

PART VI: PRECIOUS METALS AND COLLECTIBLES

7685. What are considered precious metals for investment purposes?

For investment purposes, precious metals are traditionally considered the chemical elements gold, silver, platinum, and palladium. These are classified for their unique characteristics, such as luster, resistance to tarnish or corrosion, chemical stability, and rarity. Apart from most all other elements, the “precious metals,” like gold, silver, and, to a much lesser degree, platinum, are the most common hard asset investment options given their historical use as currency by nations. All four share the same properties that have made gold and silver especially desirable as money.¹ Thus, these metals are highly sought after materials as stores of wealth that historically have held value over time against other forms of investments, and especially as compared to the value of paper currencies.

Investors can invest in precious metals both directly by purchasing the asset in the form of actual bullion or in coins, and indirectly by investing in the stock of companies that either invest in precious metals or produce them. Another way to invest in precious metals is to purchase precious metal ETFs (exchanged-traded funds). Investment in a precious metal ETF should be considered to be an investment in the fund itself rather than in the underlying precious metal(s). In that sense, precious metal ETFs are more like investing in stock or a mutual fund. However, such ETFs are noteworthy because of their unique characteristics. For one, they are used to determine the current price (the spot price) for the metals, and second, they allow the investor to take delivery of the physical underlying metal if desired. This discussion focuses on direct investment in those assets commonly called precious metals in the form of bullion or coins.

Gold, silver, and platinum are the most common investment metals of the four, while palladium, being new to the investment metals market, currently has fewer investment options. For example, as of the date of this edition, US 1oz “Eagle” coins are available to investors in gold, silver, and platinum, but are not yet minted in palladium. Currently, the only “bullion-type” coin available in palladium is the Canadian Maple Leaf, although many private mints may stamp their own coins in palladium. Unlike some other investments, precious metals and coins generally have a high degree of investment risk, including loss of principal, and the markets can be very volatile and are currently largely unregulated.

In general, the IRS generally deems a precious metal asset investment a “collectible” and thereby a capital asset for income tax purposes. Hence, a net sale profit or loss is taxed as a capital gain or loss, and as either long-term or short-term, applying a tax rate on most long-term capital gains that in 2013 and beyond that largely depends on the income level of the taxpayer. Further, for taxpayers with income in excess of \$250,000 (joint returns) or \$200,000 (single returns), the additional 3.8 percent investment income tax (the 3.8 percent net investment tax) is added to the otherwise applicable capital gains rate.

1. Note, this commonality does not make them “like-kind” for purposes of an IRC, Sec. 1031 tax-free exchange.

Therefore, as this discussion suggests, the taxation of the investment is an important consideration, especially as a consequence of federal tax increases effective in 2013. However, it may be the lesser consideration in any decision in adding precious metal to an investment portfolio.

7686. How may an individual invest in precious metals?

Depending on the metal, investments may be made in two or three ways. In the case of gold or silver, an investor may purchase gold or silver *bullion-type* coins (e.g., the Canadian Maple Leaf), bars, or certificates that certify that a specific amount of the metal is housed in a specific warehouse for the investor. In the case of other metals, such as platinum or palladium, investments are made by the purchase of bars or certificates.

Each method of investing in precious metals has its advantages and disadvantages.

If an investor acquires *bullion-type* coins in a taxable transaction (such as in a non-like-kind exchange or as payment of a stock dividend or for services rendered), the coins will be valued at *fair market value*, not face value, for purposes of that transaction (see Q 7696).

For the important distinction between bullion-type coins and other valuable coins, see Q 7693.

An investor might also consider a defined contribution qualified plan, including an IRA, and perhaps even a defined benefit qualified plan as a way to acquire certain precious metals investments. However, there are special limits on the types of investments, including in precious metals that are permissible in retirement plans, and there are significant limitations (“prohibited transactions”) on moving assets in and out of a qualified plan trust that may make them an unsatisfactory vehicle to acquire precious metals (see Q 7687 and Q 7688).

In summary, each combination of metal and investment option carries certain advantages and disadvantages. Some precious metals may have more established markets. Other precious metals may have industrial purposes that can both hurt or help the value of the investment at any given moment, whether an investor is buying or selling in the market. Use of a qualified retirement plan vehicle for acquisition may or may not be appropriate and carries its own separate set of considerations and limitations. All these factors must be considered when making precious metals investments.

