GSTR 2003/D8 - Goods and services tax: what is a joint venture for GST purposes?

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There is an Erratum notice for this document.
This document has been finalised.

Draft Goods and Services Tax Ruling
Goods and services tax: what is a joint venture for GST purposes?

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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 upon by taxpayers and practitioners, as it is not a ruling or advice in terms of section 37 of the ***Taxation Administration Act 1953****. When officially released it will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

What this Ruling is about

1. This Ruling explains what is a joint venture for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The Ruling sets out the features that must be present in an arrangement before the Commissioner will consider it to be a joint venture.

2. The Ruling distinguishes between a partnership and a joint venture setting out the main features of both structures.

3. This Ruling does not deal with the consequences of approval of GST joint ventures under Subdivision 51-B, Subdivision 51-C or Subdivision 51-D of the GST Act.

4. Unless otherwise stated, all legislative references in this Ruling are to the GST Act and references to 'joint ventures' do not include incorporated joint ventures.

Date of effect

5. This draft Ruling 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 Ruling is officially released, it will explain our view of the law as it applies from 1 July 2000.

6. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* (TAA 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.

7. 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 later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Legislative context

8. A joint venture is an arrangement commonly adopted by businesses in the mining, primary production and other industries. A joint venture is not an entity[1] and cannot itself make supplies or acquisitions. Therefore each participant must individually account for GST and input tax credits on their taxable supplies and creditable acquisitions. Entities engaged in a joint venture can have it approved as a GST joint venture under Division 51 of the GST Act if the requirements for approval are satisfied. The nominated joint venture operator then deals with the GST liabilities and entitlements arising from its dealings on behalf of the participants in the joint venture.

9. The Commissioner must approve 2 or more entities as the participants in a GST joint venture if they meet the requirements of Subdivision 51-A of the GST Act. A joint venture that meets the requirements and is approved 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;[2] and
- The joint venture is not a partnership (as defined); and
- The entities jointly apply for approval in the approved form;[3] and
- Each entity satisfies the participation requirements in section 51-10; and

[1] Section 184-1 sets out the meaning of an entity for GST purposes. See also paragraphs 15 and 16 of this Ruling.
[2] Subregulation 51-5.01(1) sets out specified purposes for paragraph 51-5(1)(a) of the Act.
[3] Approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*. The approved form may be downloaded from the ATO's website at www.ato.gov.au.

- The application nominates one of the participants or another entity to be the joint venture operator of the 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.

10. An entity satisfies the participation requirements under section 51-10 if the entity:

- participates in, or intends to participate in, the joint venture; and
- is a party to a joint venture agreement with all the other entities participating in, or intending to participate in, the joint venture; and
- is registered for GST purposes; and
- accounts for GST on the same basis as all the other participants.

11. The benefits of being approved as a GST joint venture are mainly administrative. Individual participants' GST obligations, in respect of supplies or acquisitions made on their behalf by the joint venture operator, are satisfied by the joint venture operator, rather than by individual participants who may have little involvement in the day to day affairs of the venture. Transactions between joint venture participants are still subject to the usual GST rules. This is in contrast to the approval of a GST group[4] where most intra-group transactions are treated as if they are not taxable supplies.

Ruling with Explanation

12. For the purposes of the GST Act, we consider that a joint venture is an arrangement between 2 or more parties, characterised by all of the following features:

- a contractual agreement between the participants;
- joint control;
- a specific economic project;
- cost sharing; and
- sharing of product, not profit.

[4] See Subdivision 48-B for the consequences of approval as a GST group.

All of these features must be present for the Commissioner to be satisfied that a joint venture exists for GST purposes. The reasons for this are based on a consideration of the meaning of the expression joint venture in the context of the GST Act, drawing on dictionary definitions, judicial comments and the definition of 'non-entity joint venture' in the GST Act, as discussed below. Paragraphs 24 to 31 elaborate on each of these features.

13. The term joint venture is not defined in the GST Act. Accordingly, it takes its ordinary meaning having regard to the context in which it appears in the GST Act. The term is defined in Butterworths Concise Australian Legal Dictionary (Second Edition) as:

> An association of persons for particular trading, commercial, mining, or other financial undertakings or endeavours with a view to mutual profit. It is not a technical legal term with a settled common law meaning: *United Dominions Corp Limited v Brian Pty Ltd* (1985) 157 CLR 1; 60 ALR 741. The association is usually for the participation in a single project rather than a continuing business. A joint venture may be carried out by way of a partnership, company, trust, agency, joint ownership, or other arrangement. It may include an activity carried on by a body corporate which was formed to carry on the activity by means of joint control or ownership or shares in the body corporate: (Cth) Trade Practices Act 1974 s4j(a).

