

# Tax office in stunning U-turn on gold tax fraud



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The date was Friday December 9, 2016. A significant but smaller Australian gold refiner (**Focus Metals**) declared it had had enough and gave all its staff six weeks notice in preparation for closing the plant and all operations on January 20. The Australian Taxation Office had won.

Every other gold refiner knew that refinery closure would soon be followed by a string of others as the tax office moved to close down the Australian industry and put one thousand people out of work.

Only the government-owned Perth mint would be left.

**But then two days before Christmas an amazing event took place — the ATO at least partially changed course. Not in their wildest dreams did any gold refiner expect the Australian Tax Commissioner would overturn 13 years of mistaken policy to give the industry a chance to survive.**

The issue was complex. ATO believes the refiners played a role in Australia's biggest tax fraud. In my view that allegation must be decided by the courts. Unfortunately before the courts could decide the refiners' guilt or innocence, elements in the ATO were using all the weapons at their disposal to force total closure of the industry.

Refiners must pay GST when they buy gold that is not investment grade but the ATO was freezing GST refunds to refiners by asking hundreds of questions, so draining their working capital. The ATO also lodged huge backdated bills that refiners had no hope of paying. Banks were suddenly becoming jittery. The ATO plan appeared to be to starve the refiners of working capital and when those retrenchment notices were sent out the industry's fate seemed sealed.

But two [commentaries I wrote](#) suddenly made those at the [top of the ATO](#) fully aware of what was going on.

Clearly those commentaries had a huge impact but, even so, on Friday, December 23, the refiners were still stunned because Australian Tax Commissioner Chris Jordan had turned full circle. There was no consultation. The ATO backdown to enable the industry to survive came without warning.

To understand how the backdown worked and how Australia's biggest tax fraud was engineered you have to go back to Peter Costello's GST introduction in 2000 when Australia copied the UK system of imposing GST on non-investment grade gold bought by refiners, but no GST on investment grade gold in bars.

Three years later in 2003 the UK was taken to the cleaners because crooks sold non-investment grade gold to refiners for the price of gold plus VAT (our GST). The crooks then pocketed the VAT, rather than giving it to the government, and disappeared. London quickly changed the rules in 2003 but successive Australian treasurers and tax commissioners did nothing. Accordingly we were sitting ducks for a repeat of the British tax frauds so it was no surprise that eventually we were taken to the cleaners.

The long overdue Australian pre-Christmas 2016 ATO measures were similar to the 2003 London measures.

Gold refiners were told that on a voluntary basis they would now be allowed to buy gold with high purity but which was not stamped as investment grade without paying GST — that way the crooks are to be thwarted.

The refiners were shocked but delighted. They did not believe it possible the ATO would change tack because as late as three years ago when the refiners could see that the rate of fraud appeared to be rising they believed the ATO was set to suffer big losses. And so the refiners put to the tax office a proposal that mirrored what the ATO agreed to do on December 23, 2016.

But the tax office rejected the plan in writing. That crazy rejection cost Australian taxpayers up to \$600 million and almost caused the Australian gold refining industry to be shut down. As the refiners saw the fraud taking place they began reporting suspect transactions to Australia's financial intelligence agency — AUSTRAC. The ATO believes that the refiners have been paying GST on gold that did not need refining and so were part of the fraud. The Jordan move allows refiners to buy gold that is not investment grade and bring to investment grade without paying GST on the purchase.

There is still a problem because the ATO has limited knowledge of the refining industry and their latest moves will not work without further amendment and legislative change. Indeed without further changes the Lebanese and other gangs who are currently conducting the fraud will be able to get around the pre-Christmas measures by using Singapore refineries. But it is a good start and the refinery that was set to close on January 20 has withdrawn the retrenchment notices and will stay open.

But the ATO is still playing hard ball by refusing to pay big GST refunds that the refiners believe they are entitled to.

What an agonising decision it must have been for tax commissioner Chris Jordan to adopt the refining industry's three-year old solution after the ATO had rejected that solution three years ago.

If the taxation commissioner proceeds with the court cases to try and put blame on the refineries Jordan will have to explain to the judge how the refineries could be guilty given they warned the commissioner in writing that fraud was taking place; gave the ATO a solution which they rejected and reported the suspect transactions to AUSTRAC.

He will have to admit that as a result of not taking the industry's advice, the ATO must take at least a part of the blame for the \$600 million fraud.

Meanwhile on December 27 — four days after the big switch — the Australian Tax Commissioner, commenting in the Australian newspaper, was good enough to confirm my commentaries disclosing that there had been an enormous fraud. But he corrected me — whereas I said the fraud involved \$500 million he [increased the figure to \\$610 million](#).

But there is another part of the story. The tax commissioner would not be in this sort of mess if he made the Inspector-General of Taxation the [binding appeal avenue](#) for tax matters.

