


GSTR 2009/1EC - Compendium

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Page status: **not legally binding**

Page 1 of 6

Ruling Compendium – GSTR 2009/1

This is a compendium of responses to the issues raised by external parties to draft Goods and Services Tax Ruling GSTR 2008/D2 Goods and services tax: general law partnerships and the margin scheme, and draft Addendum to Goods and Services Tax Ruling GSTR 2003/13 Goods and services tax: general law partnerships

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1	<p>The threshold issue that needs to be addressed in the Draft Ruling is the question of whether a particular relationship between parties is a general law partnership or a tax law partnership.</p> <p>The question was addressed briefly at paragraphs 19 and 20 of GSTR 2003/13 but was of little if any assistance in enabling entities to determine their position.</p> <p>A common form of arrangement, particularly in relation to land development activities is for parties to enter into what is described as a 'Joint Venture Agreement' or some similar title in which the parties agree to undertake a project and share the profits of the project in agreed proportions.</p> <p>There are many variations to these agreements, for example in its simplest form A and B might enter into a 'Joint Venture Agreement' under which they agree to undertake a land development project. The Joint Venture Agreement will often contain a clause to the effect that the parties agree that they are co-venturers (or some other equivalent) and are not partners for any purpose. Each of A and B will contribute funds and they will jointly purchase the land to be developed, often using a bare trustee as the title holder for the land. The project will be undertaken and A and B will share the profits of the project equally.</p>	<p>It is acknowledged that determining the nature of the particular relationship between the parties often requires an assessment of detailed and complex, facts and circumstances. The assessment of the nature of a relationship between parties is often made more difficult by the fact that an arrangement may possess a range of indicia applicable to both general law partnerships and tax law partnerships.</p> <p>Goods and Services Tax Ruling GSTR 2003/13 on general law partnerships and Goods and Services Tax Ruling GSTR 2004/6 on tax law partnerships set out some general principles for ascertaining the nature of a relationship between parties. This issue is not addressed further in this Ruling as this Ruling is primarily focussed upon how the margin scheme operates subsequent to determining that there is a general law partnership in existence.</p> <p>Due to the many variations to arrangements and agreements the Tax Office considers that the general principles set out in GSTR 2003/13 and GSTR 2004/6 is an appropriate manner in which guidance can be provided in relation to this issue.</p>

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Page 2 of 6

Issue No.	Issue raised	Tax Office Response/Action taken
	<p>Alternatively, A and B might agree to undertake a project in circumstances where A owns the land to be developed and B (or an associate of B) conducts a building business. They agree that A will retain ownership of the land and will be the party that enters into sale agreements. The proceeds of the project are to be applied firstly to compensate A for the value of the land at the date that the project commences, and secondly to compensate B for the costs associated with the buildings that have been constructed on the land and finally to share any balance in agreed proportions. As in the previous example, A and B enter into a Joint Venture Agreement where they agree that they are not partners for any purpose.</p> <p>The pivotal question is whether transactions arising under such arrangements are intended to be covered by the draft Ruling, that is whether the arrangement between the parties is a general law partnership, a tax law partnership or some other arrangement. Given the implications that will arise for the parties if there is a common law partnership a detailed examination of this question is a necessary pre-requisite for the draft Ruling.</p>	
2	<p>Legal Title held by Bare Trustee</p> <p>In a number of instances where land is developed by a partnership the title to the land is held by a bare trustee. The ATO has recently issued GSTR 2008/3 that expresses the ATO view about how the GST Act applies in the circumstances of a bare trustee. There should be a reference to the bare trust ruling in that part of the draft Ruling that considers the concept of 'Partnership property' (paragraphs 17-20).</p>	<p>The Tax Office considers that circumstances where, and issues arising from, the holding of partnership property by a bare trustee is outside the scope of this Ruling. As noted, the Tax Office's views on the GST consequences arising when real property is held by a bare trustee are addressed in GSTR 2008/3.</p> <p>Paragraph 18 of the Ruling has been amended to refer to partnership property 'normally' held by the partners so as to acknowledge that there may be circumstances where one or more of the partners of a partnership may not always hold the legal title to property that is partnership property.</p>

