


# ***GSTR 2003/10 - Goods and Services Tax: What is 'precious metal' for the purposes of GST?***

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## **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 ruling for the purposes of section 37 of the **Taxation Administration Act 1953**. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

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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. This Ruling discusses what is precious metal comprising of 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 Ruling explains our view of the law as it applied from 1 July 2000. You can rely upon this Ruling on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. 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.
6. If this Ruling conflicts with a previous private ruling that you have obtained, this 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 this 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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7. 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 (or section 38-185, which is about exported goods), supplies of precious metal are input taxed under section 40-100.

8. 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.'

9. 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.

## Ruling and Explanation

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10. 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**

11. To be the metal gold, silver or platinum, the item must have the character of the metal rather than the character of a thing made from the metal. 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.

12. 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 of its metal content it is not being traded for its metal value only. This suggests that it does not have the character of the relevant metal. It has another character. An example is proof coins. As noted at paragraph 38, proof coins are traded at a price that reflects the quality of the finish over and above what is necessary to trade the metal value. The price is not determined solely by the metal value of the coin. The price is determined by reference to the spot price and by reference to the quality of the physical characteristics of the coin.<sup>1</sup> The latter indicates that proof coins are not traded for the metal value only and therefore indicates that they do not have the character of the metal, but rather the character of manufactured articles, that is, coins made from the metal. This means that proof coins are not precious metal.

13. Other 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. This indicates that they are not traded for their metal value only and therefore they do not have 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**

14. 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.

15. There are two sections in the GST Act that deal specifically with precious metal, section 38-385 and section 40-100. Both section 38-385 and section 40-100 use the expression 'precious metal'. Section 40-100 merely provides that 'A supply of precious metal is input taxed'. It contains no further requirements and therefore provides little indication of the context in which it operates. Section 38-385 contains several requirements and therefore provides some indication of the context in which the expression precious metal, and hence the term 'investment form', is used.

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<sup>1</sup> This is discussed further at paragraph 38 onwards.

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16. 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, an entity has to satisfy the Commissioner that the entity regularly converts or refines precious metal in carrying on its enterprise.<sup>2</sup> Another requirement is that the supply is made to a dealer in precious metal. To be a dealer in precious metal, an entity has to satisfy the Commissioner that a principal part of carrying on the entity's enterprise is the regular supply and acquisition of precious metal.<sup>3</sup>

17. These requirements provide the context in which the expression precious metal, and therefore the term investment form, are used. 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 trading in metals as such by professional traders and dealers.

18. 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 trade in the metals themselves.

19. Trade in the metals gold, silver and platinum that is undertaken by entities carrying on enterprises that principally acquire and supply metals is undertaken in the bullion market.<sup>4</sup> The entities that trade in this market are the banks, bullion dealers, commodity brokers and stockbrokers that generally deal in gold, silver or platinum in that market.<sup>5</sup>

20. What is 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 physical form that is capable of being traded on the international market for that metal by traders in 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.

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<sup>2</sup> Definition of 'refiner of precious metal' in section 195-1.

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

<sup>4</sup> Gold, silver and platinum are traded on what is generally referred to as the international bullion market. Therefore, references to bullion in this Ruling include platinum as well as gold and silver.

<sup>5</sup> This is supported by the reference to the international bullion market in the Explanatory Memorandum to the Bill for the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*, which added the words 'in an investment form' to the definition of precious metal. See paragraph 31.

21. As the context is the trade in the metals themselves, the physical form in which the metals are traded should not be relevant to setting the price of the trade, other than where relevant for the purposes of confirming the fineness of the metal. The physical form is no more than the physical state for the relevant metal. That is, the physical form should not have a value in its own right as it is trade in the metal and nothing else that is contemplated by the relevant sections of the GST Act. The form is only relevant to the extent that it facilitates trading in the metal. If the form of an article has physical characteristics other than what is necessary for trade in the metal, it is not in an investment form and does not have the character of the metal only. The minimum physical characteristics necessary for international trade are being in a tradeable form and bearing an internationally accepted mark or characteristic that identifies and guarantees fineness and quality. If an item has any additional features, these will need to be taken into account in determining the character of the item and may indicate that the item is not in an investment form and does not have the character of the metal only.