Planning Point: In the case of an Individual Retirement Account (or Individual Retirement Annuity), an important consideration is the IRS’s revised position recently announced¹ regarding the limitation of one rollover a year. Before January 1, 2015, the IRS’s position in both the proposed regulations and its Publication 590 was that there was no limit in the number of IRA rollovers that a taxpayer could make. However, per the Announcement, beginning January 1, 2015, a taxpayer will be allowed only one rollover per year. This limitation on rollovers will place some limitations on a taxpayers to move investments around between different IRA-held investments. In addition, taxpayers should make use of the remainder of 2014 to make all IRA rollovers as

1. See IRS Announcement 2014-15 (March 20, 2014) also see *Bobrow v. Comm.*, TC Memo 2014-21, in which the IRS took the one-nontaxable-transfer-per-year position and surprisingly won. In light of the favorable Tax Court decision, the IRS then announced it would amend its proposed regulations and its publications to conform with the one transfer per year holding and interpretation under IRC Sec. 408 (d)(3)(B).

may be determined to be desirable, especially to reposition all holdings toward the less flexible environment.¹ However, this limitation should not capture the following transfers: trustee-to-trustee direct IRA rollovers; qualified plan-to-IRA direct rollovers; IRA-to-qualified plan direct rollovers; certain Roth IRA conversions, whether direct or indirect (401(k)-to-401(k) transfers done as trustee-to-trustee transfers; solo 401(k) in-plan Roth conversions, so options often will remain open that avoid taxation.

7687. Can a taxpayer hold precious metals in an IRA?

Yes, but the list allowed is specific. According to the IRS, both life insurance and collectibles *cannot* be held in an IRA. According to the IRS, “if you invest your IRA in collectibles, the amount invested is considered distributed in the year invested and you may have to pay a 10 percent additional tax on early distributions.” In effect, the transaction is treated as a premature taxable distribution. Therefore, investment assets in an IRA must be carefully selected, especially if they are precious metals.

Here are some examples of *prohibited collectibles* currently listed by the IRS in its website FAQ:

- Artwork,
- Rugs,
- Metals (*but there are exceptions for certain kinds of bullion that meet specific requirements*),
- Coins (*but there are exceptions for certain coins that meet specific requirements*),
- Antiques,
- Gems,
- Stamps,
- Alcoholic beverages, and
- Certain other tangible personal property.²

Planning Point: Despite this seemingly broad prohibition that looks to include precious metals, there are exceptions available for precious metal collectibles permitted in IRAs, but they are rather specific, and may be found in IRC Section 408(m).

More detailed information on an IRA investment in permitted and prohibited precious metals “collectibles” is contained in IRS Publication 590, *Individual Retirement Arrangements (IRAs)*. According to IRC Section 408, an IRA can include any “gold, silver, platinum, or palladium of a finess equal to or exceeding the minimum fineness that a contract market (as described in section of the Commodity Exchange Act) requires for metals which may be delivered in satisfaction of a regulated futures contract.”³ Investors should always work with an IRA administrator/custodian

1. See IRS Announcement 2014-15 (March 20, 2014).

2. See www.irs.gov/Retirement-Plans/Retirement-Plans-FAQs-Regarding-Plan-Investments (Last reviewed or updated by the IRS on May 15, 2014) Q&A #1. Also see, DOL Reg. §2550.404c-1.

3. IRC Sec. 408(m)(3).

experienced with permissible Section 408(m)(3) precious metals to avoid adverse tax consequences to the IRA, and its participant(s).

7688. Can a taxpayer hold precious metals within a qualified pension plan?

The law currently allows a defined contribution 401(k) (and profit-sharing) qualified plan, and even a defined benefit plan, to invest in precious metals to the same extent permitted (and prohibited) under IRC Section 408(m) (see Q 7687). However, advisors must also consider the prohibited transaction rules contained in IRC Section 4975 and ERISA Section 406, and the regulations under ERISA Sections 404(c) and 404(b) when investing in precious metals through a defined contribution qualified plan, including an IRA.¹

As noted, qualified defined benefit pension plans are also legally permitted to invest in precious metals as plan assets subject to the same Section 408(m) requirements imposed on permissible investments, but such investment generally makes little sense when there are plan benefit maximums allowed. Actually, as the IRS notes, “Although there is no list of approved investments for retirement plans, there are special rules contained in the Employee Retirement Income Security Act of 1974 (ERISA) that apply to retirement plan investments.” In general, a plan sponsor or plan administrator of a qualified plan who acts in a fiduciary capacity is required, in investing plan assets, to exercise the judgment that a prudent investor would use in investing for his or her own retirement (ERISA Section 404).