The existing appeal system, although it recruits outsiders too often, becomes just another arm of the taxation office. And so in gold refining a legally qualified tax executive gave an opinion which at best was controversial and at worst wrong. He then allowed himself to chair the internal tax appeal body that endorsed his opinion.

Had the inspector-general body conducted that review with binding powers the review would have called in gold experts from around the world to test the opinion and the validity of the ATO actions.

Prime Minister Malcolm Turnbull and Treasurer Scott Morrison can't allow this chaos to continue.

We have seen the dramatic admission that fictitious legal reports were used to try and bankrupt Roy Douglass, the hero of Port Hedland productivity improvements. [Jordan withdrew](#) when the court case opened.

It makes a mockery of the government's attempts to promote innovation.

As I have written previously the answer is simple-----make the inspector-general of tax the binding appeal body. It not only ends the chaos in tax but it is the right thing to do.

Given the experiences of Douglass and gold plus more events in the pipeline the tax commissioner should make it easy for Morrison and Turnbull by advocating the change.

**Link:** <http://www.theaustralian.com.au/business/opinion/robert-gottliebsen/tax-office-in-stunning-uturn-on-gold-tax-fraud/news-story/8044d198378d2adf37dff53b0e581879>



Peter Mervyn  
1 HOUR AGO

When is the ATO ever going to learn that its job is not to interfere, in any way, with the operations of any business, but to first prove its case in a court of law whereupon, if the court rules in its favour, may then pursue the business?

FLAGSHARE



Paul  
1 HOUR AGO

That's because the ATO has always had a cultural problem in admitting fault with many of the same old faces occupying the same old deck chairs.

And it makes no difference which government is in power because where there is labor and liberal they will never agree on anything constructive.

Looks like these carousel arrangements have been around since Moses parted the sea so the habibi lawyers did not have far to look for a new way to make money.

FLAGSHARE

Paul  
2 HOURS AGO

Time to sack all those involved.

FLAGSHARE

Keith  
3 HOURS AGO

The Australian refining industry is a scam itself, ask anyone who has had gold refined

FLAGSHARE



Ian  
4 HOURS AGO

Bloody arrogant know it all public servants. Jordan and his colleagues should be sacked and not receive their pension entitlements.

FLAGSHARE

Phil  
5 HOURS AGO

Hey one person can change the world after all! Well done.

FLAGSHARE

Warwick  
5 HOURS AGO

Onya Robert. hope you get a hearing with ScoMo to promote the IGoT's role.

FLAGSHARE

George  
5 HOURS AGO

Good man...

FLAGSHARE

Tim  
7 HOURS AGO

Robert, well done and please keep fighting for common sense.

FLAGSHARE

Happyj  
8 HOURS AGO

The quandary is whether gold is money or a commodity. IMO it is money. and about at this point the river runs very deep and murky. Yet there is precedent because Gov. Macquarie released silver coins in 1809. He saved the colony from bankruptcy. But not all were happy, cause the colony ran on IOU's. So Macquarie was hated in high places.

FLAGSHARE

Tony  
8 HOURS AGO

It's common knoweldge that the current Commissioner of Taxation and Inspector General of Taxation (IGoT) don't really see eye to eye. A penny for Mr Jordan's thoughts on the suggestion that his team have to work daily with the IGoT and that his people's work would be subject to binding IGoT review!

FLAGSHARE



Roger  
8 HOURS AGO

@Tony I think Jordan is part of the problem. Having seen him perform for Parliamentary committees, he clearly enjoys being in the public limelight. I preferred it when Commissioners for Taxation were more bureaucrats and less show pony. Have a look at the picture accompanying this article.

FLAGSHARE

Daniel  
9 HOURS AGO

What an absolute debacle! The ATO are a law unto themselves, vindictive and incompetent. Time to drain that swamp.

FLAGSHARE

Ross  
9 HOURS AGO

Our whole tax system is a minefield of double speak and totally over complicated as to compliance with draconian penalties for easily made mistakes because of the complexities. We pay some 259 taxes Federally and State per year and come third in the world for the number of pages of tax legislation at around 8000 pages and that is after 4100 pages were deleted in 2006 to improve readability. Cost of taxpayer compliance is some 2.1% of GDP which equates to 12% of tax revenue collected. With this ever growing albatross around our necks Australia has lead boots on in trying to move forward.

FLAGSHARE

Laurie  
10 HOURS AGO

It would seem that the ATO is part of the budget deficit problem and needs an overhaul.

FLAGSHARE



PR  
10 HOURS AGO

The ATO kills jobs.

FLAGSHARE

Logical  
10 HOURS AGO

"Every other gold refiner knew that refinery closure would soon be followed by a string of others as the tax office moved to close down the Australian industry and put one thousand people out of work"

But that is what you have been pushing for.

FLAGSHARE



John  
10 HOURS AGO

The ATO blinked.