#### ***Tradeable form***

22. Bars, wafers and bullion coins are the physical forms in which the metals gold, silver and platinum are traded on the international bullion market for those metals. These are therefore forms of those metals that are capable of being traded on the international bullion market.

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

23. To be tradeable on the international bullion market, the metal must bear some mark or characteristic on its face accepted by the market as identifying and guaranteeing 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 and noted weight and fineness 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 metal 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>6</sup>

***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 trade in the metal. Some forms are traded for other reasons, such as for collection purposes. When traded on the international bullion market, gold, silver and platinum 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 trade in the metal, 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. In addition, these coins are not traded on the bullion market.

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, 400 ounce gold bars are generally traded on the international bullion market at the spot price. No additional charges apply to produce the physical bars; the price is the price of the gold only. Provided they have the requisite purity and an accepted mark, they are considered to be gold in investment form.

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<sup>6</sup> Additionally, as noted in paragraph 10, 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 gold, silver or platinum as such; rather, they have the character of manufactured items produced from gold, silver or platinum. See paragraph 11.

**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;
- bears a mark or characteristic accepted as identifying and guaranteeing its fineness and quality; and
- is usually traded at a price that is determined by reference to the spot price of the metal it contains.

30. This view is supported by the Explanatory Memorandum (EM) to the Bill for the Act<sup>7</sup> that added the words 'in an investment form' to the definition of precious metal in section 195-1, which says:<sup>8</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.

31. A product in a form that is not 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.

*Alternative view*

32. An alternative view is that the requirements of section 38-385 do not provide any context for the term precious metal and hence for the term investment form. However, even if this is the case, the metal has to have the character of being the metal itself, as discussed at paragraph 11. Further, with the definition of precious metal requiring that the metal be 'gold (in an investment form)', or silver (in an investment form), or platinum (in an investment form), the term investment form reinforces that the metal has to be in a form that is the metal itself rather than something made from the metal. If the form is not one that is usually traded at a price determined solely by reference to the spot price this indicates that it is not being traded for its metal content only and, as discussed at paragraph 12, this indicates

<sup>7</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>8</sup> Explanatory Memorandum to the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999* at paragraph 1.11.



that the item does not have the character of the metal itself. Hence, if the form is not one that is usually traded at a price determined solely by reference to the spot price, this indicates that the item is not the metal itself. Further, this also indicates that it is not in an investment form. In this way, regardless of whether the requirements of section 38-385 provide context for the term precious metal and the term investment form, the term investment form of itself reinforces the need for the item to have the character of the metal rather than of something made from metal. Forms of gold, silver and platinum that are usually traded at a price determined solely by reference to spot price are bars, wafers and bullion coins.

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

#### ***Granules***

33. Granules are not in an investment form because, as mentioned at paragraph 24, 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***

34. 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, such as the ABC hallmark,<sup>9</sup> that are accepted as guaranteeing fineness and quality.

35. Such bars and wafers are produced at varying weights. If they are in a form 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.

36. As an example, some small refiners in Australia make bars that are only traded in Australia. As noted at paragraph 22, bars are an internationally traded form of metal. If the bars produced by the refiner have a hallmark that is accepted in their market as guaranteeing the fineness and quality of the metal they will be in a tradeable form bearing an accepted mark or characteristic. If such bars are traded at a price determined by reference to the spot price they will be in an investment form.

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<sup>9</sup> This is the hallmark used by the Australian Bullion Company (NSW) Pty Ltd.

***Coins***

37. Gold, platinum or silver coins can be manufactured to two standards, namely proof and bullion quality. Proof coins are marketed as collectables, whilst bullion coins are for the trading market.

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

- (a) Bullion coins are traded on the basis of their metal content, whereas proof or other numismatic or collectors' coins are traded on the basis of their numismatic, commemorative or rarity value. The price of gold, silver or platinum bullion coins is determined by reference to the prevailing spot price of the gold, silver or platinum they contain. In the case of numismatic or other collectors' 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. The price for proof coins is determined in reference to the spot price and also the additional value arising from their physical characteristics; they are exact reproductions, without flaws. Whereas for bullion coins the stamping only establishes their worth in terms of their metal value - the stamping only guarantees their fineness and the backing of government as currency. For proof coins, the additional quality of the finish is not related to the fineness and quality of the metal, but adds a further value associated with the quality of the finish and condition;
- (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
- (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 and other numismatic or collectors' coins, on the other hand, are primarily traded by coin dealers.