In addition, certain rules apply to specific plan types. For example, there are different limits on the amount of employer stock and employer real property that a qualified plan can hold, depending on whether the plan is a defined benefit plan, a 401(k) plan, or another kind of qualified plan (ERISA Section 407). Certain plans, such as 401(k) plans, that permit participant-directed investment can avoid some fiduciary responsibilities if participants are offered at least three diversified options for investment, each with different risk/return factors (Labor Regulation Section 2550.404c-1).²

In addition, under the Code both participant-directed accounts and IRAs cannot invest in collectibles, such as art, antiques, gems, coins, or alcoholic beverages, and they can invest in certain precious metals only if the metals (coins or bullion) meet specific requirements.³

Planning Point: As a practical matter, a large corporate plan with many participants is unlikely to offer precious metals permitted under IRC Section 408(m)(3) as an investment in its “participant-directed” 401(k) plan because of the complications for the trustee, except perhaps in the stock or precious metals ETF form.

However, for small business owners and professionals that can meet the qualifications to implement and use a so-called self-directed “solo 401K” (a one-person plan, or a precious metals IRA, and perhaps even a small solo defined benefit pension plan) precious metals might be purchased as a plan asset. However, even though some of these qualified plan vehicles may

1. See www.irs.gov/Retirement-Plans/Retirement-Plans-FAQs-Regarding-Plan-Investments (Last reviewed or updated by the IRS on May 15, 2014), Q&A #6.
 2. See www.irs.gov/Retirement-Plans/Retirement-Plans-FAQs-Regarding-Plan-Investments (Last reviewed or updated by the IRS on May 15, 2014), Q&A #1.
 3. IRC Sec. 408(m).

allow a pre-tax purchase of the investment, the vehicle itself generally requires compliance with substantial rules, especially prohibited transaction rules, and reporting requirements, plus with distribution treatment (Q 7687) of the investment from the plan that may make acquisition of the precious metal through one of these retirement plan vehicles less attractive than by individual purchase.

No qualified plan approach to acquisition of plan-permissible precious metals should ever be attempted by an investor without professional legal and tax guidance, and a plan administrator experienced with the special issues surrounding physical precious metals (other than precious metals stock interest and the like) as plan assets.

7689. When a precious metal is sold, how is the transaction taxed?

Unless a precious metal is part of a tax straddle owned by the investor, or is part of a conversion transaction, no special tax rules apply to its sale. Therefore, to the extent that the selling price received exceeds the individual's tax basis (see Q 598) in the metal, the individual must report a taxable gain. If the individual's tax basis in the metal exceeds the selling price, he or she may report a loss from the transaction. Metal held as an investment is considered a capital asset, and gain or loss on the sale will be considered a capital gain or loss (see Q 604) subject, however, to the special rules for collectibles. See Q 7575 to Q 7576. Whether the capital gain or loss will be long-term or short-term depends on how long the investor owned the metal prior to sale. See Q 605. For the treatment of capital gains and losses, see Q 608.

When bullion-type coins are acquired in the ordinary course of a taxpayer's trade or business, the taxpayer's purpose for holding the coins at the time of their disposition (even if different from the taxpayer's purpose in acquiring them) apparently controls for purposes of determining whether their sale results in capital gain (or loss) or ordinary income (or loss).¹

The sale of a precious metal that is part of a tax straddle is subject to special tax rules (see Q 7587 to Q 7603), as is the sale of a precious metal that was held as part of a conversion transaction. See Q 7604 and Q 7605.

Planning Point: In light of the changes in taxation (as to deductions, ordinary and capital gain tax rates), and the new 3.8 percent investment income tax imposed on certain investments held by taxpayers with income in excess of specified threshold levels that became effective in 2013, sellers should carefully check to determine the tax impact of a proposed sales transaction. Some sales may now push the seller into higher tax brackets and therefore result in a smaller net gain for an investor.

State Income taxation: Some states (and local county and city governments) impose a separate state income tax on precious metal sales transactions. The rates and the tax treatment in the states vary widely by state, and the tax can be substantial depending upon the state in which the sale takes place. As of the date of this publication, those states that apparently *do not* impose an income tax on the sale are Alaska, Florida, New Hampshire, Nevada, Tennessee, Texas, South Dakota, Washington, and Wyoming (primarily because these states have no state income tax). Advisors need to check the impact of the applicable state capital gains taxation

1. See TAM 8413001.

and other income tax regime at the time of proposed sale to assess the impact of such taxation on the sales transaction.

