



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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Law Administration Practice Statement (General Administration)

PS LA 2007/2 (GA)

This Practice Statement is an internal ATO document and an instruction to ATO staff.

Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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 we are aware of in the mining and petroleum industries. The issue relates to the goods and services tax (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 output¹ of the joint venture. These supplies are commonly referred to as 'non-product sales'.

¹ Paragraphs 31 to 34 of Goods and Services Tax Ruling GSTR 2004/2 *Goods and services tax: What is a joint venture for GST purposes?* discuss what is meant by product or output of the joint venture.

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 location²
 - 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 formed 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, there can be uncertainty among 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)³ on behalf of the participants in the joint venture.
6. All legislative references in this Practice Statement are to the GST Act, unless otherwise indicated. References to 'joint ventures' do not include incorporated joint ventures or partnerships.

GST joint ventures and payment of GST

7. The GST law provides for the formation of⁴ 2 or more entities as the participants in a GST joint venture⁵ for the exploration or exploitation of mineral deposits if certain requirements are satisfied. These include the requirement that the entities agree in writing to the formation of the joint venture as a GST joint venture⁶ and that the agreement nominates one of those entities, or another entity, to be the joint venture operator of the joint venture.⁷ The nominated joint venture operator is required to notify us, in the approved form, of the formation of the joint venture as a GST joint venture.⁸
8. A consequence of the formation of a GST joint venture is that the GST payable on a taxable supply or taxable importation that the joint venture operator makes

² This should not be taken to imply that fuel provided to contractors without charge is regarded as sold to the contractors: for our views regarding GST and non-monetary consideration, see Goods and Services Tax Ruling GSTR 2001/6 *Goods and services tax: non-monetary consideration*.

³ 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.

⁴ Subsection 51-5(1).

⁵ GSTR 2004/2 provides our view of the meaning of 'joint venture'.

⁶ Paragraph 51-5(1)(e).

⁷ Paragraph 51-5(1)(ea).

⁸ Paragraph 51-5(1)(eb).

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
- not payable by the participant.⁹

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.¹⁰ However, the participants remain jointly and severally liable for the GST that is payable by the joint venture operator¹¹ unless they have entered into an indirect tax sharing agreement with the joint venture operator.¹²

Joint venture operators and non-product sales

10. We accept 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 Practice Statement.

11. Consequently, we 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).¹³
- 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.
- The participants remain jointly and severally liable for the GST payable on the non-product sales or have entered into an indirect tax sharing agreement with the joint venture operator under which the contribution amount takes into account the non-product sales.

Example – joint venture operator accounting for non-product sales

12. *MiningCo is the joint venture operator of a coal mining joint venture, which has been formed 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.*

⁹ Subsection 51-30(1).

¹⁰ 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.

¹¹ Subsection 444-80(1) of Schedule 1 to the *Taxation Administration Act 1953*.

¹² Subsection 444-80(1A) of Schedule 1 to the *Taxation Administration Act 1953*.

¹³ This Practice Statement therefore does not apply to any GST joint venture formed for any of the purposes specified in section 51-5.01 of the *A New Tax System (Goods and Services Tax) Regulations 2019*.

13. *MiningCo can include the agistment supply in MiningCo's GST joint venture activity statement.*
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Other industries

14. If the issue addressed in this Practice Statement arises in other industries in which joint ventures operate, industry associations (whose members are affected) should be invited to request that we 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.
15. Industry bodies wishing to make such requests should be asked to address the request to:

Technical Leadership and Advice – GST
PO Box 3524
Albury NSW 2640

or

facsimile: 1300 139 031

Date issued: 22 August 2007

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Business line: ISP - GST

Amendment history

28 November 2024

Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.

30 July 2014

Part	Comment
Contact details	Updated.

30 October 2012

Part	Comment
Contact details	Updated.

21 October 2011

Part	Comment
Paragraphs 3, 7, 8, 9 and 12	Adjustments to clarify the Commissioners position on notifying in writing of a joint venture. Changes from 'approved' to 'formed'.
Footnotes 5, 6, 7, 10 and 11	Changes to legislation.

28 July 2011

Part	Comment
Paragraph 11	Amended due to legislative changes to the GST Act.

15 September 2009

Part	Comment
Contact details	Updated.

References

Legislative references	ANTS(GST)A 1999 Div 51 ANTS(GST)A 1999 51-5(1) ANTS(GST)A 1999 51-5(1)(e) ANTS(GST)A 1999 51-5(1)(ea) ANTS(GST)A 1999 51-5(1)(eb) ANTS(GST)A 1999 51-30(1) ANTS(GST)A 1999 51-35 ANTS(GST)A 1999 195-1 ANTS(GST)R 2019 51-5.01 TAA 1953 Sch 1 444-80(1) TAA 1953 Sch 1 444-80(1A)
Related public rulings	GSTR 2001/6 GSTR 2004/2

ATO references

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