


TDP 2017/1 - When are collectables and antiques that contain gold, silver or platinum accepted as 'incidental valuable metal goods' and therefore second-hand goods?

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When are collectables and antiques that contain gold, silver or platinum accepted as 'incidental valuable metal goods' and therefore second-hand goods?

This paper discusses and seeks feedback on the meaning of the terms 'collectables' and 'antiques' for the purposes applying the GST law to dealings in second-hand goods that contain valuable metal.

Purpose and status of this discussion paper

The purpose of this paper is to facilitate consultation between the Australian Taxation Office (ATO) and the community as part of the process of developing advice on the application of the indirect tax law.

This paper is prepared solely for the purpose of obtaining comments from interested parties. All views in this paper are therefore preliminary in nature and should not be taken as representing either an ATO view or that the ATO will take a particular view.

This paper is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this paper does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

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Contact officer (for comments or further information)	<i>Contact officer details have been removed as the comments period has ended.</i>
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Introduction

1. The *Treasury Laws Amendment (GST Integrity) Act 2017* (the amending Act) amended the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) as it relates to precious metals.
2. The amendments clarify that goods, to the extent that they consist of a valuable metal (gold, silver or platinum) are generally not eligible to be treated as second-hand goods. This means that such goods are not eligible to attract input tax credits under Division 66 of the GST Act.¹

¹ Division 66 contains special rules that allow entities to claim input tax credits for second-hand goods acquired for the purposes of sale or exchange (but not for manufacture) in the ordinary course of their business, even though the supply

3. This change applies to acquisitions of second-hand goods that occur on or after 1 April 2017.
4. The change is designed to remove the opportunity for an entity to change the form of a precious metal to exploit the different tax treatment available for second-hand goods.
5. However, without special rules, a range of goods would be inappropriately excluded from the second-hand goods definition. These are goods which contain valuable metal but are properly characterised as consisting of the value-added product, rather than the constituent metal. Examples of such goods may include a piece of electronic equipment, antique jewellery, a prestige brand gold watch or a collector's edition proof coin.
6. The amendments provide special rules for such goods which are termed 'incidental valuable metal goods'. Such goods are *not* prevented from being second-hand goods where:
- the goods are collectables or antiques; and the goods are not precious metals;
 - the market value of the goods exceeds the market value of any valuable metal contained in the goods by ten per cent or more at the time of acquisition;
 - the Minister has determined, by legislative instrument, that the class of goods is not prevented from being second-hand goods.
7. This paper discusses the meaning of the terms 'collectables' and 'antiques' for the purposes of this rule.

Purpose

8. The ATO is seeking your input through this consultation paper, so that we can provide you with relevant advice and guidance products to assist you in complying. We are seeking your input to highlight any areas you think are unclear, cause difficulties in understanding your obligations or areas where there are practical compliance issues.

Overview of the law

9. Section 195-1 of the GST Act (relevantly) states that:
- Second-hand goods** does not include
- (a) goods (except *incidental valuable metal goods) to the extent that they consist of *valuable metal;
- valuable metal** means:
- (a) gold, silver or platinum; or
- (b) any other substance specified for the purposes of paragraph (d) of the definition of **precious metal** in this section.
- incidental valuable metal goods** means goods:
- (a) acquired for the purposes of sale or exchange (but not for manufacture) in the ordinary course of *business; and
- (b) that consist wholly or partly of *valuable metal; and
- (c) in relation to which any of the following applies:
- (i) the goods are collectables or antiques, and the goods are not *precious metals;

of the goods to them was not a taxable supply. Broadly, this rule allows a credit for any GST embedded in the price of second-hand goods that GST-registered entities acquire from unregistered entities.

- (ii) at the time of the acquisition, the market value of the goods exceeds the *valuable metal threshold;²
- (iii) the goods are in a class determined by the Minister, by legislative instrument, for the purposes of this subparagraph.

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.

What are 'collectables' and 'antiques'?

10. There are no definitions of the terms 'collectables' or 'antiques' in the GST Act. The Explanatory Memorandum to the amending Act (the EM) stated that

1.69 For the purposes of these rules, the ordinary meaning of the terms 'collectables' and 'antiques' applies.

11. The Macquarie Dictionary defines 'collectable' as

- 1: an object of great antiquarian value, as a rare coin, often collected as an investment
- 2: an object of no intrinsic value, as a matchbox or beer can, collected as a hobby or as a memento
- 3: of or relating to such an object; suitable for acquisition as a collectable [adj]

12. The Oxford Dictionary has defined 'collectable' as "things worth collecting, esp. rare, old, or interesting objects (not necessarily valuable or antique)

13. 'Antique' is defined in the Macquarie Dictionary as

- 1: belonging to former times as contrasted with modern
- 2: dating from an early period: antique furniture
- 3: *Colloquial* very old-fashioned.
- 4. *Archaic* aged; ancient: these antique walls
- noun 5: an object of art or a furniture piece of a former period.
- 6. the antique (usually Greek or Roman) style, especially in art.