14. This definition indicates that a joint venture may be carried out in the form of a partnership, company, trust or other arrangement. However, since partnerships, companies and trusts are treated as separate entities by the GST Act,[5] for GST purposes, the expression joint venture does not include incorporated joint ventures or partnerships or trusts. This is consistent with paragraph (b) of section 51-5, which precludes a partnership from being approved as a GST joint venture. Therefore, for the purposes of the GST Act there is a distinction between a joint venture and a partnership.

15. While the GST Act does not define the term 'joint venture', it does provide a definition of 'non-entity joint venture'[6] for the purpose of excluding unincorporated joint ventures from the definition of 'entity' in section 184-1.[7] We think it is likely that a Court would look to the definition for some guidance as to the meaning of joint venture. The definition reflects[8] the Australian Accounting Standard, AASB 1006.

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[5] Section 184-1.
[6] Under section 195-1, a non-entity joint venture has the same meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).
[7] Subsection 184-1(1A).
[8] The Explanatory Memorandum to the Indirect Tax Legislation Amendment Bill 2000 specifically notes AASB 1006 at paragraph 7.19.

16. 'Non-entity joint venture' is defined as an arrangement that the Commissioner is satisfied is a contractual arrangement:

(a) under which 2 or more parties undertake an economic activity that is subject to the joint control of the parties; and

(b) that is entered into to obtain individual benefits for the parties, in the form of a share of the output of the arrangement rather than joint or collective profits for all the parties.

17. This definition indicates that the elements of a joint venture include a contract between 2 or more parties and joint control by the parties. The Explanatory Memorandum also states that a characteristic of a non-entity joint venture is that each participant '…incurs its own expenses and liabilities and raises its own finance which represents its own obligations.'[9]

18. Additionally, the definition indicates that sharing of the product of the venture, rather than sharing of profits, is a key feature of a joint venture. This element was also referred to in the High Court of Australia case *United Dominions Corporation Ltd v Brian Pty Ltd*[10] (*United Dominions* case), where Dawson J stated:[11]

> Perhaps, in this country, the important distinction between a partnership and a joint venture is, for practical purposes, the distinction between an association of persons who engage in a common undertaking for profit and an association of those who do so in order to generate a product to be shared among the participants. Enterprises of the latter kind are common enough in the exploration for and exploitation of mineral resources and the feature which is most likely to distinguish them from partnerships is the sharing of product rather than profit.

We discuss the distinction between a joint venture and partnership further in paragraphs 36 to 44.

19. In the same case, Mason, Brennan and Deane JJ[12] said:

> The term 'joint venture' is not a technical one with a settled common law meaning. As a matter of ordinary language, it connotes an association of persons for the purposes of a particular trading, commercial, mining or other financial undertaking or endeavour with a view to mutual profit, with each participant usually (but not

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[9] The Explanatory Memorandum to the Indirect Tax Legislation Amendment Bill 2000 at paragraph 7.19.

[10] *United Dominions Corporation Ltd v Brian Pty Ltd* (1985) 60 ALR 741; (1985) 157 CLR 1.

[11] *United Dominions Corporation Ltd v Brian Pty Ltd* (1985) 60 ALR 741 at 750; (1985) 157 CLR 1 at 15-16.

[12] *United Dominions Corporation Ltd v Brian Pty Ltd* (1985) 60 ALR 741 at 746; (1985) 157 CLR 1 at 10.

> necessarily) contributing money, property or skill. …The borderline between what can be described as a 'joint venture' and what should more properly be seen as no more than a simple contractual relationship may on occasion be blurred. Thus, where one party contributes only money or other property, it may sometimes be difficult to determine whether a relationship is a joint venture in which both parties are entitled to a share of profits or a simple contract of loan or a lease under which the interest or rent payable to the party providing the money or property is determined by reference to the profits made by the other.

This passage indicates that the term joint venture does not have a settled meaning. It does not expressly exclude arrangements for mutual profit that do not necessarily involve the sharing of product. However, as indicated above, and especially since the expression does not have a settled meaning, its meaning must be derived from its context in the GST Act.

