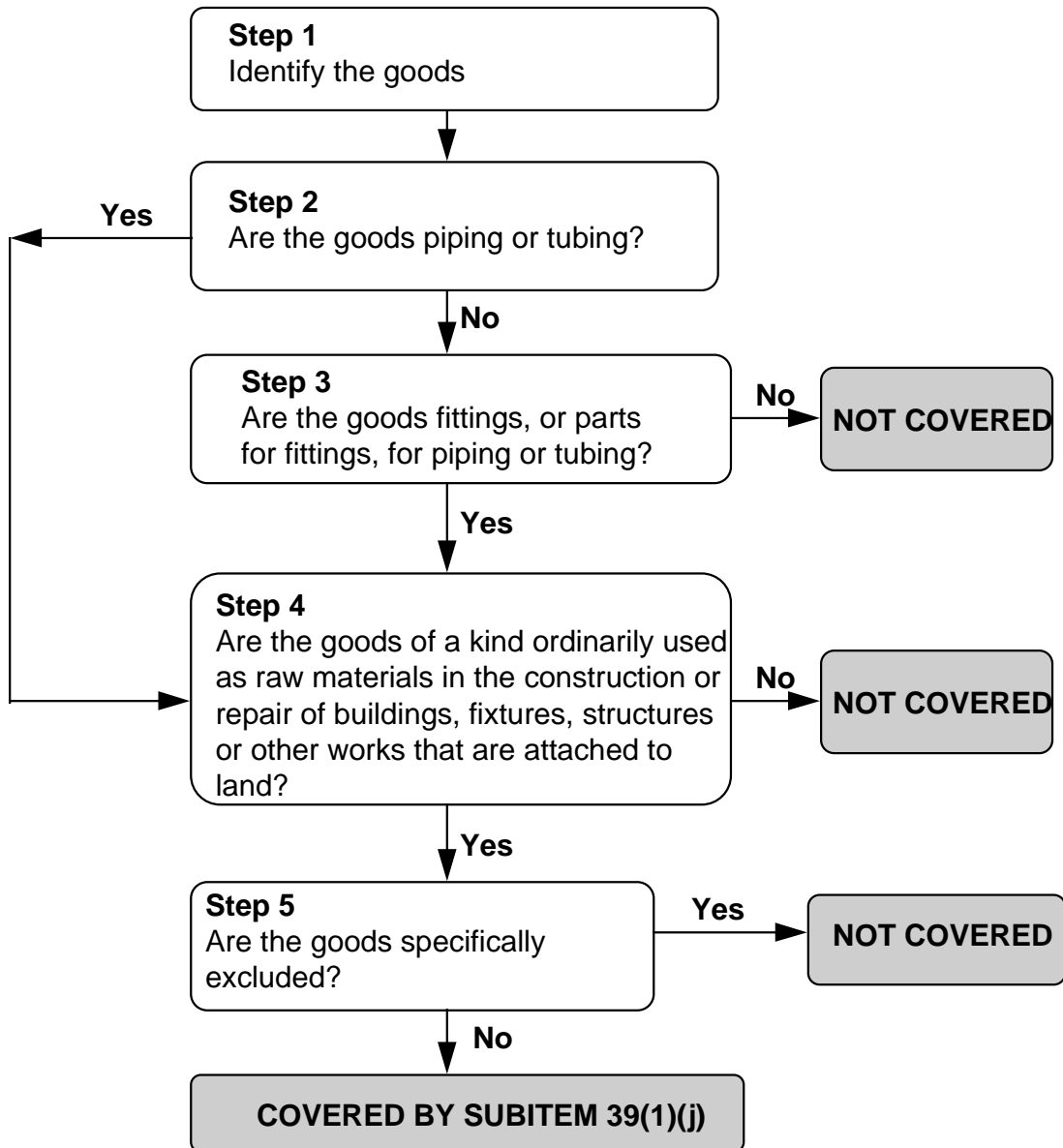
GUIDELINES FOR CLASSIFICATION UNDER PARAGRAPH (h) OF SUBITEM 39(1) IN SCHEDULE 1



