

# ***GSTR 2004/2A - Addendum - Goods and services tax: what is a joint venture for GST purposes?***

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## Addendum

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### Goods and Services Tax Ruling

#### Goods and services tax: what is a joint venture for GST purposes?

This Addendum amends Goods and Services Tax Ruling GSTR 2004/2 to reflect changes in the law as a result of the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010*. These changes apply to tax periods starting on or after 1 July 2010.

The addendum also makes further minor amendments to GSTR 2004/2 to correct other minor non-technical errors.

#### **GSTR 2004/2 is amended as follows:**

**1. Paragraph 3**

Omit 'approval'; substitute 'the formation'.

**2. Paragraph 7**

Omit the fourth sentence; substitute:

Entities engaged in a joint venture may become participants in a GST joint venture under Division 51 of the GST Act if the participation requirements are satisfied.

**3. Paragraph 8**

Omit the paragraph; substitute:

8. Two or more entities may become the participants in a GST joint venture if they meet the requirements of Subdivision 51-A. A joint venture that meets the requirements under section 51-5 is a GST joint venture. The requirements set out in section 51-5 are:

- the joint venture is for the exploration or exploitation of mineral deposits as defined, or for a purpose specified in the regulations;<sup>2</sup>
- the joint venture is not a partnership (as defined);

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<sup>2</sup> Subregulation 51-5.01(1) of the A New Tax System (Goods and Services Tax) Regulations 1999 sets out specified purposes for paragraph 51-5(1)(a) of the GST Act.

- each entity satisfies the participation requirements in section 51-10;
- each of the entities agrees in writing to the formation of the joint venture as a GST joint venture;
- the agreement nominates one of the participants or another entity to be the joint venture operator of the joint venture;
- the nominated joint venture operator notifies the Commissioner, in the approved form, of the formation of the joint venture as a GST joint venture; and
- where the joint venture operator is not a party to the joint venture agreement, the joint venture operator must nevertheless be registered for GST purposes and account for GST on the same basis as the participants in the joint venture.

#### **4. Paragraph 10**

- (a) Omit 'being approved as'; substitute 'becoming'.
- (b) Omit 'the approval of'.

#### **5. Paragraph 11**

Omit 'the Commissioner to be satisfied that a joint venture exists'; substitute 'a joint venture to exist'.

#### **6. Footnote 4**

Omit 'approval as'; substitute 'forming'.

#### **7. Paragraph 14**

- (a) Omit 'paragraph (b) of section 51-5'; substitute 'paragraph 51-5(1)(b)'.
- (b) Omit 'approved as'.

#### **8. Footnote 15**

Omit the footnote.

#### **9. Paragraph 27**

Omit 'be approved as'; substitute 'become'.

**10. Paragraph 36**

Omit the paragraph; substitute:

36. The question arises whether the joint venture agreement must be in writing. Paragraph 51-10(b) does not specifically refer to a 'written agreement'. An entity satisfies the participation requirements for a GST joint venture if it is a 'party to a joint venture agreement' with all of the other entities participating in, or intending to participate in, the joint venture. Although the entities are not expressly required to enter into a written joint venture agreement, it is expected that they will be able to provide some form of written evidence that the features of the joint venture exist.<sup>19A</sup>

**11. Footnote 20**

Omit the text; substitute:

Participants in a joint venture may have joint and several liability in some limited circumstances, such as under project financing arrangements, usually on a limited recourse basis. See also subsection 444-80(1) of Schedule 1 to the TAA 1953 which provides that the participants in a GST joint venture are jointly and severally liable to pay any amount that is payable under an indirect tax law by the joint venture operator to the extent that the amount relates to the joint venture (unless subsection 444-80(1A) of Schedule 1 to the TAA 1953 applies, which deals with indirect tax sharing agreements).

**12. Legislative references**

Omit:

- TAA 1953 51
- ANTS (GST)A99 51-5(b)

Insert:

- TAA 1953 Sch 1 444-80(1)
- TAA 1953 Sch 1 444-80(1A)
- ANTS (GST)A99 51-5(1)(e)
- ANTS (GST)A99 51-70(1)(a)

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<sup>19A</sup> Although it is not necessary for the joint venture agreement itself to be in writing, for tax periods starting on or after 1 July 2010 paragraph 51-5(1)(e) requires that the entities must agree in writing to the formation of the joint venture as a GST joint venture. Similarly, under paragraph 51-70(1)(a) the joint venture operator may add an entity to the joint venture with the entity's written agreement if it satisfies the participation requirements of a GST joint venture.

This Addendum applies on and from 1 July 2010.

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**Commissioner of Taxation**

4 August 2010

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ATO references

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