CONSULTATION> GOVERNMENT DISCUSSION DOCUMENT

GST and unincorporated joint ventures

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A government discussion document

Te Kāwanatanga o Aotearoa
New Zealand Government

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GST and unincorporated joint ventures – discussion document

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CHAPTER 1

Introduction

1.1 This discussion document considers possible reforms to the goods and services tax (GST) policy settings for joint ventures.

1.2 A joint venture is a contractual association between two or more persons, under which the parties come together for a common commercial goal. The arrangement is entered into to obtain benefits for the parties involved, typically in the form of a share of the output or revenue from the arrangement. Sharing of costs and co-ownership of property are both common features of a joint venture.

1.3 For GST purposes, a joint venture is an unincorporated body, which is treated as a separate person similar to a company.

1.4 A common practice in some industries that use joint ventures is for the members to individually account for GST on supplies made or received in the course of the venture in their own GST returns. However, draft guidance published by Inland Revenue concludes that these practices are not correct under the current rules for unincorporated bodies. This gives rise to a problem for certain types of joint ventures. Some joint ventures are unable to register for GST, so this treatment means that input tax deductions cannot be claimed.

1.5 Even when a joint venture may be able to register for GST, the members (who are often already registered for GST for their own separate activities) may prefer not to also register the joint venture for compliance cost reasons.

1.6 This discussion document seeks public views on a set of proposals to address these problems. All legislative references are to the Goods and Services Tax Act 1985 (GST Act) unless otherwise stated.

Background and problem definition

1.7 New Zealand's GST rules treat an unincorporated body, such as a partnership, joint venture, trust, club, or any other type of unincorporated association, as a separate person for GST purposes. Unincorporated bodies are required to register for GST if they supply or expect to supply goods or services worth more than $60,000 in a 12-month period.

1.8 A draft *Question We've Been Asked* (QWBA), released by Inland Revenue in March 2023 for public consultation, concludes that when an unincorporated body is not registered for GST (which may be because it is not carrying on a taxable activity, or because its supplies are under the registration threshold), the current law does not allow members to register individually for the body's activities and claim input tax deductions for goods and services acquired by the body.[1]

1.9 This is the correct policy outcome for most unincorporated bodies. However, due to the unique nature of a joint venture this conclusion can be problematic.

1.10 When a joint venture is not carrying on a taxable activity, this conclusion means that GST on goods and services acquired by the joint venture cannot be claimed

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[1] Inland Revenue, *GST – Registered members of unregistered unincorporated bodies* (March 2023), available at: https://www.taxtechnical.ird.govt.nz/consultations/2023/pub00356.

back as an input tax deduction by any person under the current law. This applies even when the goods or services are directly used for making taxable supplies by GST-registered members of the joint venture in their separate taxable activities. For instance, this issue may arise when the participants in the venture share in the output or product of the venture and each sell their share of the output or product separately (which is a common practice in both the resources and construction industries, and potentially in other industries).

1.11 Even when a joint venture is carrying on a taxable activity, requiring the joint venture to register instead of the members may in some instances increase overall compliance costs. This may be the case if the joint venture members are individually registered for GST for taxable activities that they each carry on separately, especially if some of them are also participants in many joint ventures.

Summary of proposals

1.12 The table below sets out the main policy proposals included in this document.

Definition of "joint venture"	
The proposals would apply to any unincorporated commercial undertaking that falls within the ordinary meaning of "joint venture". This would not include a partnership.	See Chapter 3, page 13
Default "flow-through" treatment	
By default, a joint venture would not be a "person" under the GST Act. The members of the joint venture would individually account for GST on taxable supplies made and claim input tax deductions for supplies received, if they are registered for GST.	See Chapter 4, pages 15–16
Optional registration of joint venture	
Members of a joint venture who are jointly carrying on a taxable activity may elect for "single entity" treatment by registering the joint venture for GST as a separate person.	See Chapter 4, page 16
Once registered, the joint venture would be a person for all purposes of the GST Act, starting on the date of its registration. The current rules in the GST Act for unincorporated bodies would apply.	See Chapter 4, page 16
Special rule if joint venture would be above registration threshold	
If a joint venture would exceed the $60,000 registration threshold if it was treated as a person, a special rule would provide that either: • all the members of the joint venture must individually register, or • the members must register the joint venture for GST as a separate person.	See Chapter 4, pages 17–18
Interests in property of an unregistered joint venture	
An amendment to the "participatory security" definition would ensure that it does not apply to a joint venture that is subject to flow-through treatment.	See Chapter 5, pages 22–23
Business-to-business supplies of interests in the property of a joint venture that is subject to flow-through treatment would be zero-rated under a new provision.	See Chapter 5, pages 24–27

Transitional rule for joint ventures already registered for GST before introduction of proposed new rules	
A transitional rule would allow the members of a joint venture that was registered for GST before the enactment date for the new rules to elect for flow-through treatment by applying to cancel the joint venture's registration.	See Chapter 6, pages 28–29
Consequences of deregistration of joint venture	
A rule would provide that there is a supply of the assets of an unincorporated body (including a GST-registered joint venture) by the body to its members at market value immediately before its registration is cancelled. This supply would be zero-rated if it is a business-to-business supply.	See Chapter 7, pages 30–31

Timing for proposals

1.13 If, following public consultation these proposals are progressed, they would require legislative changes and could be included in a Government taxation Bill to be introduced in the second half of 2025.

1.14 Submissions are invited on the appropriate application date for the proposed changes.

Document outline

1.15 Chapter 2 sets out the context and background in more detail. It briefly reviews the current GST legislation in relation to unincorporated bodies, as well as approaches taken in overseas jurisdictions in relation to VAT/GST and joint ventures.

1.16 Chapter 3 discusses the types of structures the proposals outlined in this document would apply to, and what would be out of scope.

1.17 Chapter 4 outlines the basic mechanics of the proposals, in terms of:

- how the proposed flow-through treatment would apply, and
- how the proposed rules allowing the members of a joint venture to elect for unincorporated body or "single entity" treatment would function.

1.18 Chapter 5 sets out the proposed GST treatment of supplies of interests in the underlying property jointly owned by the members of a joint venture that is subject to flow-through treatment.

1.19 Chapter 6 seeks feedback on application dates and on the proposed transitional rule.

1.20 Chapter 7 considers other related policy matters.

1.21 The Appendix includes draft legislative wording for most of the policy proposals set out in this document.

Making a submission

1.22 The Government invites submissions on the proposals in this document, including the specific questions asked and any other issues raised, as well as on the draft legislative wording included in the Appendix.

1.23 Include in your submission a brief summary of the major points and recommendations you have made. Please indicate if officials from Inland Revenue can contact you to discuss the points raised, if required.

1.24 The closing date for submissions is **16 May 2025**.

1.25 Submissions can be made:

- by email to policy.webmaster@ird.govt.nz with "GST and unincorporated joint ventures" in the subject line, or
- by post to:

  GST and unincorporated joint ventures
  C/- Deputy Commissioner, Policy
  Inland Revenue Department
  PO Box 2198
  Wellington 6140

1.26 Submissions may be the subject of a request under the Official Information Act 1982. Please clearly indicate in your submission if any information should be withheld on the grounds of privacy, or for any other reason (contact information such as an address, email, and phone number for submissions from individuals will be withheld). Any information withheld will be determined using the Official Information Act 1982.

CHAPTER 2

Context and background

Overview

This chapter sets out the relevant context and background for the proposals. It describes the nature of a joint venture, summarises the current GST legislation in relation to unincorporated bodies, and considers the policy rationale behind the unincorporated body rules. It also considers the specific issues for joint ventures that arise under Inland Revenue's interpretation of the current law.

Approaches taken in overseas jurisdictions in relation to VAT/GST and joint ventures are also briefly considered.

Meaning of "joint venture"

2.1 The term "joint venture" usually refers to a contractual association under which parties come together for a particular common commercial goal. According to case law, an essential feature is there must be a joint undertaking where plans are worked through for the benefit of and with input from each party.[2] A contract between the parties does not need to be in writing for a joint venture to exist.

2.2 A joint venture can take many different forms. Some joint ventures involve jointly owned assets, which are either held by a company as nominee or are directly co-owned by the members of the venture as tenants in common. In other joint ventures, each party may contribute different assets while retaining full ownership of those assets. For example, one party might provide mining licences while another might provide equipment for carrying out a mining operation. In this situation, the assets are held by the parties individually with no co-ownership.