39. Proof coins have a value determined by reference to the spot price for the metal they contain as well as by reference to their additional physical characteristics, including the quality of their finish. As noted at paragraph 12, this indicates that proof coins are not traded for the metal value only and therefore indicates that they do not have the character of the metal, but rather the character of manufactured

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articles, that is, coins made from the metal. Therefore, they are not precious metal for GST purposes.

40. Other numismatic or collectors' gold, silver or platinum coins 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 11 above, they have the character of numismatic coins manufactured from gold, platinum or silver. Therefore, they are not precious metal for GST purposes.

41. As discussed above at paragraph 22, bullion coins are in a tradeable form. They are usually traded at a price that is determined by reference to the spot price for the metal, indicating that they have the character of the metal itself. Bullion coins bear an accepted mark or character on their face and noted weight and fineness guaranteeing their fineness and quality. They are in an investment form. Therefore, if they are of the relevant fineness, such gold, silver or platinum bullion coins are precious metal for GST purposes.

42. There are 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>10</sup>

*Alternative view*

43. An alternative view is that proof coins are also precious metal. This view is taken on the basis that proof coins bear characteristic patterns or designs and noted weight and fineness that identify them as issued, backed and guaranteed as to fineness by a government. In addition, purchasers of proof coins buy them as an investment in anticipation of their value increasing over time, and increasing due to the additional value added to the coin by the additional characteristics of its finish mentioned above. These two points could suggest that proof coins are in an investment form.

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<sup>10</sup> See paragraph 13.

44. Whether or not purchasers of proof coins intend to hold them in anticipation of their value increasing due to the value added to the coin by the additional characteristics of its finish and relative rarity compared to the bullion version of the same coin is not relevant to whether such coins are in an investment form. As noted at paragraph 14 the expression investment form can colloquially be defined as a form in which an item is capable of being held as an investment. While proof coins may be held as an investment, the term must be read in the context of the precious metal provisions. As discussed at paragraphs 17 to 19, the context in which the expression investment form is used is trading in the metals gold, silver and platinum as such, and not trade in items with a value additional to the value of the metal.

45. Proof coins do bear characteristic patterns or designs and noted weight and fineness that identify them as issued, backed and guaranteed as to fineness by a government. As discussed at paragraphs 26 to 28 this is not sufficient to mean that such coins are in an investment form. To be in an investment form the metal has to be in a form that is normally traded on the bullion market at a price that is calculated by reference to the spot price. As noted at paragraph 38, the price for proof coins is determined by reference to the spot price *and* the additional value arising from their physical characteristics. For example, the way the Australian Nugget is sold through some coin dealers is that there is a listed price for the proof coin because the price is not set only by reference to the spot price. However, for the bullion coin there is no listed price as the price is determined on the day by the spot price on the day.

46. In addition, whether or not an item is in an investment form is not the only test of whether something is precious metal. As discussed at paragraphs 11 to 13, to be precious metal the item has to have the character of being the metal rather than being something made from the metal. Proof coins are traded at prices determined by factors in addition to the spot price of the metal, which indicates they do not have the character of being the metal. For example, the Australian Nugget coin is made to two standards, bullion and proof. The bullion Australian Nugget coin is traded at a price close to, and based on, the spot price. The proof Australian Nugget coin, on the other hand, is initially sold at a price determined by reference to the spot price and its additional characteristics.

47. For these reasons we do not consider proof coins to be precious metal as defined for GST purposes.

## Detailed contents list

48. Below is a detailed contents list for this draft Goods and Services Tax Ruling:

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### Commissioner of Taxation

18 June 2003

*Previous Draft:*

Previously released in draft form as GSTR 2003/D1

*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 38-185
- ANTS(GST)A 1999 38-385

- ANTS(GST)A 1999 40-100
- ANTS(GST)A 1999 195-1
- ANTS (Indirect Tax and Consequential Amendments) Act (No. 2) 1999
- ANTS (Indirect Tax and Consequential Amendments) Act (No. 2) 1999 3
- ANTS (Indirect Tax and Consequential Amendments) Act (No. 2) 1999 Sch 1 item 145
- ANTS (Indirect Tax and Consequential Amendments) Act (No. 2) 1999 Sch 1 146
- TAA 1953 37

*Other references:*

Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999 para 1.11

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ATO references

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