ATTACHMENT B

PIPING, TUBING, AND FITTINGS (AND PARTS FOR FITTINGS) FOR PIPING AND TUBING

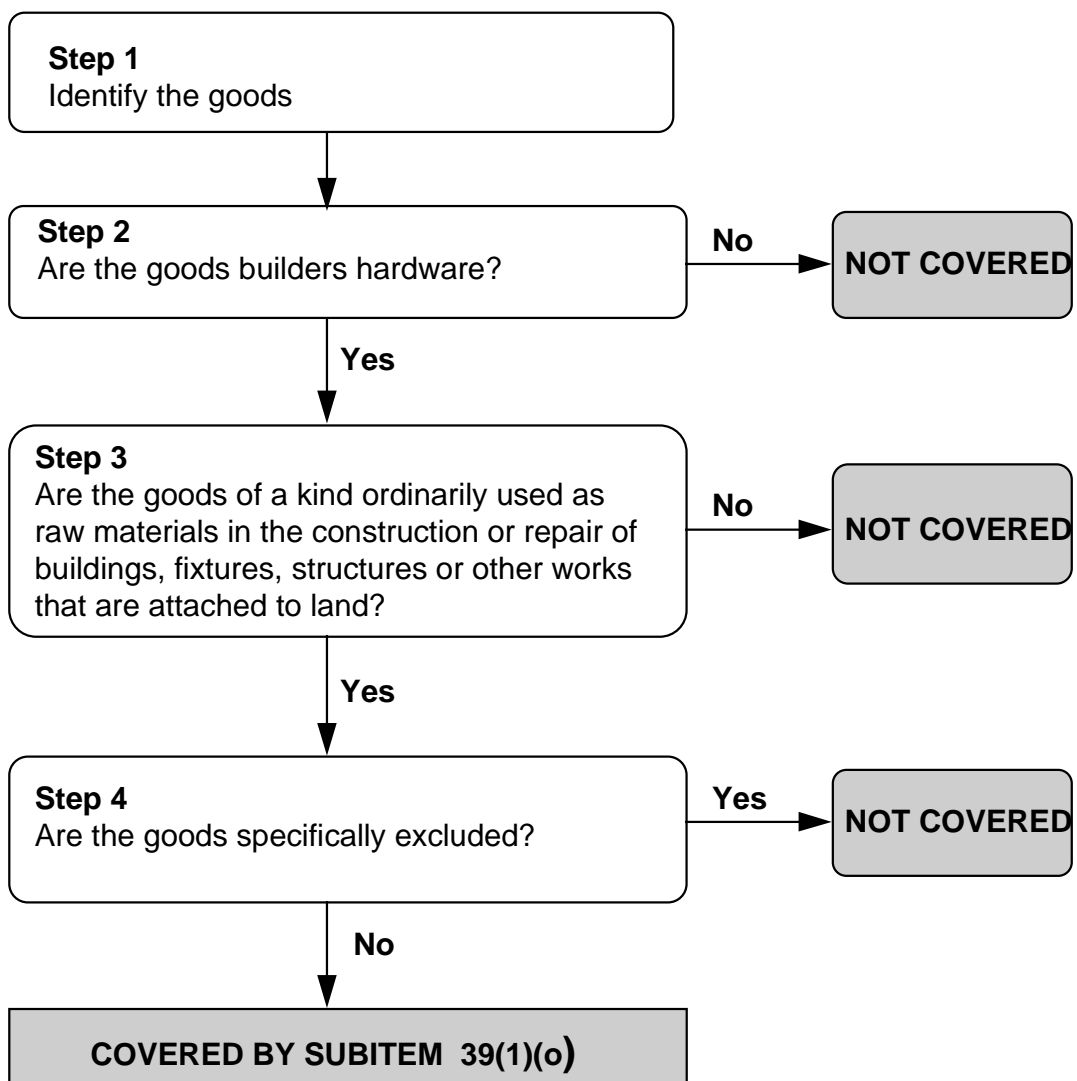
GUIDELINES FOR CLASSIFICATION UNDER PARAGRAPH (j) OF SUBITEM 39(1) IN SCHEDULE 1