2.3 While co-ownership is a common feature of a joint venture, simply co-owning property while undertaking individual ventures, or passive co-ownership of assets as an investment, will not give rise to a joint venture. These scenarios lack the necessary joint undertaking and active decision-making features of a joint venture.

2.4 Joint ventures are also distinguishable from partnerships in that they tend to have a finite and confined purpose, such as a particular project or development. The parties to a joint venture often carry on a business of their own separately from the other participants, in some cases as competitors. In contrast, partnerships are usually formed to conduct a general and ongoing business. In addition, partnerships must be carried on "in common", which requires that the parties are acting jointly, rather than independently, and that each person's actions bind the others.

[2] *Commerce Commission v Fletcher Challenge Ltd* [1989] 2 NZLR 554 (HC).

Current law

2.5 The definition of "person" in section 2(1) includes an "unincorporated body of persons". The term "unincorporated body of persons" is not defined in the GST Act, but "unincorporated body" is defined in section 2(1) as follows:

> **unincorporated body** means an unincorporated body of persons, including a partnership, a joint venture, and the trustees of a trust

2.6 A person becomes liable to be registered for GST under section 51 when the total value of supplies made in New Zealand in the course of carrying on all taxable activities exceeds $60,000. A person may also become registered when they satisfy the Commissioner of Inland Revenue (the Commissioner) that they are carrying on, or intend to carry on, any taxable activity.

2.7 Section 57 clarifies that when an unincorporated body is carrying on a taxable activity and is a registered person:

- the members cannot be registered or liable to register in relation to carrying on that taxable activity
- any supply of goods and services made in the course of carrying on that taxable activity is treated as supplied by the body and not the members
- any acquisition of goods and services by any member acting in their capacity as a member of the body and in the course of carrying on that taxable activity, is treated as acquired by the body and not the member
- the registration is in the name of the body, and
- any change in members has no effect for GST purposes.

2.8 Section 57 also sets out that the members of the unincorporated body are jointly and severally liable for the GST obligations of the body.[3]

Policy considerations

2.9 A policy justification for requiring an unincorporated body to register for GST, instead of its members, is to minimise overall compliance and administration costs. For instance, in the case of a partnership, often the partners will not have any other taxable activity that requires them to separately register for GST. This means that in many cases, only one GST registration (as opposed to several) is required.

2.10 This rationale seems much less relevant for joint ventures than it is for other unincorporated bodies such as partnerships, given the unique characteristics of joint ventures (as well as the fact that the members of a joint venture will often all be individually registered for GST in relation to their separate activities).

2.11 In addition, the requirement that the unincorporated body must be registered, rather than the members, reflects that, when a single supply is made jointly by an unincorporated body of persons, this should be treated as a single supply with a single GST treatment, rather than being treated as multiple supplies with potentially differing GST treatments. This is consistent with the central focus of the GST Act, which is to tax supplies.

2.12 This rationale of taxing a supply by a group of persons as a single supply by a single supplier is not, however, relevant to an "output-sharing" joint venture

[3] Refer section 57(3) and (5).

(that is, when the participants in the venture share in the output of the venture), particularly when the members each sell their share of the output separately rather than jointly as a group.

Issues

2.13 Multiple industries use joint ventures, often to undertake large projects. The resources and construction industries are two examples of industries that make extensive use of joint ventures. However, those joint ventures often cannot register because the members sell the outputs separately.

2.14 For example, resources industry participants often come together using an unincorporated joint venture structure to explore for resources and extract them. However, anti-cartel provisions in the Commerce Act 1986 require that the resources are not sold jointly by the participants. This means that many mining or oil and gas joint ventures are not carrying on a taxable activity, and cannot register for GST, because the joint ventures do not make any supplies of goods or services. Therefore, under Inland Revenue's interpretation of the current law, input tax deductions with a significant value, relating directly to the sale of the members' shares of the extracted resources, would be denied. However, the Government understands these sectors have been applying a different interpretation of the law.

2.15 As noted in Chapter 1, even when a joint venture is carrying on a taxable activity, requiring the joint venture to register instead of the members may, in some instances, increase overall compliance costs.

2.16 To spread risk, horse racing industry professionals (such as bloodstock breeders) often use a different ownership structure for each individual horse, creating a separate joint venture. In many cases, the members of these joint ventures each carry on a separate breeding business and are individually GST registered.

2.17 Based on industry estimates, out of roughly 14,400 horses owned by breeders as breeding stock, approximately 6,500 are co-owned under this joint venture model. Requiring each of these joint ventures to register separately would therefore affect an estimated 45% of the total breeding stock in New Zealand, potentially resulting in approximately 6,500 additional GST registrations. The Government understands that breeders in these joint ventures would much prefer to reduce compliance costs by individually accounting for supplies and purchases in their own GST returns, rather than separately registering each joint venture.

Overseas approaches

2.18 VAT/GST legislation in many overseas jurisdictions does not treat a joint venture (as a distinct concept from a partnership) as a "person" that may be eligible for registration. This is the approach taken in jurisdictions such as the United Kingdom, Ireland and Canada. Under this approach, the parties to a joint venture should account for their "share" of supplies made and received in their own returns.

2.19 It appears to be a standard feature of VAT/GST regimes internationally that partnerships and other types of unincorporated bodies are "persons" and are required to register if they make supplies exceeding the threshold for registration. Therefore, in many cases there is a boundary between partnerships and joint ventures for VAT/GST purposes.

2.20 Australia takes a different approach to most other jurisdictions. The boundary between a general partnership (that is, where the parties are carrying on a business in common with a view of profit) and a joint venture does not determine whether an association of persons engaging in a common commercial undertaking is an "entity" for Australian GST purposes. Instead, the relevant boundary in Australia is between:

- an association of persons engaging in a common undertaking for profit, whether or not the participants are carrying on business "in common", and
- an association of persons engaging in a common undertaking to generate a product or output to be shared among the participants.

2.21 Since joint ventures are often unable to register for VAT/GST in other jurisdictions, some countries (such as Australia and Canada) have opted to allow a form of optional "single entity" treatment for certain types of joint ventures. However, these rules are more like GST grouping rules than New Zealand's unincorporated body rules.

CHAPTER 3

Scope of proposal

Overview

This chapter proposes that any unincorporated commercial undertaking that falls within the ordinary meaning of "joint venture" would be in scope of the changes proposed in this document. Therefore, for GST purposes, a definition of joint venture would simply provide that a joint venture does not include a partnership.

Other types of unincorporated bodies are not proposed be in scope of the proposals.

Defining which joint ventures would be in scope

3.1 The Government is not proposing to define "joint venture" in the legislation, other than to clarify that, for GST purposes, a joint venture does not include a partnership. Therefore, the scope of arrangements that would be subject to the proposals is limited to those that fall within the ordinary meaning of "joint venture".

3.2 An alternative approach to the one proposed here might be to limit the scope of the "flow-through" proposal outlined in later chapters to joint ventures where the participants share the output or product of the venture rather than the profits (output-sharing joint ventures), and to retain the existing rules for other types of joint ventures (referred to in this chapter as "profit-sharing" joint ventures). This approach has some similarities with Australia's GST rules in relation to joint ventures. However, this option is not being considered by the Government for two reasons:

- Even in the case of joint ventures that have profit sharing as a feature (meaning that supplies are made jointly by the participants, rather than each participant taking a share of the output or product of the venture), there may still be compliance cost issues with requiring the joint venture to register as a separate person (as outlined in Chapter 1). For this reason, the Government's view is that the proposals in this document should also be available to those joint ventures that could register for GST if they are treated as "persons" for GST purposes (that is, because they would be carrying on a taxable activity).[4]
- Adopting this option would place more stress on the boundary between mere co-ownership of property and a profit-sharing joint venture. It would also introduce a new boundary between a profit-sharing joint venture and an output-sharing joint venture. The Government's view is that the boundary between a joint venture and a partnership may be easier to manage because the general partnership concept is well defined and understood.

[4] Namely, profit-sharing joint ventures, and potentially some joint ventures where the participants share gross revenues that may be classified as "output-sharing" joint ventures under a definition based on sharing output or product rather than profits.

Other unincorporated bodies

3.3 Other types of unincorporated bodies are not proposed to be in scope of the proposals. The Government considers that the current law is appropriate for these unincorporated bodies and provides the correct policy outcomes.

