GSTD 2003/D3 - Goods and services tax: if the joint venture operator of a GST joint venture set up to design, build or maintain residential or commercial premises transfers completed premises to a joint venture participant, is that supply treated as if it were not a taxable supply?

This cover sheet is provided for information only. It does not form part of *GSTD 2003/D3 - Goods and services tax: if the joint venture operator of a GST joint venture set up to design, build or maintain residential or commercial premises transfers completed premises to a joint venture participant, is that supply treated as if it were not a taxable supply?*

This document has been finalised.

Draft Goods and Services Tax Determination

Goods and services tax: if the joint venture operator of a GST joint venture set up to design, build or maintain residential or commercial premises transfers completed premises to a joint venture participant, is that supply treated as if it were not a taxable supply?

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 on by taxpayers and practitioners as it is not a ruling or advice for the purposes of section 37 of the ***Taxation Administration Act 1953.*** *The final Determination will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

1. No. The supply made by the joint venture operator is a taxable supply, if the requirements of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) are satisfied, as subsection 51-30(2) does not apply.

2. Subsection 51-30(2) provides that a supply made by the joint venture operator of a GST joint venture to a joint venture participant is not a taxable supply if the participant acquires the thing supplied for consumption, use or supply in the course of the activities for which the joint venture was entered into.

3. We consider that the participant does not acquire the completed premises '…for consumption, use or supply in the course of the activities for which the joint venture was entered into', having regard to the requirements for approval of a GST joint venture in subsection 51-5.

4. Subsection 51-5(1) provides that the Commissioner must approve 2 or more entities as the participants in a GST joint venture if certain requirements are satisfied. Paragraph 51-5(1)(a) includes the requirement that the joint venture is a joint venture for the exploration or exploitation of mineral deposits, or for a purpose specified in the regulations ('specified purpose').

5. Under paragraph 51-5.01(1)(f) of Regulation 51-5.01 of the A New Tax System (Goods and Services Tax) Regulations 1999 (the GST Regulations), the 'design, or building, or maintenance, of residential or commercial premises' is a specified purpose.

6. We consider that, in referring to the '… activities for which the joint venture was entered into', subsection 51-30(2) is referring to activities which are part of the specified purpose for which the joint venture was approved.

7. Accordingly, to be treated as if it were not a taxable supply by subsection 51-30(2), a supply must be made to a participant who acquires the thing supplied for consumption, use or supply in the course of a joint venture for the specified purpose. If the participant acquires the thing for consumption, use or supply in the course of some other activity, such as for private use or resale, subsection 51-30(2) does not apply.

8. While the parties may between themselves agree that other activities, such as transfer of the premises to a participant for private use or sale, are part of the activities for which the joint venture is entered into, this does not have the effect of extending the operation of Division 51 to activities which are not specified purposes. In other words, it is not possible to extend the operation of subsection 51-30(2) to activities for which approval of the joint venture could not be obtained under section 51-5, by providing in the joint venture agreement for the joint venture to also be for other purposes for which approval could not be obtained.

9. The transfer of the completed premises to a participant is not part of the specified purpose of design, building or maintenance of residential or commercial premises. It follows that subsection 51-30(2) does not operate in respect of the transfer of the completed premises to the participant. This is so even if the joint venture agreement provides that the purposes of the joint venture include sale of the completed premises.

Example

10. *Tracey, Harvey and Adam enter into a joint venture agreement to construct residential premises, being a block of strata title units. Tracey contributes money to the venture, Harvey attends to all site works and constructs the building, and Adam contributes expertise in design and fit out. The parties agree that 30 of the units will be transferred to Harvey on completion, 5 to Adam, and the remaining 15 retained by Tracey. Tracey is nominated by the parties as the 'joint venture operator' and purchases the land for the venture. The joint venture is approved as a GST joint venture.*

11. *Upon completion of the units, Tracey as joint venture operator transfers the units to Adam and Harvey in accordance with the joint venture agreement. Adam and Harvey do not acquire the units for consumption, use or supply in the course of the construction of the premises, which is the relevant specified purpose. Accordingly, subsection 51-30(2) does not treat the supply of the units to Adam and Harvey as if they were not taxable supplies.*

Date of effect

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

13. The final Determination will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 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.

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

Your comments

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

Due date:	**7 January 2004**
Contact officer:	**James Francis**
E-mail address:	**james.francis@ato.gov.au**
Telephone:	**(07) 3213 8125**
Facsimile:	**(07) 3213 8588**
Address:	**PO Box 9846**
	Chermside QLD 4032

Commissioner of Taxation
26 November 2003

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
GSTR 1999/1; GSTD 2003/D2

Subject references:
- Joint venture
- GST joint venture

Legislative references:
- TAA 1953 37
- ANTS (GST)A99 9-5
- ANTS (GST)A99 51-5
- ANTS (GST)A99 51-5(1)(a)
- ANTS (GST)A99 51-30(2)

- ANTS (GST)R99 51-5.01
- ANTS (GST)R99 51-5.01(1)(f)

ATO references
NO: 2003/12602
ISSN: 1443-5179