20. In particular, we do not think it is intended to cover arrangements, including partnerships, under which parties carry on a venture together with a view to sharing profits. These arrangements are dealt with under the ordinary provisions of the GST Act.

21. Accordingly, we think that the term joint venture in the context of the GST Act is intended to have the meaning suggested by Dawson J in the *United Dominions* case[13] and is therefore limited to arrangements where the participants are to share product rather than profits.

22. This passage also confirms that a feature of joint ventures is the sharing of the costs of the venture by the participants, commonly by way of individual participants contributing money, property or expertise.

Features of a joint venture

23. The question whether an arrangement is a joint venture is to be determined on the basis of a consideration of all the facts and circumstances in each case. The arrangement must have all of the features outlined in paragraph 12 if it is to be accepted as a joint venture for GST purposes. In particular, the fact that an arrangement is referred to as a joint venture does not, by itself, make it a joint venture. The following paragraphs elaborate upon the essential requirements referred to at paragraph 12.

[13] See paragraph 18.

Contractual agreement

24. Joint venture participants must enter into an agreement, which establishes the operation, management and joint control of the joint venture. Usually the terms of the arrangement are governed by a written agreement entered into by the participants, but a joint venture may also be governed by statute. Joint venture agreements usually declare that the participants associate themselves in a business undertaking for a stated purpose, for example to mine a mineral deposit. The agreements also usually disclaim other legal relationships between the participants, for example, a partnership relationship. However, a statement that an arrangement is not a partnership, by itself, does not determine the nature of the arrangement. See Example 2 in paragraphs 49 to 52.

Joint control

25. A joint venture must be under the joint control of the participants. However, the extent to which each participant can influence the strategy and operations of the venture can vary. An essential feature is that none of the individual participants can unilaterally control the venture. The joint venture agreement will specify the nature and extent of the joint control e.g. unanimous consent of the participants. Responsibility for the day to day management of the venture may rest with a manager/operator appointed by the participants. The manager/operator may be one of the participants, or a management company formed by the participants, or a third party.

26. However, although a party may be involved in decision making, it may not necessarily be a joint venture participant. For example, a potential buyer of a building being developed by a joint venture may want to be part of the decision making, for example for quality control purposes and selection of fittings.

Specific economic project

27. As outlined in the *United Dominions* case joint ventures are undertaken for the purposes of a particular trading, commercial, mining or other financial undertaking or endeavour. Commonly, a joint venture is for a specific project such as building a dam or mining an iron ore deposit. These projects ordinarily have a finite life (such as the life of the mine) and when the project is complete the joint venture ends. It is not essential that the end date of the undertaking be specified, or able to be determined when entering into the joint venture agreement.

Cost sharing

28. Costs associated with the undertaking of a joint venture are met by the participants individually, commonly in accordance with the joint venture interests stipulated in the joint venture agreement. Each participant in the joint venture may use its own resources, such as cash, plant and equipment, and carry its own inventory. Contributions need not be cash, plant or equipment, but can be technological skills or other valuable intangible items eg mining information. Each participant incurs its own expenses and liabilities and raises its own finance. Each participant is liable only for its own debts. Not being a separate entity, joint ventures have no separate liability for debts. Also, unlike partners in a partnership, there is no statutory or other basis for participants to be jointly and severally liable for debts incurred by the other participants.[14]

Sharing of product not profit

29. A key characteristic of a joint venture for GST purposes, as outlined in the *United Dominions* case above, and reflected in the definition of 'non-entity joint venture', is that each participant receives an agreed share of the product or output to its own account, rather than a share of jointly earned profit. An example of sharing of product is where a land owner and builder enter into a joint venture to build a block of 12 strata title units and on completion the landowner is to retain units 1 to 8 and the builder is to take units 9 to 12.

30. Each participant can deal with their share of the product in their own right. For example, in a mining joint venture, each participant takes a share of the extracted minerals or ore to deal with in its own right. In this case, the individual participants' shares are not readily identifiable from, for example, a stockpile of coal. Nevertheless, each participant is entitled to a specified share of the product. Although the participants may agree that their shares of the product may be pooled together for sale, there is still no joint sale of the product or output. If the participants share the proceeds of the sale of the product, rather than sharing the product, there will not be a joint venture. However, the participants may agree that the product is to be sold collectively by another entity, or by one of the participants, on behalf of all of the participants. This does not mean that the participants are sharing in the proceeds of the sale or that there is a joint profit to share. Rather, the entity that sells each participant's share of the product sells on behalf of that participant.