3.4 For other types of unincorporated bodies, it is much clearer that the members are engaged in a managed joint undertaking, as opposed to the type of limited cost-sharing exercise that a joint venture is typically engaged in. Therefore, for non-joint venture unincorporated bodies, it is appropriate for registration to be considered, and supplies to be taxed, at the unincorporated body level rather than at the member level. It is also more likely that a single registration will result in compliance cost savings in these circumstances.

3.5 Some might question whether partnerships, in particular, should be in scope of the proposals in Chapters 4 and 5, given the similarities between these unincorporated bodies and some joint ventures. The Government's view is that treating a partnership as an unincorporated body is appropriate because the partners carry on a business in common and make joint supplies, and because internal accounting processes are likely to be undertaken at the partnership level (rather than by the partners separately). Members of a joint venture, on the other hand, do not carry on a business in common. Therefore, separate registration makes more sense for what are most likely to be separate supplies.

Questions for submitters

Q1. Do you agree with the proposal to rely on the ordinary meaning of "joint venture" for the purposes of defining what arrangements are in scope of the proposed changes? Why/why not?

Q2. If not, what alternative definition would you suggest?

CHAPTER 4

Mechanics of proposal

Overview

This chapter outlines the proposals for flow-through treatment for joint ventures, including that a joint venture would not be a "person" for GST purposes unless the members choose that it is a person. Instead, the default treatment would be a "flow-through" approach.

The proposed default treatment would allow the members of a joint venture to individually account for GST themselves on any supplies made or received in the course of the joint venture activity. In other words, provided that a member is carrying on a taxable activity for which they are registered for GST, the member would account for output tax and input tax deductions on their "share" of supplies made and received in their own GST returns. This assumes that (as per ordinary GST principles) the supplies are made in the course or furtherance of the member's taxable activity, and there is a nexus between the goods and services acquired and a taxable supply the member makes.

If the members of a joint venture are jointly carrying on a taxable activity, they may choose that the joint venture is treated as a separate person for GST purposes, as is the case for other unincorporated bodies (referred to in this document as an election for unincorporated body or "single entity" treatment). If this choice is made, the joint venture would be treated as carrying on the activity carried on jointly by its members as a separate person, and to make and receive the supplies made and received in the course of that activity (instead of the members making and receiving the supplies).

The Appendix to this document includes draft legislative wording for the proposals in this chapter.

Default flow-through treatment

4.1 It is proposed that a joint venture would, by default, be excluded from being a "person" under the GST Act. This means flow-through treatment would apply to joint ventures for GST purposes as a starting point under the proposals. When flow-through treatment applies to a joint venture, the members would separately account for GST on taxable supplies made and claim input tax deductions for supplies received, if they are individually registered for GST.

4.2 Under this approach, members of a joint venture would generally make and receive supplies according to the proportions the members have agreed to for sharing gross revenues (or outputs) and costs.

4.3 Typically, when there is co-ownership of assets (but not necessarily always) the participants agree that each person must contribute to the costs of the venture in proportion to their interest in the joint venture property, and that each person is entitled to the gross revenues or output of the venture in proportion to their interest in the property. Example 1 illustrates how the flow-through proposal would apply in such situations.

Example 1: Proposed flow-through treatment

Two GST-registered companies, Works Co and Roading Co, are in a joint venture for an infrastructure project.

Works Co and Roading Co co-own some of the assets used for the joint venture on a 50:50 basis as tenants in common. They also agree that they will each contribute 50% to the costs of the project and are each entitled to 50% of the gross proceeds.

Under the proposed flow-through approach, Works Co and Roading Co would be treated as making and receiving supplies in proportion to their interests in the joint venture property (in this case, 50% each).

Therefore, when invoices are issued to the relevant government agency for each stage of the project, Works Co and Roading Co (as the vendors of the infrastructure under development) will each account for 50% of the output tax on the supplies of infrastructure in their own GST returns. In compliance with the taxable supply information requirements, Works Co and Roading Co issue shared invoices as members of a supplier group to the government agency (because it is more convenient for them than issuing separate invoices).

Works Co and Roading Co will also each separately claim input tax deductions on 50% of the goods and services they jointly acquire for the purposes of the project.

Optional registration of joint venture if it is carrying on taxable activity

4.4 It is also proposed that members of a joint venture who are jointly carrying on a taxable activity may elect for single entity treatment if they prefer. Draft legislative wording in the Appendix provides that members of a joint venture may elect to become a “single entity joint venture” if all members:

- are jointly carrying on a taxable activity, and
- agree to register as a single entity joint venture by applying to the Commissioner for registration in the prescribed form.

4.5 Once registered, the joint venture would be a person for all purposes of the GST Act, starting on the date of its registration (including a retrospective or “backdated” registration date when appropriate).

4.6 The rules currently applying to unincorporated bodies (in particular, those in section 57) would also apply when relevant. For instance, this would mean a single entity joint venture would be treated as carrying on the activity carried on jointly by its members, and as making and receiving supplies in the course of that activity instead of the individual members making and receiving the supplies. The members would also be jointly and severally liable for the GST obligations of the joint venture (consistent with the current rules in section 57(3) and (5)).

4.7 It is proposed that the election for single entity treatment would be irrevocable except when the transitional rule discussed in Chapter 6 is applied. This means that if a single entity joint venture requests to have its registration cancelled because its taxable supplies have fallen below the registration threshold, the joint venture would remain an unincorporated body under the GST Act. If the joint venture’s supplies go over the registration threshold once again, the joint venture will be the person that is liable to register (rather than flow-through treatment applying and the members being individually able to register).

4.8 Example 2 illustrates how the election for single entity treatment would apply.

Example 2: Single entity treatment

Consider Works Co and Roading Co from Example 1. Assume this time that, instead of applying the default flow-through treatment, Works Co and Roading Co decide they wish to register the joint venture for GST. They apply to the Commissioner to register the joint venture under the name "Infrastructure JV".

Once elected as a single entity joint venture, Infrastructure JV meets the usual tests for registration because:

- its activity meets the requirements of a taxable activity (the activity is sufficiently continuous or regular and involves the making of supplies for consideration), and
- Infrastructure JV will make supplies in New Zealand in the course or furtherance of that activity.

Infrastructure JV registers for GST with an effective date for its registration of 1 July 2026. As of that date, Infrastructure JV is a "person" for all purposes of the GST Act. This means that, as of 1 July 2026, Infrastructure JV (instead of Works Co and Roading Co) will be treated as the person carrying on the joint venture activity, including:

- making any supply of goods and services in the course of that activity
- acquiring any goods and services that were in fact acquired by Works Co and/or Roading Co acting in their capacity as a member of the joint venture and in the course of carrying on the joint venture activity.

Infrastructure JV will account for all such supplies and purchases made on or after 1 July 2026 in its own GST returns. Works Co and Roading Co should not account for these supplies and purchases in their own GST returns, because those supplies are treated as being made and received by Infrastructure JV as a separate person.

Works Co and Roading Co will also be jointly and severally liable for Infrastructure JV's GST obligations, including doing anything that is required to be done by or on behalf of Infrastructure JV under the GST Act.

If either Works Co or Roading Co divests their interest in Infrastructure JV by selling it to a new member, Infrastructure JV will continue in existence under the GST Act regardless of the change in membership (meaning it is treated as the same registered person before and after any change of members). The exiting member will remain jointly and severally liable with the other member for all tax payable by Infrastructure JV during the taxable periods (or part of taxable periods, if applicable) that the exiting member was a member of Infrastructure JV.

Special rule if joint venture would be above registration threshold

4.9 As noted, flow-through treatment would apply by default under the approach proposed in this chapter. This includes situations when a joint venture would be treated as making taxable supplies above the $60,000 registration threshold (and therefore would be required to register) if, instead, unincorporated body or "single entity" treatment applied.

4.10 This means, in the absence of a special rule, any members of such a joint venture that are individually below the registration threshold would not be required to register, nor would the joint venture itself be required to register. This is at odds with the treatment of other types of unincorporated bodies such as partnerships, which must register if total supplies made in New Zealand by the members in the course or furtherance of all taxable activities they carry on as a group exceed (or are expected to exceed) $60,000 in a 12-month period.

4.11 While the Government considers it appropriate to allow members of a joint venture to apply flow-through treatment even when the joint venture itself could register, it is relevant to note that this is a concession for compliance cost reasons only (that is, in recognition of the fact that mandatory registration of joint ventures as separate persons to their members may in some cases increase overall compliance costs).

