

Bare trusts, nominees and joint ventures: Temporary administrative leniency

February 12, 2014

In brief

A recent Canada Revenue Agency (CRA) announcement grants taxpayers a temporary reprieve for a bare trust or nominee that reports the Goods and Services Tax/Harmonized Sales Tax (GST/HST) on behalf of the members of a joint venture.

Background

Joint ventures

Under the general Goods and Services Tax/Harmonized Sales Tax (GST/HST) rules, a joint venture is not a 'person.' Therefore, absent a joint venture election, all joint venture participants must account separately for:

- their prorated share of GST/HST collectible on any sales
- GST/HST paid on joint venture purchases

Joint venture election

The joint venture election under the *Excise Tax Act* provides flexibility in the reporting of the GST/HST for certain prescribed joint ventures.

For GST/HST purposes, participants in a joint venture can elect one of the following to

be the 'operator' of the joint venture:

- a member that contributed resources and takes a share of revenue or losses
- a manager of the joint venture

The election is particularly helpful when there is a single operator and the other participants are not directly involved in day-to-day operations.

The elected joint venture operator is responsible for accounting for the GST/HST on all sales made by participants through the joint venture and will claim allowable input tax credits for tax paid on expenses and other outlays made through the joint venture that are covered by the election.

However, the operator and the participants remain jointly and severally liable for the collection and remittance of GST/HST for the joint venture operations.

Participants still will be permitted to claim input tax credits for tax paid on expenses related to the joint venture that they incur directly (i.e. not through the joint venture), to the extent that they would be entitled to do so if the election had not been made.

Joint venture operator election

The joint venture operator election is available in various prescribed cases, including for joint ventures:

- undertaking the construction of real property, or

- whose purpose is to derive revenue from real property by way of sale, lease, licence or similar arrangement

The election must be made using the prescribed form, which does not have to be filed with the CRA.

The CRA's position is that the joint venture operator election applies only to post-acquisition conduct and, in the case of real property, does not apply to the acquisition of that property.

Real estate transactions

Consequently, for real estate transactions when the purchaser is required to self-assess GST/HST on the purchase, each joint venture participant:

- should register for GST/HST on or before the acquisition date of real property acquired in connection with a commercial activity
- should provide its GST/HST registration number to the vendor, so GST/HST is not charged on the sale, and
- must self-assess its respective share of the GST/HST and claim any available corresponding input tax credit

Subsequently, the joint venture participants can elect an operator to account for the GST/HST on post-acquisition activities related to the real property.

Nominees or bare trustees

In some cases, legal title to real property may be held in the name of a corporation acting as nominee or bare trustee for the beneficial owner(s).

This nominee corporation may take all actions necessary to facilitate the acquisition, financing, leasing and sale of the particular property as agent for, and under the instructions of, the beneficial owner(s).

If the bare trustee or nominee has no discretionary powers and all powers or responsibilities to manage the trust property are retained by the beneficial owner(s), the CRA generally will not consider the bare trustee to have the managerial duties that are required to be the elected GST/HST joint venture operator.

If the bare trustee has incorrectly reported the GST/HST transactions on behalf of the members of the joint venture, interest and penalties could be assessed against the members for non-reporting of GST/HST collected on revenue.

Election between agent and principal

In certain circumstances, the *Excise Tax Act* provides for an election between an agent and a principal which is different than the joint venture election.

Under this joint election the parties agree for the principal to account and report the GST/HST collected by the agent on behalf of the principal. This

election does not allow for an agent to claim input tax credits for the principal.

Temporary reprieve

The CRA's recently released GST/HST Notice No. 284 announced that, for reporting periods ending before January 1, 2015, GST/HST will not be reassessed if a bare trustee or nominee was reporting the tax on behalf of a joint venture as its operator, when it was not eligible to do so.

This policy will apply when:

- the bare trustee was reporting on behalf of a joint venture (not apply to partnerships or other structures)
- all returns have been filed
- all taxes have been remitted
- the joint venture members are otherwise fully compliant

It will allow joint ventures to review how they currently report GST/HST and ensure that their practices are in compliance, without fear of CRA reassessments on this issue.

Although this temporary reprieve is available only to joint ventures, all taxpayers should review their reporting procedures to make sure all requirements are met to avoid costly reassessments.

Let's talk

For a deeper discussion of the implications of the administrative reprieve, please contact:

Mario Seyer, *National Indirect Tax Leader*

+1 (514) 205 5285

mario.seyer@ca.pwc.com

Audrey Diamant

+1 (416) 687 8933

audrey.j.diamant@ca.pwc.com

Wayne Mandel

+1 (905) 738 2914

wayne.h.mandel@ca.pwc.com

Wilson and Partners LLP, a law firm affiliated with PwC Canada

Brent Murray

+1 (416) 947 8960

brent.f.murray@ca.pwc.com

2014 budgets: PwC will keep you up-to-date on tax changes in Canada's federal and provincial budgets.
Go to www.pwc.com/ca/budget