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[14] Participants in a joint venture may have joint and several liability under some project financing, but recourse is usually limited. See also section 51 of 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.

31. While the sharing of an output rather than a sharing of profit or income is a critical feature of a joint venture for GST purposes, the output need not be of a tangible nature. The output may include intangible items, such as mining rights and patents. For example, a joint venture may be formed to construct a road on State-owned land, with the product being interests as tenants in common in relation to the operation of a toll upon the use of the road.

Arrangements separate to the joint venture

32. An agreement governing a joint venture may also extend to arrangements which are not part of the joint venture. If all of the above features are present, so that there is a joint venture, the other arrangements do not detract from the status of the joint venture. Nor do the arrangements form part of the joint venture.

33. For example, participants in a joint venture for the construction of commercial or residential premises may engage a construction company to carry out the construction. Even if the engagement of the construction company is covered by the agreement and the consideration for the company's services includes, say, a strata title unit in the premises, the construction company may not be a participant in the joint venture in these circumstances. The contractual arrangements with the construction company may not exhibit *all* of the features of a joint venture. For example, if the construction company does not participate in the control of the venture, it is not a participant in the joint venture. Rather, the arrangement involves the supply of a service for consideration.

Is a written agreement required?

34. The question arises whether the joint venture agreement must be in writing. Paragraph 51-10(b) does not specifically refer to a 'written agreement'. It requires each entity seeking approval as a participant in a GST joint venture to be a 'party to a joint venture agreement' and the GST joint venture application to be in an approved form. Although the applicants 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.

35. Most joint ventures have some form of documentation to establish the existence of the arrangement and to govern the relationship between the participants, particularly the manner in which the participants' contributions and the product of the venture are to be dealt with between them.

Joint venture or partnership

36. To determine whether a particular arrangement is a joint venture or partnership, consideration must be given, case by case, to the substance of the relationship between the parties to the arrangement.

37. We have stated above the features of a joint venture. We restate here briefly the features of a partnership. A partnership is defined in section 195-1 of the GST Act by reference to the definition of a partnership in section 995-1 of the ITAA 1997. That definition states that a partnership is 'an association of persons carrying on business as partners or in receipt of ordinary income or statutory income jointly, but does not include a company.'

38. The first limb of the definition refers to 'an association of persons carrying on business as partners'. This reflects the general law definition of a partnership in the various State and Territory partnership Acts.[15] We refer to this type of partnership as a general law partnership.[16]

39. Whether a partnership exists is a question of fact determined having regard to the partnership agreement and the circumstances surrounding the formation of the agreement. There will usually be evidence of the parties' intention to act as partners and an entitlement to a share of net profits. Further, the relationship will usually involve mutual trust and confidence so that the partners must act in the interests of the partners as a whole. There will also be joint and several liability of partners. Where these features are present a Court may be inclined to find that arrangements described as joint ventures are actually partnerships.[17]

40. The second limb of the definition refers to an association of persons, not necessarily in business, but in receipt of income jointly, for example co-owners of rental property. This type of partnership is commonly referred to as a tax law partnership.

41. Receipt of income jointly connotes a joint entitlement to income rather than a mere sharing of gross income. For example, a

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[15] The general law definition is set out in the Partnership Act of each State and Territory as follows: subsection 7(1) WA; subsection 5 (1) Qld; subsection 5(1) Vic; subsection 1(1) SA; subsection 1(1) NSW; subsection 6(1) ACT; subsection 6(1) Tas; subsection 5(1) NT. The various State statutes define 'partnership' as 'the relation which subsists between persons carrying on a business in common with a view of profit.' This definition is adopted from the common law.

[16] Our view on general law partnerships can be found in Goods and Services Tax Ruling GSTR 2003/13. TR 94/8 sets out the Commissioner's view on when a business is carried on in partnership.

[17] See, for example, *United Dominions Corporation Ltd v Brian Pty Ltd* (1985) 60 ALR 741; (1985) 157 CLR 1; *Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd* (1974) 131 CLR 321.

joint venture agreement may provide for one of the participants to receive the proceeds from the sale of the participants' shares of the product of the joint venture, on behalf of the other participants. Even though the participants, under the terms of the agreement, may share in the amount received, they are entitled to their respective contractual shares of the product severally rather than jointly.