4.12 The Government does not consider that the flow-through proposal should provide the opportunity for joint venturers to escape GST registration in cases when the joint venture, if treated as a separate person to its members, would be carrying on a taxable activity and making taxable supplies above the $60,000 registration threshold. In such cases, either all the members of the joint venture, or the joint venture itself, should register. Therefore, the Government is proposing that a special rule would provide for this outcome.

4.13 The special rule would not apply if the joint venture (if treated as a separate person):

- would not be carrying on a taxable activity (such as when the joint venture does not make any non-exempt supplies for a consideration, its activity is not continuous or regular enough to be a taxable activity, or if it is merely carrying on a private recreational pursuit or hobby), or
- would be carrying on a taxable activity, but its supplies in New Zealand are below the registration threshold.

4.14 Example 3 illustrates how the rule would apply.

Example 3: Joint venture above registration threshold

Mike and Wendy are in a joint venture for a commercial building in Gore that they co-own on a 50:50 basis. The building (which is currently tenanted) includes a retail shop on the ground level and storage space upstairs.

Under the joint venture agreement, the annual rental income from the building of $100,000 plus GST (if any) is split between Mike and Wendy in equal shares. Neither Mike nor Wendy carries on any other taxable activity, and therefore neither of them are registered for GST.

If the joint venture was treated as a separate person carrying on the rental activity, its total annual supplies in New Zealand in the course or furtherance of a taxable activity would exceed the $60,000 registration threshold, meaning it would be required to register. This means the special rule will apply. Under this rule, either:

- Mike and Wendy must both register for GST separately, or
- the joint venture itself must register for GST as a separate person.

The special rule applies even though flow-through treatment applies by default and both Mike and Wendy are individually below the $60,000 registration threshold (because they would each make supplies worth $50,000 annually).

How proposals would apply if joint venture is not carrying on taxable activity or makes supplies below registration threshold

Joint venture below registration threshold

4.15 If a joint venture would be carrying on a taxable activity if treated as a separate person, it would still be able to voluntarily register (by electing to be a single entity joint venture) if it is below the $60,000 registration threshold. However, if the members choose not to register a joint venture that is below the registration threshold, a member would only be liable to register for GST themselves if they individually exceed the registration threshold for their separate activities.

4.16 If an election has not been made for the joint venture to be a single entity joint venture (and therefore it is not a "person"), each member would generally be carrying on their share of the joint venture activity according to the proportions in which the members have agreed to share costs and gross revenues or outputs. This means that a fraction or part of the joint venture activity would be a taxable activity (or part of a wider taxable activity) for each member. Therefore, a member who is a registered person should account for their "share" of supplies and purchases in their own GST return.

Joint venture not carrying on taxable activity

4.17 Flow-through treatment would always apply if the joint venture itself would not be carrying on a taxable activity. In this situation, a member could not individually register for their "part" of the joint venture activity, unless that activity is part of a wider taxable activity that the member carries on separately.

4.18 If the activity is part of the member's own taxable activity, the member should account for GST on their "share" of supplies made in their own GST returns (as this would be treated as a taxable supply the member makes). Input tax on a GST-registered member's share of goods and services acquired would only be deductible if there is a nexus between the expenditure and a taxable supply the member makes, as per ordinary GST principles.

4.19 Examples 4 and 5 illustrate how the proposals would apply when a joint venture does not carry on a taxable activity.

Example 4: Output-sharing joint venture not carrying on taxable activity because it does not make supplies

Gordon and Jacob both want to build apartments to sell at a profit. Both are interested in the same piece of bare land. They decide to buy the land together (half share each) and to build a six-storey block with 20 apartments in total on that land. Gordon and Jacob each want a separate share of the output of the project and agree which units are for Gordon and which ones are for Jacob.

Gordon and Jacob have entered into a joint venture.

When construction is close to completion, they each enter into a separate contract with different real estate agents to market the apartments.

Because Gordon and Jacob do not make any supplies jointly but instead separately market and sell their respective "shares" of the output of the venture (being the apartments), the joint venture, if it is treated as a separate person, would not make any supplies and cannot register for GST. Therefore, Gordon and Jacob should separately assess whether they are each carrying on a taxable activity and if they are individually liable to register.

Both Gordon and Jacob are separately carrying on a taxable activity of property development and expect to make more than $60,000 in supplies in New Zealand in the course or furtherance of all taxable activities that they individually carry on. Both Gordon and Jacob register for GST and separately account for their individual sales, as well as their share of goods and services acquired for the project, in their own GST returns.

Example 5: GST-registered bloodstock breeder in a "hobby" racing joint venture

Jenna is a GST-registered bloodstock breeder. She forms a joint venture with two racing enthusiasts she knows, Paul and Marie, to acquire and race a promising colt that Jenna has seen at the Karaka yearling sales. Paul is not registered for GST, but Marie is registered for GST in relation to a dentistry practice she owns.

Jenna, Paul and Marie agree to share in the gross revenue earned by the colt and in the gross expenditure on the colt in proportion to their respective interests in the colt.

Jenna's intention in relation to the colt is to use it for breeding once its racing career is over. However, deciding when the colt will retire from racing, and if and when it will commence breeding, is subject to the agreement of all three parties to the venture.

Assuming the joint venture is only carrying on a hobby, Jenna, Paul and Marie should each assess whether their part ownership of the colt is part of a taxable activity they are carrying on separately.

Since Jenna is separately carrying on a taxable activity of breeding and intends to use the colt for breeding purposes (meaning she intends to use the colt to make her separate taxable supplies), Jenna should account for output tax on her share of any prize money received, as well as her share of any gross revenues from stud fees when the breeding phase commences. Jenna is also entitled to claim input tax deductions for her share of expenditure on the colt in her own GST returns.

Paul and Marie cannot claim input tax deductions for their share of expenditure on the colt. This is because, for both Paul and Marie, their participation in the joint venture is a hobby. In Marie's case, although she is registered for GST, there is no nexus between Marie's share of the expenditure on the colt and a taxable supply she will make (since her separate taxable activity has nothing to do with horse racing).

Deeming separate supplies by joint venturers

4.20 When the members of a joint venture make joint supplies of goods or services, it is arguable that section 8(1) would not allow each member to separately account for GST for their share of the supplies made under a flow-through approach. As discussed in Chapter 2, one of the reasons for treating unincorporated bodies as separate persons under the current law is that, when a single supply is made jointly by an unincorporated body of persons, this should be treated as a single supply with a single GST treatment, rather than being treated as multiple supplies with potentially differing GST treatments.

4.21 In many cases when the members of a joint venture are making joint supplies, it is likely that the option with the least compliance costs would be to register the joint venture as a separate person. However, in some situations when some or all the members are already separately registered such that creating another registered entity would result in extra compliance costs, it may make sense for the members to apply flow-through treatment. In this case, it appears to be necessary to amend the law to ensure that, when the members of an "ordinary" joint venture (being an unregistered joint venture that has not been elected for single entity treatment) supply goods and services jointly, each member would be treated as making a separate supply. This would enable the provisions of the GST Act, including section 8(1), to appropriately determine the GST treatment of each member's supply (whether taxable or not taxable).

4.22 To ensure this outcome, the Government is proposing that a specific rule would split what might otherwise be a single supply into multiple supplies (being one supply by each member of the venture). Under the proposed rule, the amount of consideration for each member's supply would be in proportion to:

- the member's share or ownership interest in the underlying joint venture property, if all the members co-own property for the purposes of the venture, or
- the member's agreed share of the proceeds from the venture.

4.23 At this stage, the Government is not proposing any specific rule for determining the proportion of supplies each member of an ordinary joint venture would be treated as receiving when the members acquire goods and services for the venture. This is because the proportions in which the members receive supplies should naturally be determined by what the members have agreed between themselves (in terms of the members' agreed contributions to costs).

4.24 The proposed rule deeming separate supplies by joint venturers would mean that, by default, a separate set of taxable supply information would be required for each taxable supply (when members are not registered persons no taxable supply information would be required, but information showing that a member's supply is not subject to GST could be provided if the supplier wished). If it would be more convenient to issue a single set of taxable supply information to a recipient that includes each member's supply, it would be possible for the members of an ordinary joint venture to elect to be a supplier group. This would allow the "issuing member" to issue shared invoices that would include the total amount of consideration for the members' taxable supplies to the recipient.

