


# ***GSTR 2003/D1 - Goods and Services Tax: What is 'precious metal' for the purposes of GST?***

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There is an Erratum notice for this document.

This document has been finalised.



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## **Draft Goods and Services Tax Ruling**

### **Goods and Services Tax: What is ‘precious metal’ for the purposes of GST?**

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#### ***Preamble***

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners, as it is not a ruling or advice in terms of section 37 of the **Taxation Administration Act 1953**. When officially released it will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

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## **What this Ruling is about**

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1. This ruling considers what is ‘precious metal’ for the purposes of sections 38-385 and 40-100 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. In considering what is precious metal, the ruling discusses what is gold, silver or platinum.
3. The ruling then discusses when gold, silver or platinum are in ‘an investment form’ for the purposes of the definition of precious metal in the GST Act.
4. All legislative references are to the GST Act unless indicated otherwise.

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## **Date of effect**

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5. This draft Ruling represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applies from 1 July 2000.
6. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

7. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

## Background

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8. The first supply of precious metal after its refining may be GST-free under section 38-385. Apart from transactions that fall within the ambit of section 38-385, supplies of precious metal are input taxed under section 40-100.

9. Precious metal is defined in section 195-1 as follows:

*‘precious metal* means:

- (a) gold (in an investment form) of at least 99.5% fineness; or
- (b) silver (in an investment form) of at least 99.9% fineness; or
- (c) platinum (in an investment form) of at least 99% fineness; or
- (d) any other substance (in an investment form) specified in the regulations of a particular fineness specified in the regulations.’

10. No regulations have been made to specify any other substance. To be precious metal for GST purposes, the metal must therefore be gold, silver or platinum.

11. The Explanatory Memorandum (EM) to the Bill for the Act<sup>1</sup> that added the words ‘in an investment form’ to the definition says:<sup>2</sup>

In order to ensure that the correct supply of precious metal is GST-free or input taxed, the definition of ‘precious metal’ has been amended to refer to sales of precious metals in an investment form. Investment form means precious metal sold in a wafer, bar or other tradeable form which has an internationally accepted hallmark. In the case of gold, this means a hallmark that has been approved by the London Bullion Market and means that the gold can be traded on the international bullion market.

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<sup>1</sup> *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*, section 3 and items 145 and 146 of Schedule 1.

<sup>2</sup> Explanatory Memorandum to the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999* at paragraph 1.11.

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## **Ruling and Explanations**

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12. To be precious metal, a thing must be the metal gold, silver, or platinum of specified fineness, or a substance listed in the regulations. The gold, silver, platinum or other substance must also be in an investment form.

### **The metal gold, silver or platinum**

13. Items such as jewellery that happen to be made of gold, silver or platinum are not gold, silver or platinum for the purposes of the definition of precious metal in the GST Act. They no longer have the character of the metal gold, silver or platinum. They have the character of jewellery made from gold, silver or platinum. They are therefore not precious metal for the purposes of the GST Act.

14. A factor that can point to whether something has lost its character as the metal gold, silver or platinum is whether it is traded at a price that is determined by reference to the prevailing spot price for the metal. If something is not usually traded at a price determined by reference to the prevailing spot price it is not being traded for its metal value. This means that it does not have the character of the relevant metal. It has another character. An example is numismatic or proof coins. Numismatic coins are usually traded at prices largely determined by their rarity, condition and beauty. They are not usually traded at a price largely determined by reference to the prevailing spot price for the relevant metal. They do not bear the character of the metal gold, silver or platinum. They have the character of coins made from those metals. They are therefore not precious metal.

### **Investment form**

15. What is 'in an investment form' is not defined in the GST Act. The expression 'investment form' therefore takes its ordinary meaning from the context in which it is used. Colloquially, the expression can be defined as a form in which an item is capable of being held as an investment. While jewellery made of gold, silver or platinum may be held as an investment, the term must be read in the context of the precious metal provisions.

16. There are two sections in the GST Act that deal specifically with precious metal, section 38-385 and section 40-100. Section 38-385 is expressed to operate in relation to the first supply of precious metal in certain circumstances. Section 40-100 operates in relation to subsequent supplies of that precious metal. This means that the precious metal will generally have been supplied in a supply that

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meets the terms of section 38-385 before it is later supplied in a supply to which section 40-100 applies. Hence, section 40-100 and section 38-385 operate in the same context.

17. Section 38-385 accords GST-free status to certain supplies of precious metal. To have this GST-free status one of the requirements is that the metal has been refined by a refiner of precious metal. To be a refiner of precious metal the entity has to satisfy the Commissioner that they regularly convert or refine precious metal in carrying on its enterprise.<sup>3</sup> Another requirement is that the supply be made to a dealer in precious metal. To be a dealer in precious metal the entity has to satisfy the Commissioner that a principal part of the enterprise carried on by the entity has to be the regular supply and acquisition of precious metal.<sup>4</sup>

18. This provides the context for the supplies of precious metal that the precious metal provisions are intended to cover. The requirement for the metal to have been refined by an entity that regularly refines precious metal and, in particular, to be supplied to an entity that principally supplies and acquires precious metal, indicates that the context of the provisions is investment and trading in metals as such by professional traders and dealers.