Taxation inside Qualified and Nonqualified Plans

IRA – Certain permissible precious metals may be purchased by the custodian inside a self-directed IRA. They will be exempt from all capital gains taxes if sold inside the IRA by the custodian, since the transaction is generally exempt from income taxation. Precious metals for IRAs may be purchased only by the account custodian, except in instances of transfers of rollovers (see Q 7686 concerning rollovers). All contributions to an IRA must be made in cash. Distributions can be taken in-kind subject to the prohibited transactions rules, and there is a 10 percent penalty for distributions taken prior to age 59½, and the Required Minimum Distribution rules (RMD rules) apply to IRAs beginning at age 70½. Therefore, the desirability of such an investment must be weighed in light of the often confusing permissible precious metals investment and prohibited transaction rules compliance requirements, along with the reporting requirements and certain recent federal government proposals¹ to place limits on these accounts. However, as of the date of publication, there are at least some IRA vendors in the U.S. purporting to provide and expertly handle certain precious metal purchases (with metal storage in the package) utilizing the IRA vehicle.

401(k) - A qualified plan could permit plan participants to invest in precious metals on a pre-tax basis. Moreover, trading by the participant in such an account would be tax-deferred. However, the distribution would normally be payable in cash rather than in-kind, and would thereby produce ordinary income rather than capital gain, unless a distribution in-kind is specifically taken. Distributions can be made in kind from a defined contribution qualified plan. However, the prohibited transaction rules must be carefully observed, and there is a 10 percent penalty for distributions of any kind taken prior to age 59½ and the Required Minimum Distribution rules (RMD rules) apply to accounts beginning at age 70½. Therefore, with potential negative income tax consequences, reporting, technical issues, and potential proposals to place additional limitations on these accounts², use of a qualified deferred compensation plan to acquire precious metals, except in the stock or precious metals ETF form, generally may not be attractive (even in smaller companies for a sole participant with a solo 401(k) or defined benefit plan) as compared to owning metals personally. An investor should not utilize the 401(k) vehicle for other than precious metal stocks and the like until satisfied that any purported provider of such investments inside a 401(k) has both the expertise and experience to judge the appropriateness of use of this vehicle and to handle the special issues raised by actual precious metal purchases by a qualified plan, even (and maybe especially) in the sole shareholder situation.

Nonqualified Deferred Compensation Plan – A nonqualified plan could permit plan participants to invest in precious metals on a pre-tax basis. However, the sponsoring company *must own* the

1. Consideration by the Administration has been given to confiscating all IRA and 401(k) accounts and requiring investment in US T Bonds, thereby federalizing such accounts, and removing self-direction of any type. See for example, an article entitled, *Obama Begins Push to Confiscate IRAs: & 401(k)s*; at www.silverdoctors.com. There has been no development of this sort in any major legislative way as of 2014. However, there have been discussion proposals by Congress and the Administration to reduce pre-tax qualified plan contributions or cap pre-tax contributions into all tax-sheltered accounts, based upon a maximum present value of a total fund of all a taxpayer's tax-advantaged retirement accounts.

2. *Ibid.*

assets held in connection with the plan to achieve IRS income tax deferral and ERISA exemption objectives, and so the sponsoring business entity would actually possess ownership of the metal, even if held in a Rabbi Trust. In a nonqualified deferred compensation plan, the precious metal account can only be a record-keeping, notional account, even if the sponsoring company actually invests in those precious metals. Trading on the account (any account) is taxable (to the degree taxable) to the sponsoring company; not the individual participant, unless a pass-through tax entity (in which case the taxpayer stands in place of the entity based upon his or her pro rata ownership. However, the participant never has, nor can have, any beneficial interest in the underlying assets if it is to achieve the desired income tax deferral. The value of a participant's notional account at the time of distribution should be taxable as ordinary income to the participant, and not as a capital gain, even if distributed in-kind in satisfaction of the employer's debt to the participant based on the plan. Under Section 409A, covered plans may also not accelerate distribution of benefits, except in a few narrow situations.¹

Planning Point: Satisfying a nonqualified deferred compensation account liability owed a participant by the distribution of actual precious metal rather than cash has ordinary income tax consequences, regardless, and also raises potential ERISA and other income tax issues. Therefore, use of a nonqualified deferred compensation plan to acquire precious metals is not an attractive method for purchasing such metals.

7690. What transactions of precious metals are reportable on an investing taxpayer's income tax return for the sale year, including foreign tangible assets?

All sales of precious metals result in a reportable income tax transaction, as a gain or a loss, for federal income tax purposes in the year of a sale. They are similarly reportable for purposes of any applicable state income tax. This reporting on a personal income return is required whether the sales transaction is structured as a like-kind exchange or not, and whether or not it is a reportable transaction on Form 1099B by a dealer. Of course, any failure to report income for federal (and state income tax purposes where applicable) can result in civil and/or criminal tax penalties.