Questions for submitters

Default flow-through treatment

Q3. Do you agree that excluding joint ventures from being "persons" for GST purposes by default is an appropriate and effective way to achieve the intended flow-through treatment described in this chapter? Why/why not?

Q4. Do you agree with the proposal to introduce a rule that would split a supply made jointly by the members of an ordinary joint venture into multiple supplies? Why/why not?

Q5. Are there any unintended consequences that may result from the draft legislative wording for these proposals in the Appendix, or any design issues with the mechanics of the flow-through proposal that have not been considered?

Optional registration of joint venture if it is carrying on a taxable activity

Q6. Would the proposals aimed at allowing the members of a joint venture (that are jointly carrying on a taxable activity) to register the joint venture for GST as a separate person be effective in achieving the desired outcome as set out in this chapter? Why/why not?

Q7. Are there any unintended consequences that may result from the draft legislative wording for these proposals in the Appendix, or any design issues with these proposals that have not been considered?

Special rule if joint venture would be above registration threshold

Q8. Do you agree with the proposal that either all the members of a joint venture, or the joint venture itself, would be required to register if the joint venture (if treated as a person) would be over the $60,000 registration threshold? Why/why not?

CHAPTER 5

Interests in property of ordinary joint venture

Overview

This chapter sets out the proposed GST treatment for supplies of interests in the underlying property jointly owned by the members of an ordinary joint venture. Changes are proposed to ensure that a supply of an interest in "joint venture property" would not be a supply of a participatory security (and therefore not an exempt supply of a financial service) if the joint venture is flow through for GST purposes. This chapter also considers whether taxable supplies of these interests should always be standard-rated, or whether they should be zero-rated in some circumstances (such as when the supply is a business-to-business supply).

In this chapter, references to a member's interest in "joint venture property" or "the property of a joint venture" refer to the person's interest in the underlying property or assets that are co-owned by the joint venturers for the purpose of the venture, along with any rights the person has under the joint venture contracts.

Nature of interest in property of ordinary joint venture

5.1 The legal nature of a joint venture is different to that of a partnership. In the context of a partnership the courts have concluded that a partner does not have title to specific partnership property but has a beneficial interest in the entirety of the partnership assets. On that basis, a partner's interest in the partnership is a chose in action.[5] This principle does not apply to a joint venture. Instead, a joint venture is a contractual arrangement, and the joint venture members legally co-own any "joint venture property", either directly or indirectly through a nominee company (in other words, they have a legal interest in the actual property and contracts, rather than a chose in action).

5.2 A supply of an interest in the property of an ordinary joint venture will be a taxable supply if it is made in the course or furtherance of a taxable activity carried on by the member making the supply. However, this does not include any activity to the extent to which the activity involves the making of exempt supplies.

Issues with "financial services" definition

5.3 Supplies of financial services are exempt supplies under section 14. The definition of "financial services" in section 3 includes the issue, allotment or transfer of ownership of a participatory security.

5.4 "Participatory security" is defined to mean any interest or right to participate in any capital, assets, earnings, or other property of any person when that interest or right forms part of a contributory scheme. This includes an interest in a unit trust as defined in the Income Tax Act 2007, but does not include an equity security, debt security, money, or a cheque.

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[5] *Hadlee and Sydney Bridge Nominees Ltd v Commissioner of Inland Revenue* [1991] 3 NZLR 517; (1991) 13 NZTC 8,116 (CA) at 8,126.

5.5 “Contributory scheme” means any scheme or arrangement that, in substance and irrespective of the form of the scheme or arrangement, involves the investment of money where:

- the investor acquires or may acquire an interest in or right in respect of property, and
- that interest or right will or may be, under the terms of investment, used or exercised in conjunction with any other interest in or right in respect of property acquired in similar circumstances, whether at the same time or not.

5.6 Such a scheme or arrangement may be excluded from being a contributory scheme if it has five or fewer investors. However, this exclusion will only apply if neither the manager of the scheme nor any associated person of the manager is the manager of another such scheme or arrangement.

5.7 An interest in an unincorporated body, including a joint venture, will often be treated as a participatory security under section 3 unless there are five or fewer members and there is no manager that manages other such schemes. As such, the supply of an interest in an unincorporated body will often be an exempt supply for GST purposes.

5.8 This makes sense if the unincorporated body is, for GST purposes, essentially treated like a company, with the interests in the unincorporated body being treated like they are equity securities. However, under a flow-through approach, this treatment does not make sense.

5.9 Under the flow-through proposal, the legal reality of the transaction is what is relevant from a policy perspective. As noted above, when a member of a joint venture disposes of their interests in the joint venture, they are disposing of their legal interest in the actual property and contracts co-owned by the joint venture members. Therefore, the Government is proposing to ensure that the participatory security and contributory scheme definitions do not apply to a joint venture that is subject to flow-through treatment.

5.10 The policy intention is that, when flow-through treatment applies to a joint venture, the GST consequences should reflect the fact that there is a disposal of a member’s interest in the joint venture property, rather than an exempt supply of a financial service. The usual test of whether the member makes the supply in New Zealand in the course or furtherance of their taxable activity should then apply to determine whether the supply is taxable or non-taxable.

5.11 To achieve this outcome, the Government suggests that the definition of “participatory security” in section 3 could be amended so that it excludes an interest in an ordinary joint venture. The Appendix contains draft legislative wording that is intended to achieve this outcome.

Circumstances in which a taxable supply of an interest in joint venture property may arise

5.12 If the change suggested above is progressed, it appears likely that the supply of a GST-registered joint venturer’s interest in the joint venture property would be a taxable supply in many cases (assuming no further amendments are made to provide a different outcome).

5.13 Such a taxable supply could occur:

- by way of a sale to a new joint venture member or another existing member

- when a new member of an existing joint venture makes an initial contribution to the costs of the venture and, in exchange for this initial contribution, acquires an interest in the joint venture property from the existing members (illustrated by Example 6), or
- when the parties have agreed that changes in contributions to costs would result in a member's interest in the joint venture property increasing, relative to other members.

5.14 The proposals in this chapter (including the zero-rating proposal outlined below) would apply in all three scenarios to determine the GST treatment of the supply.

Example 6: Joint venture admits new member after its formation

Forest Co formed a joint venture with Management Co to manage, harvest and market forest products. Forest Co and Management Co own the assets, including freehold land with standing timber, forestry licences and working capital as co-owners in 50:50 shares.

Forest Co and Management Co are both registered for GST and will use their respective interests in the joint venture property to make their own separate taxable supplies (that is, the joint venture is not registered for GST as a single entity joint venture, and both members will be treated as individually making supplies of their "share" of the forest products).

Shortly after, Felling Co is admitted to the joint venture as a new member. Felling Co makes an initial contribution to the costs of the venture of $10 million, in exchange for a 25% interest in the joint venture property.

This means Forest Co and Management Co have each made a supply of a 12.5% interest in the joint venture property to Felling Co, with $5 million being provided in consideration for each supply. Both supplies are made in New Zealand in the course or furtherance of the supplier's taxable activity.

Both supplies are taxable supplies.

Treatment of business-to-business supplies of interests in property of ordinary joint venture

5.15 Under the flow-through proposal, a supply of a joint venturer's interest in joint venture property may in some cases be zero-rated under the compulsory zero-rating rules for business-to-business supplies of land (the compulsory land zero-rating rules). This would generally be the case if the underlying property includes land and if both the supplier and purchaser are registered for GST.

5.16 Potentially, even if the joint venture property does not include land, zero-rating might apply under the rule for supplies of going concerns (although, whether a supply of an interest in the property of an ordinary joint venture is a supply of a going concern will depend on the specific facts).

5.17 When a supply of an interest in the property of an ordinary joint venture is a business-to-business supply, it would appear to make sense that zero-rating should apply, regardless of whether the joint venture property includes land. This is likely to be preferred by the parties involved for cash flow reasons. In addition, a clear rule to this effect is likely to be simpler to apply than the current rules, which require an assessment to be made about whether the supply includes land or amounts to a sale of a going concern. Compulsory zero-rating would also address any potential fiscal risks associated with standard-rating high-value business-to-business supplies.

5.18 Example 7 illustrates how this would apply when a GST-registered member of an ordinary joint venture sells their interest in the joint venture property to a new member who is also registered for GST and will use the interest in the property to make taxable supplies. Example 8 illustrates how the proposed rules would apply if the new member acquiring the interest does not intend to use it to make taxable supplies.

