

18 April 2023

Inland Revenue

By email: Public.Consultation@ird.govt.nz

Submission on GST – Registered members of unregistered unincorporated bodies

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy advocacy organisation. We enable constructive collaboration across the energy sector through and beyond New Zealand's transition to net zero carbon emissions in 2050.
2. This document constitutes our comments on the exposure draft of a "question we've been asked" (QWBA) advice from Inland Revenue (IR) regarding GST, as it applies to registered members of unregistered unincorporated bodies.
3. We welcome the opportunity to provide feedback. Our comments focus on the application of this advice to joint venture (JV) arrangements and joint venture participants (JVPs) in the upstream oil and gas industry.

Background

4. Joint ventures are one of the most common business arrangement for oil and gas companies engaging in exploration, development, and production operations.
5. These arrangements are typically governed by a Joint Operating Agreement (JOA), which amongst other things covers the roles and responsibilities of the members. It is also a requirement of the Crown Minerals Act 1991 for a permit operator to be nominated, and that the operator also be a permit participant.
6. The operator is responsible for the day-to-day operations of the permit on behalf of the JV. This includes procuring goods and services as inputs into permit activities on behalf of the JV.
7. Typically, once development has concluded and production has commenced, JVPs take possession of (or "lift") their share of production for independent sales and marketing.

Submission

8. We do not believe the outcome of the GST policy intent is reflected in the QWBA exposure draft as GST would be unrecoverable, due to a choice of business structure.
9. Generally, it has been IR practice for many years to allow oil and gas JVs to be GST registered through the exploration stage and (where exploration is successful) through to development of the relevant oil/gas field. There are audit and compliance benefits to IR in taking this approach, as all the records are held and maintained by the JV operator who files and claims GST refunds on behalf of the JVPs.
10. However, it has also been IR practice for many years to require oil and gas JVs to deregister at the point at which production commences, and for the individual JVPs to then become separately registered. IR advises that it holds the view that when the JVPs take their share of production they are doing so and selling that in their own right (as they are generally not making joint supplies to customers) and on this basis there is effectively no "joint venture".
11. In our view the position adopted in this exposure draft would have a significant impact on the operation of JVs in New Zealand's oil and gas sector and runs counter to the practice widely adopted in the industry for over two decades.
12. We recommend the advice in the QWBA be expanded to cover the scenario where an unincorporated JV operator acts as agent on behalf of the other JV partners. This would cover a common operating scenario in the energy industry.
13. Section 60(2) of the Goods and Services Tax Act 1985 deems a supply to the operator, as agent, to be a supply to the other JV partners as principals. Therefore, other JVPs are entitled to claim input tax deductions for those costs incurred by the unincorporated JV.
14. This approach is supported in Example 13 of the IR "Cost-sharing arrangements in Inland Revenue Interpretation Statement 21/01", where even without a written agreement, a cost-sharing arrangement can constitute an agency relationship for GST purposes.¹
15. We recommend the draft QWBA be updated to include a paragraph explicitly recognising the unique situation for upstream oil and gas joint ventures.

¹ Available at: <https://www.taxtechnical.ird.govt.nz/interpretation-statements/2021/is-21-01>