Specified foreign financial assets were first required by law to be reported by U.S. individual taxpayers on Form 8938 (Statement of Specified Foreign Financial) as part of the 2011 Form 1040. 2012 Form 8938 required disclosure of (1) foreign deposit and custodial accounts and (2) other foreign financial assets. On June 7, 2012, the IRS released guidance for completing this requirement. It provided three major pieces of guidance on the reporting of specified foreign financial assets on Form 8938:

- 1) A foreign safe deposit box will not be considered a financial account;
- 2) Taxpayers who meet the minimum filing thresholds must report *all* specified foreign financial assets; and

1. See generally, *The Advisor's Guide to Nonqualified Deferred Compensation, 2014 Ed.*, Richey, Baier & Phelan, SBM NUCO, 2014, Chapter 4, for an in-depth discussion of tax rules governing nonqualified deferred compensation plans, especially those covered by Code Section 409A.

- 3) Taxpayers with foreign tangible assets such as precious metals (e.g., gold) or tangibles such as jewelry, autos, antiques, and other collectibles will generally not be required to report those assets on Form 8938 if the assets are held directly, unless those precious metals or other tangible assets are held through certificates issued by a foreign person, since the ~~the~~ indirect ownership would be considered a specified foreign financial asset.

7691. Are state or local sales taxes imposed on the purchase of precious metals?

State or local sales tax may be imposed on a purchase of precious metals, regardless of whether the form taken is pure bullion, bullion coins or numismatic coins. According to the Industry Council for Tangible Assets, Inc. (ICTA), some 30 states allow sales tax exemptions on precious metals and rare coins, but have established minimum purchases to obtain the exemption.¹ For example, California currently exempts only precious metals purchases in bullion and coin from California sales tax if the purchase is for more than \$1,500 in-state (but does not currently cover the purchase of platinum bars), and also exempts all purchases of any size if the purchase is made from and delivered out-of-state (including platinum).

State sales tax rules on precious metal vary greatly by state. Some states impose sales taxes on almost every type of transaction whether coins, paper, money, or bullion. These sales taxes can be substantial and can be a substantial impediment to investment in metals for investment purposes because they raise the break-even point. Certain other states exempt large purchases (commonly purchases in excess of about \$1,000) or exempt some precious metals (or currency) purchases, and not others, without any explanation for the differences. So, it is necessary and useful to ascertain whether a transaction will be subject to sales tax at the time of any purchase. Where state sales tax exemptions exist, it has been observed that the newest precious metal – palladium – and even platinum are frequently not yet on the list of precious metals exempt from state sales tax.

7692. How is an individual taxed if, instead of selling a precious metal, the individual exchanges it for other property?

Like-Kind Exchanges

If a precious metal is exchanged solely for another precious metal of the *same nature and character* (e.g., gold for gold, or silver for silver), the transaction will generally receive non-recognition treatment, subject to the rules for like-kind exchanges under IRC Section 1031. See Q 614. Thus, the exchange of *bullion-type* gold coins minted by one country (Mexican 50-peso gold coins) for *bullion-type* gold coins minted by another country (Austrian 100-corona gold coins) will qualify as a like-kind exchange.² Similarly, the exchange of gold bullion for Canadian

1. Letter to Rep. David Simpson, Texas State Representative, from Diane Piret, Industry Affairs Director, ICTA, dated February 25, 2013 references the financial impact of lack of exemption and minimum purchase amounts to claim a state's sales tax exemption. In 2013, Texas was considering legislation that would remove the minimum amount requirement from the State's current sales tax exemption for precious metals.

2. Rev. Rul. 76-214, 1976-1 CB 218.

Maple Leaf gold coins (i.e., bullion-type coins that are legal tender in Canada but only to the extent of \$50 face value each) is a like-kind exchange.¹

However, the exchange of a *numismatic* coin (U.S. \$20 gold coins) for a *bullion-type* coin (South American Krugerrand gold coins) is not a like-kind exchange.² Likewise, the exchange of gold bullion for silver bullion does not qualify as a like-kind exchange, since “silver and gold are intrinsically different metals and are used in different ways.” Therefore, an “investment in one of the metals is fundamentally different than investment in the other metal.”³ (This reasoning would appear to apply to an exchange of any two different metals.)

For an explanation of like-kind exchanges and the effect of giving or receiving money or other property in connection with an otherwise like-kind exchange, see Q 614. For the distinction between *bullion-type* coins and other valuable coins, see Q 7693.