5.19 The Government invites submissions on whether this zero-rating proposal has merit and should be progressed.

Example 7: Business-to-business supply of interest in property of ordinary joint venture (zero-rated)

Explore Co, Pipeline Co and Gas Co are members of a joint venture that has commenced exploring for natural gas and condensate that was recently discovered. The members are all individually registered for GST. The joint venture is not registered for GST (and is not a single entity joint venture), meaning the members individually account for supplies and purchases in their own GST returns.

Several of the assets used for the venture are co-owned by the members as tenants in common. None of the co-owned assets meet the definition of “land” that applies for the purpose of the compulsory land zero-rating rules.

Explore Co owns a one-third interest in the joint venture property. After two years, Explore Co decides to exit the venture and divest its interest in the joint venture property. It sells its interest to a new member, Energy Co, who is also a registered person.

Since the aim or goal of the venture for each member is to ultimately obtain a share of the extracted resources that the member will market and sell, Energy Co has a clear intention of using the interest in the joint venture property that it acquires from Explore Co to make taxable supplies.

The supply of Explore Co’s interest in the joint venture property to Energy Co meets the requirements for zero-rating. Accordingly, it is treated as a zero-rated supply.

Example 8: Business-to-consumer supply of interest in property of ordinary joint venture (standard-rated)

One year after the purchase of the colt, Jenna, Paul and Marie from Example 5 agree that the horse will be gelded to address recent issues with its temperament so that it may continue with its racing career. This means the horse will not be used for breeding as Jenna had originally intended.

Shortly after, Jenna sells her interest in the horse to Sam, an acquaintance of hers who is a racing enthusiast. Sam is only interested in racing the horse for fun and does not intend to use the interest in the horse to make taxable supplies.

The supply of Jenna’s interest in the horse to Sam does not meet the requirements for zero-rating because Sam is not a registered person who will use the interest in the course or furtherance of his taxable activity. Accordingly, the supply of Jenna’s interest in the horse is standard-rated.

Design of zero-rating regime for supplies of interests in property of ordinary joint ventures

5.20 In terms of the detailed design of the zero-rating proposal, one possible approach might be to use (at least some of) the existing rules that apply for the purposes of the compulsory land zero-rating regime. These rules include:

- disclosure requirements (aimed at enabling a vendor making a taxable supply of land to correctly ascertain whether the supply should be treated as standard-rated or zero-rated)
- special rules for nominees
- record-keeping requirements
- a "reverse charge" that may apply when, at any time after settlement, it is discovered that a supply of land should have been treated as standard-rated rather than zero-rated.

5.21 By contrast, the zero-rating rule for supplies of going concerns only requires that the purchaser is a registered person, and the vendor and purchaser:

- agree in writing that the supply is the supply of a going concern, and
- intend that the supply is of a taxable activity, or part of a taxable activity, that is capable of being carried on as a going concern by the recipient.

5.22 When it is discovered that a supply of goods and services should have been treated as standard-rated (instead of being treated as zero-rated under the going concern rule), the vendor is required to make a correction by accounting for output tax on the supply, rather than the purchaser being required to account for GST on the supply by way of a reverse charge.[6]

5.23 The main arguments for aligning the zero-rating proposal with the existing rules applying under the compulsory land zero-rating regime are:

- This approach may more effectively mitigate revenue risks arising when a joint venturer incorrectly treats a supply of their interest in joint venture property as zero-rated. As noted, the compulsory land zero-rating rules include a reverse charge mechanism that may apply when a supply is incorrectly treated as zero-rated. This mechanism requires the recipient (being the person who owns the assets) to account for GST on the supply to Inland Revenue. Not having a reverse charge mechanism would essentially rely on the supplier (who might not have any assets by the time the incorrect treatment of the supply is discovered) correcting their GST position and paying the output tax on the supply to Inland Revenue.
- When the joint venture property in question includes land, it might arguably make more sense for the GST treatment of a supply of an interest in the property to be determined by the compulsory land zero-rating rules (and the parties might intuitively expect these rules to apply to determine the treatment of the supply).
- Even when the joint venture property does not include land, it might still make sense to have the same or similar requirements apply as though

[6] If the contract contains no provision for an increase to the agreed price arising in the event the supply is not a zero-rated supply, section 78E provides that the supplier may increase the consideration for the supply by the amount of GST, calculated as 15% of the original agreed price.

the supply of an interest in the property was a supply of land (that is, so that the same rules always apply to a supply of an interest in joint venture property, whether or not the supply actually includes land). This assumes that supplies of interests in joint venture property that include land would be subject to the compulsory land zero-rating regime, as per the bullet point above.

5.24 The arguments for taking a simpler approach and designing a zero-rating rule for supplies of interests in joint venture property in a way that is more consistent with the zero-rating rule for supplies of going concerns, are:

- This approach would involve simpler administrative rules and would therefore impose less compliance costs on the parties involved.
- The risks of a standard-rated supply being incorrectly treated as zero-rated are expected to be lower in most cases. This is because it is more likely in this context that a taxable supply of a joint venturer's interest in joint venture property to a new or existing member would be a business-to-business supply (and in the case of large joint ventures especially, it may be obvious to the supplier that the recipient is a registered person and will use the interest in their taxable activity).
- The compulsory land zero-rating rules include some features that may not be necessary or relevant in the joint venture context. For example, it seems unlikely that a recipient of a supply of an interest in joint venture property (being a new or existing member of the joint venture) would use the joint venture property as a principal place of residence for themselves or a relative (even if the property includes land and the recipient is a natural person).

5.25 The Government invites submissions on the appropriate design of a zero-rating regime for business-to-business supplies of interests in joint venture property between joint venturers.

Questions for submitters

Q9. Do you agree with the proposed amendment to the definition of "participatory security"? Why/why not? Do you see any potential issues with the draft legislative wording in the Appendix for this proposal?

Q10. Do you agree that compulsory zero-rating should apply to a business-to-business supply of an interest in the property of an ordinary joint venture from a member of the joint venture to a new or existing member? Why/why not?

Q11. In your view, does it make sense to utilise at least some of the features of the compulsory land zero-rating regime for the purposes of the zero-rating proposal set out in this chapter? Why/why not?

Q12. If the zero-rating proposal is designed quite differently from the compulsory land zero-rating regime, which set of rules should take priority when a supply of an interest in joint venture property includes an interest in land?

CHAPTER 6

Application date and transitional rules

Overview

This chapter seeks submissions on an appropriate application date for the changes outlined in this document, and whether lead time will be required for some of the proposals before they take effect.

For joint ventures that were already registered for GST before the enactment date, this chapter proposes a transitional rule to allow the members to elect for flow-through treatment by deregistering the joint venture.

Application date for proposals

6.1 The Government invites submissions on what the application dates for the proposals in this document should be, including whether any transitional or savings provisions should be considered.

6.2 Where the proposals apply prospectively, the question is whether lead time may be necessary to give taxpayers more time to prepare for certain changes (for example, the zero-rating proposal in Chapter 5) before they take effect. Submissions are therefore invited on whether any of the proposals require lead time between legislative enactment and application and, if so, what would be an appropriate effective date.

Deregistration of joint ventures already registered prior to enactment of proposals

6.3 Irrespective of the application date, joint ventures that were already registered for GST prior to the changes taking effect would be treated as having made the election for single entity treatment, thus preserving the validity of their existing GST registration and their GST positions already taken.

6.4 However, it may be the case that some members of GST-registered joint ventures might prefer to have flow-through treatment for GST purposes rather than retain the joint venture's pre-existing registration once the proposed changes have come into effect. The Government is therefore proposing a transitional rule to allow the members of a GST-registered joint venture to elect for flow-through treatment by deregistering the joint venture. This rule would override the usual requirements for deregistration in section 52(1). When a joint venture deregisters under this rule, the members of the joint venture would remain jointly and severally liable under section 57(3) for any of the joint venture's unpaid GST as at the date of the cancellation of its registration until the liability is paid in full.

6.5 It is proposed that this deregistration rule would be limited to situations where the joint venture is a registered person as at the date the amendment Act is enacted, and that the cancellation of its registration under this rule could only be applied on a prospective basis. The special deregistration rule would also only be available for a limited period following enactment of the changes.

6.6 Example 9 illustrates how the proposed transitional rule could apply.

Example 9: Joint venture deregisters under transitional rule

Explore Co, Energy Co, Pipeline Co and Petroleum Co are the members of a joint venture, Petroleum JV, that has been in operation for several decades and is separately registered for GST.

