



Explanatory Statement

Goods and Services Tax: Valuable Metals Market Value Determination 2018

General outline of instrument

1. This instrument is made under subsection 86-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).
2. This instrument sets out the method to calculate the market value of valuable metal for the purposes of working out whether the market value of a taxable supply exceeds the valuable metal threshold.
3. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument is taken to have commenced on the day after it is registered.

What is this instrument about

6. Division 86 of the GST Act requires that, under certain circumstances, the GST on a taxable supply of goods consisting wholly or partly of gold, silver or platinum is “reverse charged” so that the recipient of the supply is liable for the GST on the supply instead of the supplier.
7. However, if the market value of the supply of goods exceeds the market value of any valuable metal contained in the goods by 10 percent or more at the time of the supply, the reverse charge may not apply. In these circumstances the supplier and the recipient can agree to voluntarily reverse charge the supply to avoid having to undertake the market value calculation.
8. The definition of “second-hand goods” in section 195-1 of the GST Act excludes goods to the extent that they consist of gold, silver or platinum unless the goods are “incidental valuable metal goods”. This term is defined in section 195-1 to include goods where the market value of the goods exceeds the market value of any valuable metal contained in the goods by 10 percent or more at the time of the acquisition.
9. In this instrument, the Commissioner sets out the method taxpayers must use to calculate the market value of valuable metal for the purposes of the valuable metal threshold test.

What is the effect of this instrument

10. A supplier must use the following method to work out the market value of the valuable metal contained in a good on the date of the supply:

(Weight of valuable metal) x (Spot price of the valuable metal on that date)

where,

Weight of valuable metal is the weight in troy ounces of the valuable metal in the good

Spot price of valuable metal on the date of the supply is whichever of the following you choose:

- a. one of the published rates for that date provided by an Australian entity recognised as a member of the London Bullion Market,
- b. one of the published Australian rates for that date reported by the London Bullion Market Authority (LBMA), or
- c. one of the published Australian rates for that date provided by a commercially recognised authoritative provider of spot price data.

11. For the purposes of paragraph 10b above, the **LBMA spot price** is reported twice daily at 10.30 and 15.00 and is reported in US dollars per fine troy ounce for gold. Other precious metal prices are also listed. The LBMA publish the spot price in Australian dollars on the lbma.org.uk website. This website is available at all reasonable times and at no cost to the user.
12. A description of the good must accompany the market valuation of the good, along with a breakdown of the metals contained in the good.
13. Sales of precious metals in the Australian precious metals market generally occur at prices reflecting one of the three published rates prescribed in this instrument. The nature of the precious metals market is such that the market value of the precious metals is not static, which is reflected in a constantly changing spot price. Incorporating the relevant spot price on the date of supply is therefore necessary to ensure that the valuable metal threshold calculation reflects an accurate market value for the constituent precious metal in the goods at that date. Referring to the spot price announced or reported by an exchange or other entity on the particular date allows the spot price to be determined for that date as a matter of objective fact which can be verified by the taxpayer and the Commissioner as required.
14. The approach adopted in the instrument is consistent with the clear requirements in the legislation to determine the market value of valuable metal as at a particular date. It also accords with the approach outlined in the Explanatory Memorandum to the *Treasury Laws Amendment (GST Integrity) Bill 2017* (EM). In discussing subsection 86-10(3) the EM states that: "...the Commissioner is expected to provide instructions on how to determine the market value by reference to the fineness of the metal and the prices available on particular metal exchange markets, as well as specific instruments about the time for assessing the market value".
15. Compliance cost impact: Minor - there will be no or minimal impacts for both implementation and ongoing compliance costs. This determination is minor or machinery in nature.

Background

16. This determination explains the method that entities must use to work out the market value of valuable metal contained in a good for the purposes of the valuable metal threshold.

17. Where a good consists wholly or partly of valuable metal, section 86-5 of the GST Act makes the recipient and not the supplier, liable for the GST on the supply of that good through a “reverse charge” mechanism if:
 - a. the goods consist wholly or partly of a valuable metal, and
 - b. the recipient is registered or required to be registered, and
 - c. either:
 - i. the market value of the good does not exceed the market value of any valuable metal contained in the good by 10 percent or more at the time of the supply, or
 - ii. the supplier and the recipient agree that the recipient will pay the GST on the supply of the good.
18. In addition, goods may be “incidental valuable metal goods” and therefore second-hand goods where the market value of the goods exceeds the market value of any valuable metal contained in the goods by 10 percent or more at the time of the acquisition.
19. The method set out in this instrument must be used by the supplier in working out whether the market value of the supply of a good exceeds the valuable metal threshold at the date of the supply. The method must also be used by second-hand goods dealers at the time they acquire goods where they need to work out whether the market value of those goods exceeds the valuable metal threshold.
20. The spot rate of valuable metal on the date of the supply can be either a published rate provided by an Australian entity recognised as a member of the London Bullion Market, the published Australian rate reported by the LBMA, or one of the published Australian rates provided by a commercially recognised authoritative provider of spot price data. This should enable taxpayers to choose a rate in a manner that is consistent with their business systems.
21. The spot rate of valuable metal chosen by the supplier should be used consistently for GST purposes and may only be changed if a supplier has sound commercial reasons for doing so. A supplier that alternates between rates with a view to reducing its GST liability has used its rate inconsistently and has not followed the approach set out in this instrument.

Consultation

22. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the rule-maker is satisfied that appropriate and reasonably practicable consultation has been undertaken.
23. A draft version of the Determination and explanatory statement was provided to a group of five taxpayers and taxpayer representatives for targeted consultation. Each participant separately provided feedback by telephone over the two days 25 and 26 May 2017, and some chose to provide follow-up comments in writing.
24. Feedback received during the targeted consultation was considered by the ATO.
25. A draft of the Determination and explanatory statement was then published on the ATO Legal Database at ato.gov.au on 12 July 2017 to 26 July 2017, seeking feedback and comments. The ATO Legal Database sends emails and news feeds to direct subscribers such as tax professionals and other industry stakeholders.

26. The consultation process was announced on “What we are consulting about” at ato.gov.au. In addition, we notified the GST Stewardship Group members of the opportunity to be involved in the consultation. The members of the GST Stewardship Group comprises of senior Australian Taxation officers and external members from business, academic and professional bodies.
27. We received one response from the consultation process by telephone a short time after the closing date for feedback and comments. This response was from a professional tax consulting firm seeking to discuss some concerns relating to the application of the Determination to second hand goods dealers. The ATO considered the issue raised, however, we reached the view that it was outside the scope of the instrument. The Determination was therefore made with no material changes from the draft instrument.

Legislative references:

Acts Interpretation Act 1901

A New Tax System (Goods and Services Tax) Act 1999

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This instrument sets out the method to calculate the market value of valuable metal for the purposes of working out whether the market value of a taxable supply exceeds the valuable metal threshold, for the purposes of subsection 86-10(3) of the GST Act.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.