ATTACHMENT C

BUILDERS HARDWARE

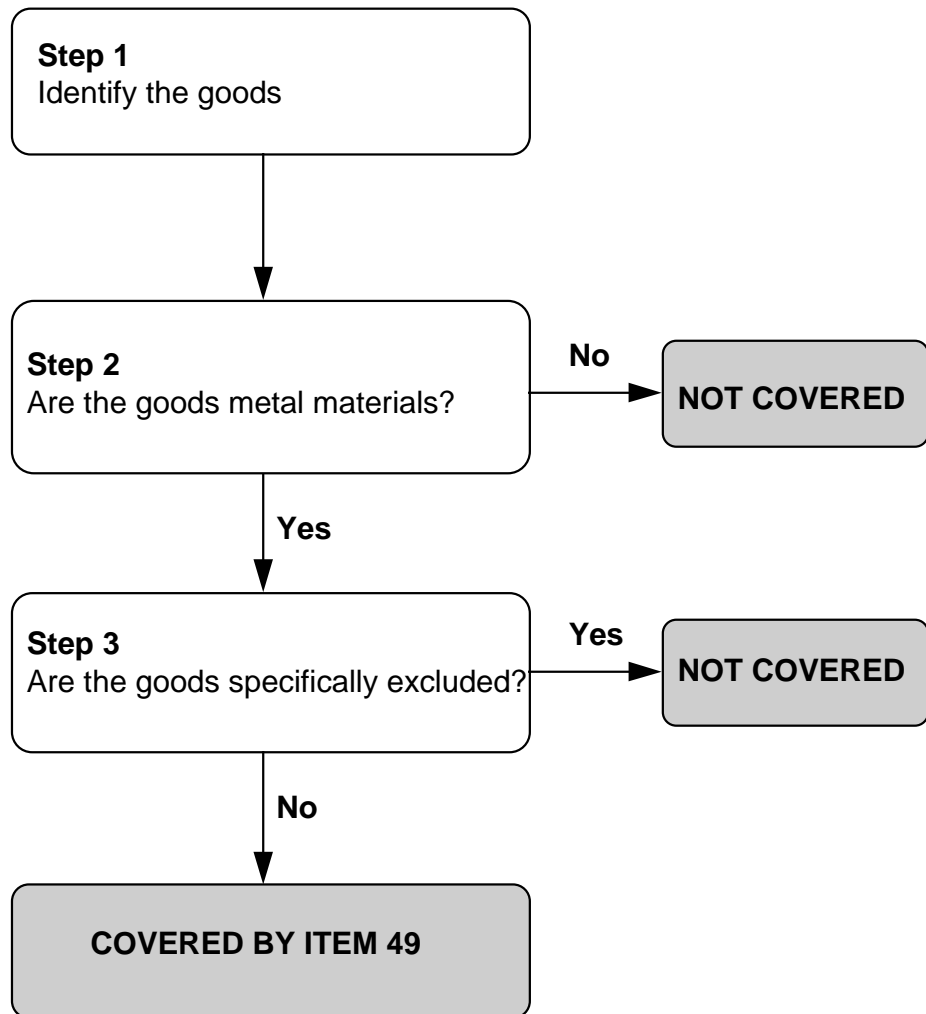
GUIDELINES FOR CLASSIFICATION UNDER PARAGRAPH (o) OF SUBITEM 39(1) IN SCHEDULE 1



ATTACHMENT D

METAL MATERIALS

GUIDELINES FOR CLASSIFICATION UNDER ITEM 49 SCHEDULE 1



ATTACHMENT E**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, i.e., 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 25 x 25mm square or 38 x 25mm rectangular or larger, with a wall thickness of 2.6mm or greater.
- Cylindrical aluminium tube manufactured and marketed specifically as downpipe.

STEEL

- Series 300 stainless steel piping and tubing.
- 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.
- 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.
- All galvanised steel circular piping.
- Conveyor idler tubing.

MISCELLANEOUS

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

ATTACHMENT F**EXAMPLES OF GOODS THAT ARE BUILDERS HARDWARE**

The following goods if of a type used for building purposes:

- 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, house numbers and letters made of steel, brass or other rigid, inflexible material;
- Kick plate, knobs;
- Latches, letter boxes, letter plates, locks, locksets and keys therefor, loxins;
- Metal frames for support of wash basins;
- Nails, name plates, 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.