In one of the few cases to address like-kind exchanges of precious metals, the Tax Court held that the exchange of gold coins for Swiss Francs was not a like-kind exchange.

The Court said that coins are exchanged in the marketplace for their collector’s numismatic value, based upon rarity. In contrast, Swiss Francs are currently circulating currency of the Swiss government and they represent investments in the Swiss economy.⁴

Other Exchanges

If an individual exchanges a precious metal held as an investment for another precious metal of a different kind or class, or other property that is not a precious metal, the individual will recognize a taxable gain (or loss) to the extent that the sum of the fair market value of the property and money (if any) received in the transaction is greater (or less) than the adjusted tax basis in the precious metal transferred.⁵ In several situations, the IRS has ruled the receipt of coins (silver) is to be treated as the receipt of real property and the coins are to be valued and reported at their fair market value and not as money for purposes of determining taxable gain or loss.⁶ Normally, these will be capital gains and losses. See Q 604. Whether the capital gain or loss will be long-term or short-term depends on how long the metal had been owned. See Q 605. For the treatment of capital gains and losses, see Q 608. For the treatment of collectibles, including “any metal or gem,” see Q 7694.

7693. What is a collectible?

In the broad sense, a “collectible” is any item of property that derives its value directly from its rarity and popularity. An item’s history, condition, composition, artistic and aesthetic qualities, and the number of similar items in existence may each play a part in determining the value of a particular collectible. However, the presence or absence of a ready market where the

1. Rev. Rul. 82-96, 1982-1 CB 113.

2. Rev. Rul. 79-143, 1979-1 CB 264.

3. Rev. Rul. 82-166, 1982-2 CB 190.

4. *California Life Insurance Company v. Commissioner*, 76 TC 107 (1981), aff’d, 680 F.2nd 85 (9th Cir. 1982).

5. IRC Sec. 1001.

6. See Rev. Ruls. 76-249, 1976-2 C.B. 21 and 74-218, 1974-C.B. 202.

item may be traded will have a great deal to do with whether a particular class of property is an investment quality collectible. Common investment quality collectibles include rare coins and currencies, works of art, metal or gems, and stamps. Oriental rugs, antiques, and certain alcoholic beverages are also often held as investments.¹

Coins

There are two types of coins held for investment purposes. *Numismatic* coins (such as the United States \$20 gold piece) derive their value from qualities, such as condition and number minted, which make them rare; metal content is only one of many elements contributing to the value of such numismatic (or rare) coins. On the other hand, *bullion-type* coins (such as the Canadian Maple Leaf, the Mexican Peso, and the Austrian Corona) derive their value solely from their metal content (although a striking premium may also be added into the market value); they represent investments in the world gold or silver markets rather than in the coins themselves.²

In either case, however, the coins should generally be treated as “collectibles” for tax law purposes, in the same way that a gemstone, stamp, artwork or a vintage wine is a collectible. Even if a bullion-type coin is not a “coin” within the meaning of IRC Section 408(m)(2)(D), it ought to fall within the category of “any metal or gem” under IRC Section 408(m)(2)(C). However, the IRC exempts certain coins issued by the United States or an American state from the definition of “collectible,” such as gold coins issued by the U.S. and real silver dollars of the “old-fashioned type.”³

7694. When a collectible is sold, how is the transaction taxed?

Except for tax rates applied to a taxable gain, no special tax rules apply to sales of collectibles held for investment. Therefore, to the extent that the selling price received exceeds the individual’s tax basis (see Q 598) in the collectible, he or she must report a taxable gain; if the individual’s basis in the collectible exceeds the selling price, he may report a loss from the transaction (still assuming, that is, that the collectible was “held for investment”).⁴ *Collectibles gain* (i.e., gain on the sale or exchange of a collectible that is a capital asset held for more than one year – see Q 608) is subject to separate treatment from other capital gains and losses, which generally results in its being subject to a capital gain rate less favorable than the generally applicable rate, but more favorable than the rate for ordinary income.⁵ See Q 604 for the definition of capital asset. See Q 608 for the tax treatment of capital gains and losses.

If the entire purchase price for the collectible is received in the taxable year of sale, the gain (or loss) must be reported on that year’s income tax return; otherwise, the installment sales rules will apply. See Q 586. Beginning in 2013, the net capital gain may also be subject to the Medicare 3.8 percent tax on “net investment income” as defined in IRC Section 1441, depending upon the taxpayer’s modified adjusted income.

