GSTD 2003/D2 - Goods and services tax: are all supplies made by the joint venture operator to participants in a GST joint venture to be treated as if they are not taxable supplies?

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Draft Goods and Services Tax Determination

Goods and services tax: are *all* supplies made by the joint venture operator to participants in a GST joint venture to be treated as if they are not taxable supplies?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling or advice for the purposes of section 37 of the ***Taxation Administration Act 1953.*** *The final Determination will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

1. No. Not all supplies made by an entity that is nominated as the joint venture operator of a GST joint venture to participants in the joint venture are treated as if they were not taxable supplies. Rather, subsection 51-30(2) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) operates only in respect of supplies made by the entity in its capacity as joint venture operator.

2. Subsection 51-5(1) provides that the Commissioner must approve 2 or more entities as the participants in a GST joint venture if certain requirements are satisfied. These include a requirement that the application nominates one of those entities, or another entity, to be the joint venture operator of the joint venture (paragraph 51-5(1)(e)).

3. Subsection 51-30(2) provides that a supply that the joint venture operator of an approved GST joint venture makes is treated as if it were not a taxable supply if:

(a) it is made to another entity that is a participant in the joint venture; and

(b) the participant acquired the thing supplied for consumption, use or supply in the course of the activities for which the joint venture was entered into.

4. We consider that subsection 51-30(2) does not apply to supplies by an entity, that is nominated as the joint venture operator, which are not made in its capacity as joint venture operator. For example, it does not apply in relation to supplies of an entity's share of the product of the joint venture that the entity may make to another participant in the joint venture. While the supplier is the joint venture operator, the supply is not made in that capacity.

5. Division 51 may be contrasted with Division 48, which provides rules for streamlining GST reporting obligations for entities that are approved as a GST group. Under Division 48, a GST group is effectively treated as a single entity and as such supplies and acquisitions made wholly within a GST group are taken out of the GST system.[1]

6. Section 48-1 is similarly worded to section 51-1 but goes on to state '…and (in most cases) intra-group transactions are excluded from the GST'. These additional words in section 48-1 are not reflected in section 51-1. If Division 51 had been intended to have a similar effect to the grouping provisions in Division 48, it is to be expected that similar provisions would be found in Division 51.

7. Subsection 48-40(2), provides that where an entity makes a supply to another member of the same GST group, the supply is treated as if it were not a taxable supply. As Division 51 does not contain an equivalent provision, it follows that the legislation contemplates that it is possible to have taxable supplies within a GST joint venture.

8. The *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999* removed the former requirement that all joint venture participants must have the same tax periods. The Explanatory Memorandum to the Act states: 'As a joint venture is not like a GST group where the group is treated as a single entity this is not necessary'.[2] The inference from this statement is that a GST joint venture is not to be treated as a single entity in the way that GST groups are treated.

9. In the context of subsection 51-30(2), the relevant supply is made by the entity in its capacity as joint venture operator. It is only supplies made by an entity in this capacity that are made by the joint venture operator for the purposes of subsection 51-30(2).

10. In accordance with this interpretation of subsection 51-30(2), all supplies by joint venture participants, in their capacity as participants, made to other participants are afforded the same GST treatment under the normal rules. In particular, the supply is a taxable supply if it satisfies the requirements for a taxable supply under section 9-5 of the GST Act.

Example

11. *Andrew and Beth enter into a farming joint venture agreement. They agree to share the product of the joint venture equally, and the Commissioner approves them as the participants in a GST joint venture.*

12. *Beth is nominated to be the joint venture operator. As joint venture operator, she provides managerial and administrative services for the joint venture. Subsection 51-30(2) applies so that the provision of these services by Beth to Andrew is treated as if it were not a taxable supply.*

13. *Beth also carries on a business of manufacturing and selling containers. Beth sells containers to Andrew for use by Andrew in delivering his share of the product of the joint*

[1] Explanatory Memorandum to the *A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999,* paragraph 1.17.
[2] Explanatory Memorandum to the *A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999,* paragraph 101.1.

venture to his customers. Although Beth is the joint venture operator, the sale of the containers to Andrew does not meet the requirements of subsection 51-30(2). This is because the supply of the containers is not made by Beth in her capacity as joint venture operator, but rather in her individual capacity as a supplier of containers. The supply is a taxable supply if it satisfies the requirements of section 9-5 of the GST Act.

Date of effect

14. This draft Determination represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Determination is officially released, it will explain our view of the law as it applies from 1 July 2000.

15. The final Determination will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

16. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of effect of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Your comments

17. We invite you to comment on this draft Goods and Services Tax Determination. Please forward your comments to the contact officer by the due date.

Due date: **7 January 2004**

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Commissioner of Taxation
26 November 2003

Previous Draft:
Not previously issued in draft form

Related Rulings/Determinations:
GSTR 1999/1; GSTD 2003/D3

Subject references:
- Joint venture
- GST joint venture

Legislative references:
- TAA 1953 37
- ANTS (GST)A99 Div 48
- ANTS (GST)A99 48-1
- ANTS (GST)A99 48-40(2)
- ANTS (GST)A99 Div 51
- ANTS (GST)A99 51-1
- ANTS (GST)A99 51-5(1)
- ANTS (GST)A99 51-30(2)
- A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999

Other references:
- Explanatory Memorandum to the New Tax System (Indirect Tax and Consequential Amendments) Bill 1999

ATO references
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