The Oxford Dictionary online defines 'antique' (as a noun) as

"A collectable object such as a piece of furniture or work of art that has a high value because of its age and quality".

14. The terms 'collectable' and 'antique' are often found in laws dealing with sales tax, value added tax and Customs laws or regulations. Such laws often define an antique to be an object of artistic and historical significance that is of an age exceeding 100 years. This description is widely accepted and used in such legal and commercial settings, although there appear to be exceptions (such as in the classification of an antique firearm or, in some countries, an antique motor car). This approach to defining an antique is also taken by the ATO for capital gains tax purposes.³

15. So, there are a range of possible meanings for the words 'collectables' and 'antiques'. The question is what they mean in this context.

² This broadly means that the market value of the goods exceeds the market value of the valuable metal in the goods by at least ten per cent. The market values are calculated on a GST exclusive basis.

³ See Taxation Determination TD 1999/40: *Income tax: capital gains: what is an 'antique' for the purposes of the definition of 'collectable' in subsection 108-10(2) of the Income Tax Assessment Act 1997?*

16. The context in which the words are used in the GST legislation is that of normal trading in second-hand goods, and needing to determine when goods qualify as second-hand goods for the purposes of claiming input tax credits under Division 66 of the GST Act. This is clear when we look at the first part of the definition of ‘incidental valuable metal goods’, which refers to “Goods that are acquired for the purposes of sale or exchange (but not for manufacture) in the ordinary course of business.”

17. The goods in question must also consist wholly or partly of valuable metal, but not be precious metal.⁴

18. So the provisions relate to business dealings in goods containing valuable metal, which suggests they are focussed on items of some real value that are sold or traded for their collectable or antique qualities. This is consistent with the idea explained in the EM that we are talking about goods which contain valuable metal but are properly characterised as consisting of the value-added product, rather than the constituent metal.

19. The EM also provides a specific example of collectable coins as being something that falls into the category of a ‘collectable’. This will be the case, regardless of whether the market value of the coins would also satisfy the valuable metal threshold test⁵.

20. Having regard to the above discussion, we feel that the sort of items that could qualify as collectables and antiques would include

- Numismatic (collectable) coins
- Collectable pieces of jewellery. This could include older pieces of jewellery by regarded makers, or particular styles or designs that are considered collectable.
- Antique jewellery (meaning pieces at least 100 years old)
- Collectable watches
- Rare and/or antique pieces of silverware or goldware
- Artwork or frames containing gold, silver or platinum
- Sculpture containing gold, silver or platinum

21. The sort of items that would not qualify as ‘collectables’ or ‘antiques’ may include

Ordinary jewellery containing gold, silver or platinum (whether or not it also includes valuable stones or other materials)

- Medallions or coins that are not genuinely collectable
- Common pieces of goldware or silverware
- Scrap gold, silver or platinum of any kind

Important note: Goods that contain valuable metal and are neither ‘collectable’ or ‘antique’ may still qualify as second-hand goods, if

- they satisfy the valuable metal threshold test (this situation might arise, for example, with a piece of jewellery containing a precious stone or a prestige brand gold watch), or
- they are in a class determined by the Minister, by legislative instrument.

Consultation Questions

22. Consultation Question (1)

⁴ This qualification ensures that goods cannot be regarded as both precious metal and a collectable or antique for the purpose of qualifying for input taxed credits under the second-hand goods rules.

⁵ The coins would satisfy the valuable metal threshold test if the (GST exclusive) market value of the coins is greater than the (GST exclusive) market value of the gold in the coins by at least ten per cent.

- Are there other examples of goods being traded by second-hand dealers which contain valuable metal and which should be properly classified as either 'collectables' or 'antiques'?
- What indicators lead to a reasonable conclusion that something is 'collectable' or 'rare'?
- Should the term 'antiques' be limited to things over 100 years old?

23. Consultation Question (2)

- Is further guidance required in relation to what is acceptable as 'collectables' and 'antiques' for the purpose of being second-hand goods?
- If so, what form of guidance would be useful for you?

24. Consultation Question (3)

- What practical difficulties do you envisage in deciding whether goods are 'collectables' or 'antiques' for the purposes of deciding whether you are entitled to input tax credits under Division 66?

References

ATOlaw topic(s)	Goods and services tax ~~ Other GST topics (N to Z) ~~ Second-hand goods Goods and services tax ~~ Other GST topics (N to Z) ~~ Precious metals ~~ Other
Legislative references:	<ul style="list-style-type: none">- ANTS(GST)A 1999 Div 66- ANTS(GST)A 1999 195-1- Treasury Laws Amendment (GST Integrity) Act 2017
Other references:	TD 1999/40
ATO references:	1-C04SIUA