19. In addition, as discussed above, to be precious metal it must have the character of the metal gold, silver or platinum and not the character of items, such as jewellery and numismatic coins, made from those metals. This further identifies the context as being investment, and trade, in the metals themselves.

20. Investment and trade in metals that is undertaken by entities carrying on enterprises that principally acquire and supply metals is generally undertaken in the metals market. Given the global nature of metal trading, the international metal market is the relevant market. As the only metals that are precious metal are gold, silver and platinum, the relevant market is the bullion market.<sup>5</sup> The entities that trade and invest in this market are the banks, bullion dealers, commodity brokers and stockbrokers that generally deal in gold, silver or platinum in that market. This is further supported by the EM which refers to the international bullion market.<sup>6</sup>

21. What an investment form takes its meaning in this context. We therefore consider that, in this context, the expression 'in an investment form' means the metal must be in a form that is capable of being traded on the international market for that metal by traders in

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<sup>3</sup> Definition of 'refiner of precious metal' in section 195-1.

<sup>4</sup> Definition of 'dealer in precious metal' in section 195-1.

<sup>5</sup> Gold, silver and platinum are traded on what is generally referred to as the international bullion market. Therefore, references to bullion in this document include platinum as well as gold and silver.

<sup>6</sup> Extracted at paragraph 11 above.

that metal in that market. The relevant traders are therefore the banks, bullion dealers, commodity brokers and stockbrokers that generally deal in gold, silver or platinum in the bullion market.

### ***Tradeable form***

22. Bars, wafers and bullion coins are the forms in which the metals gold, silver and platinum are traded on the international market for those metals. These are therefore forms that are capable of being traded on the international market for those metals. This is supported by the EM which states that investment form means precious metal sold in a wafer, bar or other tradeable form which has an internationally accepted hallmark. Gold, platinum and silver bullion coins are traded internationally and are offered as an alternative investment to the precious metal bars. We therefore consider that bullion coins fall within the expression 'other tradeable form'.

### ***Bears an internationally accepted mark or characteristic***

23. To be tradeable on the international bullion market, the metal must bear some accepted mark or characteristic on its face that identifies and guarantees its fineness and quality. An example of a mark is a hallmark used on bars. An example of a characteristic is the characteristic pattern or design found on a bullion coin that identifies the coin as issued, backed and guaranteed as to fineness by a government.

24. For example, granules do not bear any mark as to their fineness and quality and are therefore not in an investment form. On the other hand, gold bars bearing an internationally accepted hallmark, including hallmarks listed in the Industry Catalogue of Gold Bars Worldwide (ICGB), do bear such a mark and are therefore instantly accepted on the international bullion market as to their guaranteed fineness and quality.

25. As a further example, while jewellery is often marked with whether it is 18, 20 or 24 carat etc, this is not a standard that is accepted on the international bullion market as guaranteeing the fineness or quality of the metal. An assay of the metal would be necessary to determine its fineness and quality before its value could be traded. Therefore, such a marking is not sufficient for the metal to be in an investment form. Also, jewellery is not traded on the international bullion market.<sup>7</sup>

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<sup>7</sup> Additionally, as noted in paragraph 12 above, precious metal is defined as being gold, silver or platinum of a particular fineness and form. While items of jewellery may be produced from gold, silver or platinum, they do not have the character of

## ***Prices determined by reference to the inherent precious metal content***

26. Not all forms of gold, silver and platinum are traded for the purposes of investment. Some forms are traded for other reasons, such as for collection purposes. When traded on the international bullion market, they are traded by reference to the spot price for the time they are traded. The spot price reflects the value of the metal content of the metal being traded.

27. When gold, silver or platinum is in a form which is traded for reasons other than investment, the value of the trade may not be determined by reference to the prevailing spot price. For example, coins of numismatic interest are traded for a price that is largely determined by reference to their numismatic interest, that is, rarity, condition and beauty rather than by reference to the metal value.

28. We therefore consider that if gold, silver or platinum is not supplied in a form which is usually traded at a price that is determined by reference to the spot price of the metal it contains this indicates that it is not in an investment form. For example, gold bars are generally traded on the international market at a price that is the spot price plus a premium calculated as a percentage of the spot price. This is a price that is determined by reference to the spot price.

## **Summary of what is in an investment form**

29. To summarise the above, for gold, silver or platinum to be in an investment form for the purposes of the GST Act, it must be in a form that:

- is capable of being traded on the international bullion market, that is, it must be a bar, wafer or coin; and
- bears an internationally accepted mark or characteristic that guarantees its fineness and quality.