1. See IRC Sec. 408(m).

2. See Rev. Rul. 79-143, 1979-1 CB 264.

3. See IRC Sec. 408(m)(3), cross-referencing, inter alia, 26 USC Sec. 5112(a)(7)-(9); 26 USC Sec. 5112(e).

4. IRC Sec. 1001.

5. IRC Sec. 1(h).

7695. How is an individual taxed if, instead of selling the collectible, it is exchanged for other property?

Like-Kind Exchanges

If the collectible is exchanged solely for another collectible (or collectibles) of the same nature or character, the transaction will generally receive nonrecognition treatment, subject to the rules for like-kind exchanges under IRC Section 1031. Thus, the exchange of numismatic coins for other numismatic coins or stamps for stamps should generally qualify as a like-kind exchange. For an explanation of like-kind exchanges and the effect of giving or receiving money or other property in connection with an otherwise like-kind exchange, see Q 614.

The exchange of a “numismatic” coin for a bullion-type coin is not a like-kind exchange.¹ (See Q 7693 for more examples of like kind exchanges under Code Section 1031.) Surprising, there is no clear rulings or case authority for the exchange of a numismatic coin for another numismatic coin as like-kind. However, the 1991 proposed regulations would appear to support the idea of like-kind exchange under the rules applicable to artwork and other collectibles.

Planning Point: Note that what is a “numismatic” coin is not entirely clear so care should be taken that both the relinquished coin and the replacement coin are both considered “numismatic” in order to be like-kind and qualify for the 1031 tax-free exchange tax treatment.

Other Exchanges

If an individual exchanges a collectible held as an investment for (1) another collectible of a different kind or class, or (2) other property that is not a collectible, the individual will recognize a taxable gain (or loss) to the extent that the sum of the fair market value of the property and money (if any) received in the transaction is greater (or less) than the tax basis in the collectible transferred.² Normally, this will be a capital gain or loss. See Q 604. A capital gain or loss will be short-term or long-term depending on how long the transferred collectible had been owned. See Q 605.

Collectibles gain (i.e., gain on the sale or exchange of a collectible that is a capital asset held for more than one year) is subject to separate treatment from other capital gains and losses, which generally results in its being subject to a capital gain rate less favorable than the generally applicable rate, but more favorable than the ordinary income rate.³ For the tax treatment of capital gains and losses, see Q 608.

7696. Is a “rare” coin or currency money or “property”? How will it be valued when it is used in a taxable transaction?

Rare (numismatic) coins or currencies that have been removed from circulation and coins or currencies in circulation that have a numismatic value in excess of face value are “property other than money” for purposes of the federal income tax.⁴

1. See e.g., Rev. Rul. 79-143, 1979-1 CB 264.

2. IRC Sec. 1001.

3. See IRC Sec. 1(h).

4. See *California Fed. Life Ins. Co. v. Comm.*, 76 TC 107 (1981), *aff'd*, 680 F.2d 85 (9th Cir. 1982); *Joslin v. U.S.*, 66 F.2d 1306 (10th Cir. 1981); *Lary v. Comm.*, TC Memo 1987-169, *aff'd*, 842 F.2d 296 (11th Cir. 1988).

As “property other than money,” a rare coin or currency will be valued at its fair market value rather than face value when it is used in a taxable transaction. Thus, where a taxpayer “sold” real property with a tax basis of \$2,000 for silver coins having a face value of \$2,000 and a fair market value of \$6,000, the taxpayer realized a \$4,000 taxable gain in the transaction.¹ Similarly, a dividend paid to a taxpayer in U.S. Double Eagle \$20 gold coins having a total face value of \$5,500 had to be reported as \$70,396 of dividend income.² Also, an individual who receives compensation for services rendered in the form of rare but circulating coins or currencies that have a fair market value in excess of their face value must include the higher fair market value in income.³

7697. What are the gift and estate tax consequences of precious metals investments?

As collectibles, precious metals are capital assets, and treated like any other capital asset for purposes of making gifts (and determining the associated gift tax) as well as estate tax treatment under federal gift and estate tax law at rates up to 40 percent in 2013 and beyond. States may also impose gift, estate, or inheritance tax on such assets. As of the spring of 2014, approximately 20 states, plus the District of Columbia, still impose an estate and/or inheritance tax. Most state exemptions are lower than the current \$5,340,000 Federal estate tax exclusion effective in 2014.⁴ Financial planning needs to take both applicable federal and state law into account.