Following the enactment of the new rules, the members agree they will seek to cancel Petroleum JV's registration, so that they can apply the default flow-through treatment under the new rules and individually account for GST on any supplies made or received in their own GST returns.

Petroleum JV applies to the Commissioner to cancel its registration in April 2026. The cancellation of Petroleum JV's registration takes effect on 1 May 2026.

As of 1 May 2026, the members are treated as individually carrying on the joint venture activity on a prospective basis, and as individually making and receiving any supplies made or received on or after 1 May 2026.

The members also remain jointly and severally liable for any outstanding tax payable by Petroleum JV for taxable periods ending before the date of deregistration.

Questions for submitters

Q13. What do you consider to be appropriate application dates for the proposals in this document? Is lead time required for any of the proposals?

Q14. Do you agree with the proposed transitional rule allowing a GST-registered joint venture to deregister so that the members can apply flow-through treatment going forward? Why/why not?

Q15. What do you consider would be an appropriate transitional period (time limit) for the transitional rule?

Q16. Should any other transitional or savings provisions be considered? If yes, please outline the policy justification for such a provision.

CHAPTER 7

Other relevant policy matters

Overview

This chapter considers other GST policy matters that are relevant to joint ventures and the proposals outlined in previous chapters.

Deemed supply on deregistration

7.1 Chapter 6 outlined a proposal to introduce a transitional rule that would allow the members of a joint venture that was registered for GST before the enactment date for the new rules to apply to cancel the joint venture's registration. As noted, this transitional rule would apply in circumstances when the joint venture activity is continuing, but the members wish to apply flow-through treatment under the new rules going forward.

7.2 Under the current law, when a registered person (including an unincorporated body, such as a joint venture) applies to cancel its registration, section 5(3) treats the person as making a taxable supply of any goods and services that form the assets of its taxable activity at market value immediately before the cancellation of its registration. In the context of an unincorporated body, this means the body will be liable for output tax on the market value of the assets that formed part of its taxable activity when it deregisters, even though those assets are retained by the members (assuming those assets were not sold to the members before deregistration). However, because the supply under section 5(3) is not treated as being made to the members of the body, the members would not be entitled to a corresponding input tax deduction.

7.3 The Government considers that this outcome is undesirable. Therefore, a new rule is proposed to ensure there is a deemed supply of the assets from the unincorporated body to its members immediately before the cancellation of the body's registration (which is intended to override the rule in section 5(3)). It is proposed that this rule would apply to all unincorporated bodies, including a single entity joint venture, and in all situations where an unincorporated body deregisters.

7.4 It is proposed that the value of the supply would be the market value of the relevant assets. This is to provide consistency with the rule in section 5(3), thus ensuring that GST-registered unincorporated bodies do not attain a more favourable GST outcome than other registered persons when they deregister while still holding the assets of their taxable activity.

7.5 Since such a supply would typically be high value and could therefore pose cashflow concerns (as well as a possible fiscal risk for the Crown) if it is a business-to-business supply, the Government is proposing that the deemed supply would be zero-rated if the recipient of the supply is a registered person and intends to use the goods and services for making taxable supplies. Example 10 illustrates how this would apply.

7.6 Draft legislative wording for rules providing these outcomes is included in the Appendix.

Example 10: Deemed supply on deregistration of joint venture

Consider the facts outlined in Example 9.

Immediately before Petroleum JV's registration is cancelled, Petroleum JV is treated as making a supply of the joint venture property in the course or furtherance of its taxable activity to the members. The members are therefore treated for GST purposes as each acquiring an interest in the property, in proportion to their existing ownership interest in that property.

The value of the supply is deemed to be the market value of the property (currently $1.5 billion). However, since all the members are registered persons and intend to use their respective interests in the property to make taxable supplies, the supply is zero-rated. This means Petroleum JV will not account for output tax on the supply (and the members will not claim input tax deductions).

"Associated persons" definition

7.7 Section 2A(1)(db) associates members of a joint venture with the joint venture (as a separate person from its members) for GST purposes. This reflects the aligned economic interests of the joint venture and its members and is consistent with the association tests in section 2A that apply for other unincorporated bodies, such as partnerships and trusts.

7.8 The current joint venture association rule is expanded by the application of the tripartite test in section 2A(1)(i). Under the tripartite test, two persons (persons A and B) are associated with one another if they are both associated with a third person (person C).

7.9 The only limitation on the application of the tripartite test in the GST Act is when person A and person B are both associated with person C solely because of the association test for relatives in section 2A(1)(c). In the case of a joint venture, this means that the members are all associated with one another for GST purposes due to the tripartite test. This may result in overreach when members of a joint venture transact with one another. In addition, it is inconsistent with the application of the tripartite test in the Income Tax Act 2007.

7.10 The consequences of parties to a transaction being associated for GST purposes include:

- A supply of goods and services (including a supply for no consideration) between associated persons is subject to GST on the open market value of the goods and services, except when the recipient is entitled to an input tax deduction for the supply (or, as the case may be, the recipient would be entitled to such a deduction if certain facts of the transaction were different, such as if there was consideration for the supply).
- The value of an input tax deduction for secondhand goods acquired from an associated person is limited under section 3A(3) (the amount of the deduction is not simply based on the tax fraction of the consideration for the supply but would instead be a lesser amount in many cases).
- The time of supply for goods and services supplied between associated persons is treated as taking place when the services are performed or when the goods are either removed or made available to the recipient.

7.11 There is a possible argument that, since members of a joint venture are not in business together (as in, they do not carry on a business in common like partners in a partnership do), they should not be associated with one another for GST purposes solely because they are members of the same joint venture.

7.12 Often, a joint venture is formed because the project being undertaken is of such a scale that another participant with certain skills, assets or financial resources is required. In that case, what the participants are doing is pooling their resources together for the project with a view to sharing the profits, revenues or outputs. However, outside of that project, the participants still carry on their respective businesses separately from one another. The participants are also in many cases competitors with one another in their industry. From that perspective, it may be more appropriate to regard members of a joint venture as transacting at arm's length, rather than as associates.

7.13 On the other hand, when members of a joint venture transact with one another in their capacity as members of the joint venture, it seems more appropriate to treat them as associates, given their aligned economic interests in relation to the venture.

7.14 To address these issues, the Government suggests two possible amendments to the associated person rules could be made:

- To resolve the potential overreach, the tripartite test could be limited so that it does not interact with the rule in section 2A(1)(db) associating a joint venture with a member of the joint venture. This would ensure that, in the case of a single entity joint venture, the members would not be associated with one another under the tripartite test. This would achieve the same outcome as when flow-through treatment applies.
- It is also suggested that a new association test could apply when members of a joint venture transact with one another in their capacity as members of the joint venture, to ensure that they are associated persons for those specific transactions.

7.15 The combination of these possible amendments would mean that, when members of a joint venture transact with one another outside the course of the venture (that is, other than in their capacity as members of the joint venture), they are not associated persons. This would apply regardless of whether the joint venture is an ordinary joint venture or a single entity joint venture (meaning that the members would not be associated with one another for the transactions they are considered to be transacting at an arm's length, regardless of whether the joint venture is a person for GST purposes). If the joint venture is a single entity joint venture, the existing association test in section 2A(1)(db) would also apply to associate the joint venture with the members of the venture.

7.16 Example 11 illustrates how the suggested changes to the "associated persons" definition would apply when the members of an ordinary joint venture transact with one another, both in the course and outside the course of the joint venture. Example 12 illustrates how the suggested approach would apply when the joint venture is a single entity joint venture.

7.17 The Government is interested in submitters' views on whether the interaction of the tripartite test with the association test for joint ventures may produce an overreach that should be addressed, and if so, whether the possible solution identified above is appropriate.

Example 11: Application of "associated persons" definition to members of ordinary joint venture

Land Co and Construction Co are members of a joint venture for a property development project, Development A. The joint venture is an "ordinary" joint venture (meaning that it has not elected to be a single entity joint venture).

Land Co is undertaking another property development, Development B, as part of its separate business, and engages Construction Co as a general contractor for Development B. Land Co and Construction Co are not in a joint venture for Development B.

In its capacity as a member of the joint venture, Construction Co acquires goods and services that will be used as inputs for Development A, and on-charges 50% of the cost of these inputs to Land Co.