30. A product in a form that is not usually traded at a price that is determined by reference to the spot price for the metal is unlikely to have the character of the metal gold, silver or platinum nor, in any case, to be in an investment form.

**Granules, bars, wafers and coins*****Granules***

31. Granules are not an investment form of gold, silver or platinum because, as mentioned above, they bear no accepted mark or characteristic guaranteeing their fineness and quality. They are not precious metal for the purposes of the GST Act.

***Bars and wafers***

32. Bars and wafers that are hallmarked with hallmarks listed in the ICGB bear an accepted mark as to their fineness and quality. The list of hallmarks in the ICGB is not exhaustive. There are other hallmarks that are internationally accepted as guaranteeing fineness and quality.

33. Such bars and wafers are produced at varying weights. If they are in a form usually traded at prices determined by reference to the spot price, such bars and wafers are in an investment form. If so, and they are of gold, silver or platinum of the requisite fineness, they are precious metal for the purposes of the GST Act.

***Coins***

34. Gold, platinum or silver coins are generally manufactured to two standards, namely proof (or numismatic) and bullion quality. Proof coins are marketed as collectables for the numismatist, whilst bullion coins are for the investor market.

35. The major factors that differentiate a bullion coin from a proof or numismatic coin or other collectors' coins include the following:

- (a) Bullion coins are traded on the basis of their metal content, whereas proof or numismatic or other collectors' coins are traded on the basis of their numismatic, commemorative or rarity value. The price of gold, silver or platinum bullion coins is closely linked to the prevailing spot price of the gold, silver or platinum they contain. In the case of numismatic coins, their value varies in accordance with the supply and demand for these items based on their novelty and rarity, as well as being influenced by movements in the metal price. The price for individual numismatic coins is also influenced by the condition of the coin;
- (b) Bullion coins are mass produced and freely available. This enables them to be freely traded in world markets. In contrast, the minting of proof coins is limited; and



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- (c) Bullion coins are considered to be an alternative investment product to bullion bars and wafers. They are traded by many banks, bullion dealers, commodity brokers and stockbrokers. Proof coins or numismatic coins, on the other hand, are primarily traded by coin dealers.

36. Gold, silver or platinum coins of numismatic quality are not traded by the banks, bullion dealers, commodity brokers and stockbrokers. They are not traded on the international bullion market. In addition, their prices are not determined by reference to their metal content. Accordingly, we consider that gold, silver or platinum coins of numismatic quality are not gold, silver or platinum in an investment form. Further, they do not have the character of gold, silver or platinum as such; rather, as noted for jewellery at paragraph 13 above, they have the character of numismatic coins manufactured from gold, platinum or silver. Therefore, they are not precious metal for GST purposes.

37. Bullion coins, however, are an alternative investment product to precious metal bars. They are usually traded at a price that is determined by reference to the spot price for the metal. For these reasons, we consider that gold, silver and platinum bullion coins have the character of the metal itself.

38. As discussed above at paragraphs 22 and 23, bullion coins are in a tradeable form. Bullion coins bear an accepted mark or character on their face guaranteeing their fineness and quality. They are in an investment form. They have the character of the metal itself. Therefore, if they are of the relevant fineness, such bullion coins are precious metal for GST purposes.

39. There are numismatic coins, such as some commemorative coins, that are marketed in the retail market as ‘bullion’ coins because they are made from bullion. Such coins are not bullion coins for the purposes of this Ruling. Whether a coin is precious metal does not depend on whether the coin is called a bullion coin or a proof or numismatic coin. The relevant test is not what the coin is called but whether it has the character of the metal. This will be determined, as noted above, by whether it is traded for its metal content or for other reasons.<sup>8</sup>

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<sup>8</sup> See paragraph 14.

## Your comments

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40. We invite you to comment on this draft Goods and Services Tax Ruling. Please forward your comments to the contact officer by the due date.

**Comments by Date: 21 March 2003**

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## Detailed contents list

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## Commissioner of Taxation

5 February 2003

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*Previous Draft:*

Not previously released in draft form.

*Related Rulings/Determinations:*  
GSTR 1999/1

*Subject references:*

- dealers in precious metal
- goods & services tax
- GST-free
- GST-free precious metals
- input taxed
- input taxed precious metals
- investment form

- precious metals

*Legislative references:*

- ANTS(GST)A 1999
  - ANTS(GST)A 1999 38-385
  - ANTS(GST)A 1999 40-100
  - ANTS(GST)A 1999 195-1
  - ANTS(ITCA)A (No.2) 1999  
Sch 1 3
  - ANTS(ITCA)A (No.2) 1999  
Sch 1 145
  - ANTS(ITCA)A (No.2) 1999  
Sch 1 146
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ATO References

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