GSTD 2004/2 - Goods and services tax: are all supplies made by the entity nominated as the joint venture operator to entities that are participants in the GST joint venture to be treated as if they are not taxable supplies?

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Goods and Services Tax Determination

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

Preamble

This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the ***Taxation Administration Act 1953*** *and former section 105-60 of Schedule 1 to the* ***Taxation Administration Act 1953****.*

From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the ***Taxation Administration Act 1953****.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

*[****Note:*** *This is a consolidated version of this document. Refer to the Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

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[1] are treated as if they are 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 to a participant in its capacity as a participant in the joint venture.

[1] GSTR 2004/2 gives the Commissioner's views on what is a joint venture for GST purposes. GSTR 2004/3: *arrangements of the kind described in Taxpayer Alert TA 2004/2: Avoidance of GST on the sale of new residential premises* is an example of the application of aspects of those views.

Explanation

2. Subsection 51-5(1) provides that two or more entities may become the participants in a GST joint venture if certain requirements are satisfied. These include a requirement that one of those entities, or another entity, is nominated to be the joint venture operator of the joint venture.[1A]

3. Subsection 51-30(2) provides that a supply that the joint venture operator of a 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 *all* supplies made by an entity that is nominated as the joint venture operator to an entity that is a participant in the joint venture. In particular, it does not apply to supplies that are made by the entity in a capacity other than as joint venture operator or that are made to an entity in a capacity other than as a participant in the joint venture.

Example

5. *The participants in a joint venture obtain part of their shares of the product or output of the joint venture, such as the coal extracted in a mining joint venture during a particular period. Subsequently, an entity which is one of the participants in the joint venture and is nominated as the joint venture operator, sells part of its share of the product to another entity, which is also a participant in the joint venture.*

6. *While the entity making the supply may be nominated as the joint venture operator, the supply is not made by the entity in its capacity as joint venture operator. Rather, it is made by the entity in its own right in the course of its separate activity of selling coal obtained through the joint venture. Similarly, while the entity to which the supply is made is a participant in the joint venture, the supply is not made to that entity in its capacity as a participant. Rather, the entity obtains the coal for the purpose of its own separate activity of selling or using the coal.*

7. *Accordingly, subsection 51-30(2) does not apply to the subsequent supply in these circumstances. If the requirements of subsection 9-5 are satisfied, the subsequent supply is a taxable supply.*

8. Division 51 may be contrasted with Division 48, which provides rules for streamlining GST reporting obligations for entities that are members of a GST group. Under Division 48, a GST group is effectively treated as a single entity for certain purposes.[2]

[1A] Paragraph 51-5(1)(ea). The nomination must be made in the written agreement to the formation of the GST joint venture which is entered into by the participants of the joint venture (paragraph 51-5(1)(e)).

[2] See also Explanatory Memoranda to the A New Tax System (Goods and Services Tax) Bill 1998, paragraph 6.7 and to the A New Tax System (Indirect Tax and Consequential Amendments) (No. 2) Bill 1999, paragraph 1.17.

9. 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.

10. 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 between entities that are participants in a GST joint venture.

11. 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'.[3] 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 as a single entity for certain purposes.

12. 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).

13. 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.

Alternative view

14. There is an alternative view that subsection 51-30(2) covers all supplies made by an entity nominated as the joint venture operator to an entity which is a participant in the joint venture. Support for this view is said to be found in the unqualified statement in the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 at paragraph 6.25 that '[s]upplies made by the joint venture operator to another participant of the GST joint venture are not treated as being subject to GST'.

15. The Commissioner's view is that, just as subsection 51-30(2) must be read in its context, so too should this statement. To give it the unqualified meaning suggested by the alternative view would mean that supplies having no connection with the joint venture would be covered by subsection 51-30(2). The Commissioner considers that is unlikely to have been Parliament's intention.

[3] Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999, paragraph 1.101.

Date of effect

16. This Determination applies [to tax periods commencing] both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

17. [Omitted.]

Commissioner of Taxation
7 April 2004

Previous draft:

GSTD 2003/D2

Related Rulings/Determinations:

TR 2006/10; GSTR 2004/2; GSTR 2004/3

Subject references:

- joint venture
- GST joint venture

Legislative references:

- ANTS (GST)A99 9-5
- 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 51-5(1)(e)
- ANTS (GST)A99 51-5(1)(ea)
- ANTS (GST)A99 51-30(2)
- A New Tax System (Indirect Tax and Consequential Amendments) Act 1999
- TAA 1953 Sch 1 Div 358

Other references:

- Explanatory Memoranda to the A New Tax System (Goods and Services Tax) Bill 1998
- Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999
- Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) (No. 2) Bill 1999

ATO references
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