Planning Point: The American Taxpayer Relief Act increased the top estate and gift tax rate to 40 percent from 35 percent for estates beginning in 2014. However, the lifetime gift and estate tax exclusion for estates increased to \$5,340,000 (as adjusted annually for inflation). Unexpectedly, the President’s 2013-2014 Budget proposed changing the estate tax law again both as to rates and exclusions, as well as the treatment of certain popular gift/estate planning techniques, especially those utilizing grantor trusts, but met with little immediate support in Congress.

In general, for current gift and estate tax purposes the fair market value of the asset at the time of the gift transaction or at death is usually used.

Planning Point: The stabilization of the Federal gift and estate tax regime restores the clear need for the use of life insurance to cover the taxation of collectibles and other hard assets, like real estate, in the estate. These types of assets often have significant value but may be difficult to liquidate in a timely fashion to maximize that value and still allow the estate to pay the required estate taxes in the required time frames.

7698. What are the dealer reporting requirements on purchase or sale with regard to a precious metals investment?

Purchase: There is currently no dealer reporting requirements to the IRS (or any governmental agency) upon the purchase of any precious metal investment in any quantity, unless the purchase is made with cash totaling more than \$10,000 in any 12 month period. In such cases

1. Rev. Rul. 76-249, 1976-2 CB 21.

2. *Cordner v. U.S.*, 671 F.2d 367 (9th Cir. 1981).

3. *Joslin v. U.S.*, 66 F.2d 1306 (10th Cir. 1981).

4. See generally, Another State Gift Tax Kicks the Bucket, March 20, 2012, www.Forbes.com

where the cash amount does exceed \$10,000 in any 12 month period, the dealer is required to complete and file IRS Form 8300. The IRS is wary and looking for techniques seeking to break apart a single cash purchase to avoid such reporting.¹

Sale: The IRS is more interested in information reporting when precious metals are sold than purchased. A sale of a precious metal may require a report by the dealer on IRS Form 1099B. The rules governing dealer reporting for Form 1099B purposes are currently hard to locate, since much of the information is contained in trading contract rules created and maintained by the Commodities Trading Futures Commission (CFTC) that are less than clear and may even seem confusing and arbitrary. In general, a dealer must fill out 1099B for the IRS if an investor sells silver, gold, platinum or palladium in a contract form that the CFTC has approved for trading and it otherwise satisfies the minimum requirements for such a contract. All transactions occurring within a 24 hour window are considered a single sale for these purposes of these reporting rules. The current Instructions to Form 1099B express this as follows:

“A sale of a precious metal (gold, silver, platinum, or palladium) in any form for which the Commodities Futures Trading Commission (CFTC) has not approved trading by regulated futures contract (RFC) is *not* reportable. Further, even if the sale of a precious metal in a form for which the CFTC has approved trading by RFC, the sale is *not* reportable if the quantity, by weight or by number of items, is less than the minimum required quantity to satisfy a CFTC-approved RFC.

For example a broker selling a single gold coin does not need to file a Form 1099B even if the coin is of such a form and quantity that it could be delivered to satisfy a CFTC-approved RFC if all the CFTC-approved contracts for gold coins currently call for delivery of at least 25 coins.

Sales of precious metals for a single customer during a 24 hour period *must* be aggregated and treated as a single sale to determine if this exception applies. This exception does not apply if the broker knows or has reason to know that a customer, either alone or with a related person, is engaging in sales to avoid information reporting.”(Emphasis added)²

These instructions do not cover what coins are reportable, but as of the fall of 2012 it would appear that the following coins are covered: South African Krugerrands, Canadian Maple Leaf gold coins, Mexican gold 50-peso coins, and U.S. 90 percent pre-1965 silver dollars, half dollars and dimes, but not quarter dollars. Modern U.S. bullion coins are not on the list. These coins are reportable if they are in the minimum quantities under a CFTC-approved RFC. CFTC-approved “bulk gold contracts” require a minimum of 1 kilogram at a fineness of .995 or better. Under this rule, gold and silver coins would be apparently be reportable to the IRS if sold in the following quantities:

- U.S. 90 percent silver dollars – 1,000
- U.S. silver half dollars – 2,000

1. See Instructions for Form 8300 (July, 2012), page 3 at www.irs.gov.

2. See Instructions for Form 1099-B (2014), page 4 at www.irs.gov.

- U.S. silver dimes (any type) – 10,000
- Canadian Maple Leaf gold 1oz – 25
- Mexican 50-Peso gold – 25
- South African Krugerrand gold – 25

This rule means that gold bars weighing 1 kilo or smaller bars adding up to 1 kilogram or more are also reportable.¹

1. For an excellent brief article by an attorney on this confusing area, *see generally*, Armen Vartian, *What coins are “reportable”*, September 7, 2012 at www.coinworld.com.