42. Joint venture participants may receive some income as co-owners of property. For example, a third party may reimburse the joint venture for fuel used from a joint venture fuel tank, or occasional use of an outback airstrip built by the joint venture and held as tenants in common. However, we consider that such amounts of income are incidental to the main proceeds received by the participants, being a share of the relevant product. Provided that the occasion for the income is incidental in nature to the main purpose of the joint venture, we accept that such income, regardless of the amount, is not a receipt by the joint venture participants jointly. For GST purposes, the receipt of that income does not in itself make the arrangement a tax law partnership rather than a joint venture.

43. The distinction between the two types of partnership and a joint venture was observed in the decision of the Supreme Court of NSW in *A.R.M. Constructions Pty Ltd and Others v Federal Commissioner of Taxation.*[18] In that case, Yeldham J stated:

> …I am clearly of the opinion that…there was merely a joint venture between the appellants to construct buildings, in contrast to an agreement to make profits for sharing, and it was the intention of the parties at all material times to retain the units and town houses so erected, except to the extent that sales might be necessary to repay moneys borrowed from lending institutions…In my view the parties associated together to produce a product, a building of units capable of partition between them, so that each could thereafter go their own respective ways. Their expressed intention so to do was duly manifested in what they thereafter did and achieved, and their agreement constituted in law something in the nature of a joint venture to construct the building, in contrast to an agreement to make profits for sharing, inter se. The only partnership for tax purposes related to such rental income as was received jointly before the date of the deed of partition…[19]

44. The following table summarises the common features of a partnership and joint venture to assist in distinguishing between them for the purposes of paragraph (b) of subsection 51-5(1).

[18] (1987) 87 ATC 4790; (1987) 19 ATR 337.
[19] (1987) 87 ATC 4790 at 4805; (1987) 19 ATR 337 at 354.

Partnership	Joint Venture
Joint entitlement to profit or income	Sharing of product in defined portions
A continuing business	Specific economic project
One partner's actions may bind all of the partners	Joint or mutual control of the venture
Partners have indirect undivided interests in the partnership assets (a partner can individually deal with its interest in the partnership but not the underlying partnership assets.)	Well-defined separation of interests, rather than a joint undivided interest, in assets contributed towards the venture
Partners in a partnership are agents of the other partners and are ordinarily jointly and severally liable for the expenses of the partnership	Joint venture participants are usually liable for their own debts which they incur individually as principals

45. An arrangement described by the parties as a joint venture may be neither a joint venture nor a partnership. It may involve merely a fee for service agreement, as in Example 3 in paragraphs 53 and 54,[20] or an investment arrangement, as in Example 4 in paragraphs 55 to 57.

Examples

Example 1 – A joint venture not a partnership

46. MineCo Pty Ltd, ExploreCo Pty Ltd and ExportCo Pty Ltd enter into a joint venture to extract a mineral ore from a mining tenement which they own in equal shares. The joint venture agreement sets out that the purpose of the joint venture is to explore, extract and sell the mineral deposit. The joint venture agreement is a written contract between the participants that evidences that there is equal control and cost sharing of the specific project. Each of the

[20] See also *Pursell v Newberry* (1968) 118 CLR 381 at 388 where Barwick CJ, with whom McTiernan and Kitto JJ agreed, held that an arrangement between two graziers for the construction of a dividing fence could not be a joint venture as there was an agreed price to be paid by one party to the other for the work to be done.

participants is to receive a one third share of any extracted mineral deposit. ManageCo, a company formed by the other participants, is given responsibility for the day to day operations of the venture.

47. Each participant is responsible for their own share of the finance necessary to complete the project. The participants' shares of the mineral are to be pooled together for sale.

48. This arrangement between the three participants is a joint venture, not a partnership, because the intention of the participants, in entering into the arrangement, is to produce and share in a product, the mineral ore, rather than to share in profits from the sale of the ore. Also, each participant is responsible and liable for their own debts in relation to the project.

Example 2 – A partnership not a joint venture

49. LandCo, the owner of a block of land, enters into an agreement, which is described as a 'joint venture agreement', with DevCo, a construction company. LandCo makes the land available to DevCo for the purpose of residential housing development. The agreement expressly refers to LandCo and DevCo as joint venturers and states that 'nothing in this agreement shall be construed so as to deem the joint venturers to be partners'.

50. Under the agreement, ownership of the land remains with LandCo until any developed lots (with houses constructed on them) are sold to third parties. LandCo's contribution to the project is the value of the land, with DevCo making a cash contribution.

