

PS LA 2007/2 (GA) - GST joint venture operators in the mining and petroleum industries accounting for the GST on taxable supplies that generate non-product sales income

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Australian Taxation Office

Practice Statement Law Administration (General Administration)

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This Practice Statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences. Where this occurs Tax Office staff must follow their business line's escalation process.

SUBJECT: GST joint venture operators in the mining and petroleum industries accounting for the GST on taxable supplies that generate non-product sales income

PURPOSE: To outline the circumstances in which the joint venture operator of a GST joint venture in the mining or petroleum industry can account for the GST on taxable supplies it makes on behalf of the participants in the joint venture that generate non-product sales income

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STATEMENT

Background

1. This practice statement addresses a particular issue that the Commissioner has become aware of in the mining and petroleum industries. The issue relates to the GST treatment of taxable supplies made by the joint venture operator on behalf of participants in the joint venture other than sales of the product or output of the joint venture. These supplies are commonly referred to as 'non-product sales'.
2. There are various types of taxable supplies that may be made by the joint venture operator that can result in non-product sales income being earned. These supplies may vary in value and frequency. For example, the operator may:
 - sell fuel to subcontractors in a remote location¹
 - charge another entity for use of port facilities or a rail network to transport product to ships for export (commonly referred to as 'tolling'), or
 - receive income from allowing a grazier to agist cattle in an area of a mining tenement that is not currently being explored or exploited.
3. If a joint venture is approved as a GST joint venture under Division 51 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), the nominated joint venture operator accounts for the GST liabilities and entitlements arising from its dealings on behalf of the participants in the course of the activities for which the joint venture was entered into. However, some uncertainty has arisen amongst affected entities as to whether supplies that generate non-product sales income can also be dealt with by the joint venture operator.
4. In practical terms, the industry concern is that there may be increased compliance costs if the joint venture operator is not allowed to account for the GST on these non-product supplies. A different accounting and GST treatment would be required to that adopted by industry members for other aspects of the operations of the joint venture.
5. This practice statement outlines the circumstances in which the operator of a GST joint venture can account for the GST on taxable supplies that generate non-product sales income. It only applies to supplies made by the joint venture operator of a GST joint venture for the exploration or exploitation of mineral deposits (which includes petroleum, sand and gravel)² on behalf of the participants in the joint venture.
6. Unless otherwise stated, all legislative references in this practice statement are to the GST Act. References to 'joint ventures' do not include incorporated joint ventures or partnerships.

¹ This should not be taken to imply that fuel provided to contractors without charge is regarded as sold to the contractors: for the Commissioner's views regarding GST and non-monetary consideration, see Goods and Services Tax Ruling GSTR 2001/6: Goods and services tax: non-monetary consideration.

² The term 'mineral deposit' is defined in section 195-1 of the GST Act as a deposit of minerals and includes a deposit of sand or gravel. The term 'minerals' is also defined in that section and refers to the meaning given by the *Income Tax Assessment Act 1997* which includes petroleum.

GST joint ventures and payment of GST

7. The GST law provides that the Commissioner must approve³ two or more entities as the participants in a GST joint venture⁴ for the exploration or exploitation of mineral deposits if certain requirements are satisfied. These include the requirement that the entities jointly apply for approval of the joint venture as a GST joint venture⁵ and that the application nominates one of those entities, or another entity, to be the joint venture operator of the joint venture.⁶
8. A consequence of approval as a GST joint venture is that the GST payable on a taxable supply or taxable importation that the joint venture operator makes, on behalf of another entity that is a participant in the joint venture, in the course of the activities for which the joint venture was entered into:
 - is payable by the joint venture operator, and
 - is not payable by the participant.⁷
9. In this way, the responsibility for payment of GST on a supply made as the joint venture operator, which would ordinarily fall upon the participants, is imposed on the joint venture operator rather than the participants.⁸ However, the participants remain jointly and severally liable for the GST that is payable by the joint venture operator.⁹

Joint venture operators and non-product sales

10. The Commissioner accepts that the costs of compliance for the mining and petroleum industry can be reduced if the joint venture operator can account for the GST on non-product sales that are typically of the kind described in paragraph 2 of this statement.
11. Consequently, the Commissioner will accept the joint venture operator accounting for any GST on non-product sales made in a particular tax period in the following circumstances:
 - the joint venture operator is the operator of a GST joint venture for the exploration or exploitation of mineral deposits (which includes petroleum, sand and gravel)
 - the non-product sales are made by the joint venture operator on behalf of the participants
 - the joint venture operator accounts for the non-product sales in the activity statement for the tax period applying to the joint venture operator for the joint venture, and

³ Subsection 51-5(1).

⁴ GSTR 2004/2 Goods and services tax: What is a joint venture for GST purposes, provides the Commissioner's view of the meaning of 'joint venture'.

⁵ Paragraph 51-5(1)(c).

⁶ Paragraph 51-5(1)(e).

⁷ Subsection 51-30(1).

⁸ Section 51-35 similarly gives the joint venture operator the entitlement to input tax credits that would otherwise be an entitlement of the participant in respect of creditable acquisitions and creditable importations made by the joint venture operator on behalf of a participant in the course of activities for which the joint venture was entered into.

⁹ Section 51 of the *Taxation Administration Act 1953*.

- the participants remain jointly and severally liable for the GST payable on the non-product sales.

Example

12. MiningCo Pty Ltd (MiningCo) is the joint venture operator of a coal mining joint venture. The joint venture has been approved as a GST joint venture. MiningCo is also one of the participants in the joint venture. The mining lease area owned by the participants that will be exploited is very large. The coal body is being exploited in stages and only part of the lease area is being excavated. The remainder of the lease area is well grassed. MiningCo, as joint venture operator, has agreed to allow a grazier to agist cattle in this area for 6 months for an agreed fee.
13. MiningCo can include the agistment supply in MiningCo's GST joint venture activity statement.

Other industries

14. If the issue addressed in this statement arises in other industries in which joint ventures operate, industry associations, whose members are affected, should be invited to request that the Commissioner consider approving a similar practice in respect of their circumstances. The request should be considered on the basis of the circumstances of the GST joint ventures in the particular industry, including the nature and circumstances of the non-product taxable supplies made. The request should be considered in accordance with Tax Office processes for the approval of Law Administration Practice Statements in the general administration series.

15. Industry bodies wishing to make such requests should be asked to address the request to:

GST technical advice
P O Box 9935
in your capital city

or

email to: GSTmail@ato.gov.au

or

facsimile: 1300 139 031

Amendment history

Date of amendment	Part	Comment
15 September 2009	Contact details	Updated.

Subject references	GST joint venture
Legislative references	ANTS(GST)A 1999 51-5 ANTS(GST)A 1999 51-30 ANTS(GST)A 1999 51-35 TAA 1953 51
Related public rulings	GSTR 2004/2 Goods and services tax: what is a joint venture for GST purposes, provides the Commissioner's view of the meaning of 'joint venture'?
Related practice statements	
Case references	
Other references	GSTmail@ato.gov.au
File references	
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Other Business Lines consulted	All