



Precious metal refining -

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Mining and Energy Industry Partnership

Precious metal refining

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As a result of extensive consultation with participants in the gold mining and refining industries, the ATO has been able to establish a set of principles that exist in certain refining agreements between an Entity and the Refiner.

The agreements in question include those which may provide for early outturn. At the time of preparing this log entry, these principles do not exist in all refining agreements. The following principles are the particular refining agreements examined by the ATO.

Principle 1 – the object of the agreement

The Entity requests that the Refiner accept and refine Doré produced by the Entity's nominated operations to London Good Delivery Standard, and to make available to the Entity the fine gold and/or fine silver returned by the Refiner.

Principle 2 – the services

The Entity will deliver Doré to a transport provider at an agreed location.

The Refiner:

- may arrange for collection of the Doré
- will refine the Doré to London Good Delivery Standard, and
- may credit the Unallocated Metal ounces to the Entity's Unallocated Metal Account Loco Australia or purchase the fine metal.

Principle 3 – use of Doré

The Refiner may have the right to refine any delivery of Doré immediately after determination of net weights and the setting aside of agreed samples.

Principle 4 – outturn

Outturn to be based upon a nominated assay result subject to assays, splitting limits and umpire agreements to resolve variances with subsequent adjustment, if required, by the operation of such arrangements.

Principle 5 – notification of credit to unallocated metal accounts

On the date of outturn, the Refiner to notify the Entity of the fine gold and/or fine silver to be credited to the Entity's Unallocated Metal Account Loco Australia.

The agreement may provide for the Refiner to either purchase the outturned gold or silver content with a formula for determining price, or swap the unallocated gold or silver by debiting the Unallocated Metal Account Loco Australia and crediting the nominated London metals account with the fine gold and/or fine silver outturned with a swap fee determined by an agreed formula.

Principle 6 – return of metals

The Refiner to return an agreed percentage of fine gold and an agreed percentage of fine silver either to be purchased or credited to an Unallocated Metal Account Loco Australia.

Principle 7 – title

Title to the Doré bars comprised in each shipment and to metals resulting from the Refining of each shipment remains with the Entity until fine gold and/or fine silver required to be credited to the Entity's Unallocated Metal Account Loco Australia has been so credited or has been purchased by the Refiner.

This is not unlike a bailment where possession and risk passes, but title in the goods remains with the 'owner'.

Title to the fine gold and/or fine silver standing to the credit of the Entity's Unallocated Metal Account Loco Australia shall remain vested with the Entity from the time crediting occurs.

Principle 8 – liability and risk

Risk in and liability for the Doré and all metals resulting from the refining of each shipment and all metal representing a credit balance in the Entity's Unallocated Metal Account Loco Australia, passes to the Refiner from the time the Entity delivers the Doré at the delivery place, and only ceases when the Refiner effects, transfers or purchases in Australia the outturned metal from the Entity's Unallocated Metal Account Loco Australia in accordance with the Entity's instructions.

Subject to certain exclusions, the Refiner shall be responsible for any loss of Doré while the Doré is in the custody of the Refiner and carry appropriate insurance cover for such loss.

Definitions for the purposes of the above principles

- 'Doré' means gold and silver bullion produced by the Entity at its operations.
- 'Fine gold' means refined gold of 99.5% or greater purity.
- 'Fine silver' means refined silver of 99.9% or greater purity.
- 'London Good Delivery Standard' means gold refined to a minimum standard of 99.5%;
- 'Outturn' means the publishing of the statement by the Refiner of refining results and charges and the crediting thereof to the Unallocated Metal Account Loco Australia

- 'Return of metals' means the fine ounces of gold (and silver if applicable) credited to the Entity's Unallocated Metals Accounts
- 'Unallocated metal' means outturned gold and/or silver represented as a metal account credit.

Using these principles as a basis, the ATO can answer the following questions posed by the Australian Gold Council on behalf of their members.

Question 1

1. Where refining of an Entity's Doré is carried out by an Australian Refiner under an agreement containing the above principles, is it accepted that there is no taxable supply of Doré from the Entity to the Refiner?

Answer

2. Yes, it is accepted that there is no taxable supply of Doré for GST purposes by the Entity to the Refiner.

Question 2

3. Where, under the terms of the refining contract, the Entity sells the fine gold or fine silver returned by the Refiner to the Refiner, or swaps the unallocated metal to a nominated London Metals Account of the Entity, an associate or an unrelated third party, does this involve a GST-free supply by the Entity under section 38-385, being the first supply after refining?

Answer

4. Yes, a supply by the Entity to the Refiner either by way of sale or loco-swap is considered to be GST-free under section 38-385 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Question 3

5. Where an Entity has previously been considered by the ATO to have made a taxable supply of Doré to the Refiner, is the Entity considered to have made a creditable acquisition of refining services entitling the Entity to an input tax credit for the GST component of the refining fee?

Answer

6. Yes, the Entity is entitled to an input tax credit for GST charged by the Refiner on refining fees where the ATO has considered that a taxable supply of Doré from the Entity to the Refiner has occurred.

Date of effect

7. To minimise the costs of compliance to industry participants, the ATO view expressed here should be applied prospectively from 1 February 2003 (the day after the date this item was posted to the Mining and Energy Industry Partnership website).