51. DevCo is appointed to be the project manager to undertake the development works. LandCo, as the owner, will sell the developed lots to third parties. Reflecting the contribution of DevCo as project manager, the agreement provides that the profits or losses arising from the project are to be shared between LandCo and DevCo in the proportions of 40% and 60% respectively.

52. The above arrangement between LandCo and DevCo is a partnership because it provides for a sharing of any profits or losses arising from the project. The facts indicate that LandCo and DevCo are carrying on a business in common with a view of profit, and therefore the first limb of the definition of 'partnership' is satisfied. Even though the agreement provides that nothing in it shall be construed to deem the parties to be partners, and describes the relationship as a joint venture, it cannot deny the true relationship of a partnership between them. The arrangement also satisfies the second limb of the definition of 'partnership' in that LandCo and DevCo, under the agreement, are jointly in receipt of income in the form of net sale proceeds.

Example 3 – Neither a partnership nor a joint venture

53. LandCo and DevCo enter into another agreement for the purpose of developing a second residential housing development. Under this agreement, there is no sharing of the final profits or losses. LandCo remains responsible for holding costs, including rates and bank interest on its own funding arrangements. DevCo agrees to carry out all site works and construction at its cost, arranging its own financing. DevCo never becomes the owner of the developed sites, but its interests under the agreement are secured by a second mortgage over the land. Each dwelling is sold by DevCo under power of attorney for LandCo. Each is entitled to share in the proceeds of sale of each stage of the development. DevCo is entitled to retain 60% of the gross sale proceeds for each sale, the balance being paid to LandCo. Both parties have joint control of the development, all significant decisions concerning design and other matters being made by a joint management committee.

54. LandCo and DevCo are not in a joint venture as there is no sharing of product. Nor are they a partnership as the income is not received jointly, but rather is received on behalf of LandCo as the vendor of the dwellings. Nor are the parties carrying on business together. Rather, each is responsible for their own costs and outlays. The share of the proceeds received by DevCo is consideration for the site works, construction and marketing services provided by DevCo to LandCo. Thus the arrangement between LandCo and DevCo is merely a service arrangement.

Example 4 – Neither a partnership nor a joint venture

55. Philippa and Antonio have entered into a farming agreement whereby, for a period of 8 years, Antonio will farm 5 hectares of peanuts on land that Antonio owns. Antonio will sell the harvested crop. As part of the agreement, Philippa will pay Antonio $2,000 for each hectare of peanuts farmed. In addition, Antonio is to retain 50% of the gross receipts from sales of the harvested crop. The balance of the proceeds goes to Philippa.

56. Under the agreement, no interest in the land is created for Philippa. Nor is Philippa entitled to any part of the crop harvested. If Antonio terminates the agreement, he has to repay Philippa the initial $2,000 per hectare contribution. If Philippa terminates the agreement, she is entitled to a partial repayment of her contribution, the amount repayable depending on when the agreement is terminated.

57. The arrangement between Antonio and Philippa is not a partnership because they are not carrying on a business in common nor in receipt of income jointly. The arrangement is also not a joint

venture because there is neither joint control nor a sharing of a product. Antonio is running the business of farming himself without any involvement from Philippa. Antonio receives the income from the sale of the crop and disburses part of it to Philippa, who has no say in the running of the farming business. Under the agreement, Philippa is merely investing funds for an 8 year period at a rate of return varying with the size and sale price of the crop produced. The arrangement is an investment by Philippa in Antonio's business.

Your comments

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

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Detailed contents list

59. Below is a detailed contents list for this Goods and Services Tax Ruling:

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Commissioner of Taxation
26 November 2003

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Related Rulings/Determinations:
GSTR 1999/1; GSTR 2003/13;
TR 94/8

Subject references:
- joint venture
- GST joint venture
- partnership

Legislative references:
- TAA 1953 37
- TAA 1953 51
- TAA 1953 388-50(1)
- ITAA 1997 195-1
- ITAA 1997 995-1
- ITAA 1997 995-1(1)
- ANTS (GST) A99 9-5
- ANTS (GST) A99 Subdiv 48-B
- ANTS (GST) A99 Div 51
- ANTS (GST) A99 Subdiv 51-A
- ANTS (GST) A99 Subdiv 51-B
- ANTS (GST) A99 Subdiv 51-C
- ANTS (GST) A99 Subdiv 51-D
- ANTS (GST) A99 51-5
- ANTS (GST) A99 51-5(b)
- ANTS (GST) A99 51-5(1)(a)
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