Construction Co has made a supply to Land Co in its capacity as a member of the joint venture. Therefore, Land Co and Construction Co are associated persons for this supply.

As a contractor for Development B, Construction Co also makes supplies to Land Co in relation to Development B. These supplies are not made by Construction Co in its capacity as a member of the joint venture. For these supplies, Land Co and Construction Co are not associated persons.

Example 12: Application of "associated persons" definition when joint venture is a single entity joint venture

This example is a variation on Example 11. Instead of the joint venture being an ordinary joint venture, assume the joint venture is a single entity joint venture and is registered for GST.

When Construction Co acquires goods and services that will be used as inputs of the joint venture in its capacity as a member of the joint venture, the joint venture (as a separate person) is treated as acquiring the goods and services instead of Construction Co. Therefore, there is no supply between Construction Co and the joint venture.

If the goods and services were instead acquired by Construction Co other than in its capacity as a member of the joint venture, the joint venture would not be treated as having acquired the goods and services instead of Construction Co. This means the supply from Construction Co to the joint venture is recognised as a supply for GST purposes. Since Construction Co and the joint venture are associated persons, this supply is an associated supply.

The conclusion regarding supplies by Construction Co to Land Co (in relation to Development B) is unchanged from Example 11. That is, Land Co and Construction Co are not associated persons for the supplies Construction Co makes as a contractor for Development B.

Questions for submitters

Deemed supply on deregistration

Q17. Do you agree with the proposal to ensure that, when an unincorporated body's registration is cancelled, the unincorporated body (including a single entity joint venture) is treated as making a taxable supply of the goods and services forming the assets of its taxable activity at market value to its members? Why/why not?

Q18. Do you agree with the proposal to zero-rate this deemed supply when the recipient of the supply is a registered person and intends to use the goods and services for making taxable supplies?

Q19. Do you have any comments on the draft legislative wording in the Appendix for these proposals?

"Associated persons" definition

Q20. Do you agree that the interaction of the association test for joint ventures with the tripartite test may produce overreach in some cases? Why/why not? If yes, how significant do you think this issue would be?

Q21. Are you aware of any real-life examples where such an overreach has occurred? If yes, can you provide the relevant facts of the transaction/arrangement that triggered the issue?

Q22. Do you agree with introducing a limitation on the tripartite test so it does not interact with the rule in section 2A(1)(db) associating a joint venture with its members? Why/why not?

Q23. Do you agree with the suggested introduction of a new test associating two members of a joint venture when they transact with each other in their capacity as members of the joint venture? Why/why not?

APPENDIX

Draft legislative wording

Submissions are sought on whether the suggested legislative wording presented below would achieve the intended policy outcomes described in this discussion document.

2 Interpretation

(1) In this Act, other than in section 12, unless the context otherwise requires,—

ordinary joint venture means a joint venture that is not—

(a) a partnership; or
(b) a single entity joint venture

joint venture share means,—

(a) if the members of an ordinary joint venture own property together for the purposes of the joint venture, the member's share in the property; or
(b) if the members of an ordinary joint venture do not own property together for the purposes of the joint venture, the member's agreed share of the proceeds from the joint venture

member includes a partner, ~~a joint venturer,~~ a trustee, or a member of an unincorporated body

person includes a company, an unincorporated body of persons, a public authority, and a local authority; but does not include an ordinary joint venture

unincorporated body means an unincorporated body of persons, including a partnership, ~~a joint venture, and~~ the trustees of a trust, and a single entity joint venture; but does not include an ordinary joint venture

single entity joint venture—

(a) means a joint venture in which the members have elected to become a single entity joint venture under section 57B(1); and
(b) excludes a partnership

2A Meaning of associated persons

(1) In this Act, associated persons or persons associated with each other are—

[...]

(db) a single entity joint venture and a member of the single entity joint venture:

3 Meaning of term financial services

[...]

(2) For the purposes of this section—

[…]

participatory security means any interest or right to participate in any capital, assets, earnings, or other property of any person where that interest or right forms part of a contributory scheme; and includes an interest in a unit trust (within the meaning of section YA 1 of the Income Tax Act 2007); but does not include an equity security, a debt security, money, ~~or~~ a cheque, or an interest in an ordinary joint venture

5 Meaning of term supply

[…]

(29) A supply of goods and services made jointly by members of an ordinary joint venture is treated as separate supplies made by each of the members in proportion to their agreed joint venture share.

10 Value of supply of goods and services

[…]

(7A) If goods and services are deemed to be supplied by a person under section 5(3)~~,~~ ~~or~~ (3B), or section 57(2)(dd), or section 5(16C)(b) applies, the consideration in money for the supply is treated as being the open market value of the supply. A supply of common property by a unit title body corporate has a zero value.

11 Zero-rating of goods

(1) A supply of goods that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations—

[…]

(mc) the supply of goods and services, which are subject to section 57(2)(dd), to a registered person who acquires the goods and services with the intention of using them to make taxable supplies; or

51 Persons making supplies in course of taxable activity to be registered

[…]

(5C) If members of an ordinary joint venture are jointly carrying on a taxable activity and the total value of supplies made in New Zealand by the members in the course or furtherance of that taxable activity exceeds the threshold for registration in subsection (1), each member of the ordinary joint venture is liable to be registered with effect from when the threshold was exceeded.

(5D) Subsection (5C) does not apply if the members of the joint venture have elected to become a single entity joint venture under section 57B(1).

57 Unincorporated bodies

(1) [Repealed]

(2) Where an unincorporated body that carries on any taxable activity is registered pursuant to this Act,—

(a) the members of that body shall not themselves be registered or liable to be registered under this Act in relation to the carrying on of that taxable activity; and

(b) any supply of goods and services made in the course of carrying on that taxable activity shall be deemed for the purposes of this Act to be supplied by that body, and shall be deemed not to be made by any member of that body; and

(c) any supply of goods and services to, or acquisition of goods by, any member of that body acting in the capacity as a member of that body and in the course of carrying on that taxable activity, not being a supply to which paragraph (b) applies, shall be deemed for the purposes of this Act to be supplied to or acquired by that body, and shall be deemed not to be supplied to or acquired by that member; and

(d) that registration shall be in the name of the body, or where that body is the trustees of a trust, in the name of the trust; and

<u>(dd) in the event of cancellation of registration, any goods and services forming part of the assets of a taxable activity carried on by the body is treated as being supplied by the body, in the course of that taxable activity, to its members immediately before it ceases to be registered, unless the taxable activity is carried on by another person that is treated as a registered person under section 58; and</u>

(e) subject to subsections (3) to (3B), any change of members of that body shall have no effect for the purposes of this Act.

[…]

(6) Notwithstanding anything in this section, but subject to subsections (3) to (3B), where anything is required to be done pursuant to this Act by or on behalf of an unincorporated body, not being a partnership, <u>single entity</u> joint venture, or trustees of a trust, the affairs of which are managed by its members or a committee or committees of its members, it shall be the joint and several responsibility of—

(a) every member holding office as president, chairman, treasurer, secretary, or any similar office; or

(b) in default of any such member, every member holding office as a member of a committee:

provided that if it is done by any official or committee member, referred to in paragraph (a) or paragraph (b), that shall be sufficient compliance with any such requirement.

<u>57B Single entity joint ventures</u>

<u>(1) Members of an ordinary joint venture may elect to become a single entity joint venture if all members—</u>

<u>(a) are jointly carrying on a taxable activity; and</u>

<u>(b) unanimously agree to register as a single entity joint venture by applying to the Commissioner in the prescribed form.</u>

<u>(2) If subsection (1) applies, the election takes effect from the date of registration and cannot be revoked.</u>

<u>(3) Section 57 applies to single entity joint ventures.</u>

<u>92 Registration status of certain unincorporated bodies</u>

<u>(1) This section applies to an unincorporated body that is a joint venture and is registered before [*date of enactment*].</u>

<u>(2) On [*date of enactment*], the unincorporated body is treated as having made an election under section 57B(1).</u>

(3) Despite subsection (2), the unincorporated body may request the Commissioner to cancel its registration within [*the transitional period TBD*] following [*date of enactment*]. This subsection overrides the rule in section 57B(2) about a single entity joint venture election being irrevocable.

(4) If the Commissioner cancels the unincorporated body's registration under subsection (3), each member is liable to be registered in accordance with section 51(5C) with effect from the date that cancellation takes effect. This subsection overrides the specific requirements in section 52(1) about the value of the person's taxable supplies.