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Tax Alert – Canada

Federal government releases proposed changes to the application of GST/HST for joint ventures

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 21 November 2023, the federal government released for public consultation long-awaited draft legislative proposals with respect to the GST/HST rules for joint ventures as part of its 2023 *Fall Economic Statement*.¹ This announcement advances the government's commitment made in its 2014 budget to expand access to the joint venture election rules. Public comments on the draft legislative proposals are sought by 15 March 2024.

This Tax Alert provides an overview of the proposed joint election rules.

Background

Under the existing rules, joint venture participants are required to each separately account for the GST/HST in respect of activities conducted as a joint venture. However, joint venture participants who are engaged in certain activities specified by the *Excise Tax Act* or the *Joint Venture (GST/HST) Regulations* are permitted to elect to appoint a person to be the "operator" of the joint venture for GST/HST purposes. This election simplifies the accounting of the GST/HST in respect of the joint venture as it allows the operator to account for the GST/HST collectible in respect of supplies made by the joint venture, and to claim input tax credits in respect of the expenses incurred in respect of the joint venture. Absent the election, each participant would be required to account for the GST/HST on their proportionate share of the revenues earned by the joint venture and claim their proportionate share of the input tax credits in respect of GST/HST incurred on joint venture expenses.

¹ For more information on the measures released in the *Fall Economic Statement*, see [EY Tax Alert 2023 Issue No. 42](#).

The challenge with limiting access to the GST/HST joint venture election to specifically legislated activities or those prescribed by regulation is that it could result in inequitable treatment between similar activities. For example, the operation of a natural gas liquids pipeline as a joint venture was an activity for which the GST/HST joint venture election could be made, but the operation of any other type of pipeline was not.

The restriction on the availability of the joint venture election could result in disputes with the Canada Revenue Agency (CRA) in instances where a joint venture had conducted its operations as if the GST/HST joint venture election was in place (i.e., one participant, the “operator”, was accounting for all of the GST/HST on behalf of all of the participants) even though the activities of the joint venture were not specifically set out in the legislation or prescribed by regulation. Once the CRA’s assessment was issued, the operator of the joint venture either dealt with a significant GST/HST assessment or contacted the Minister of Finance to request that their activity be added to the list of prescribed activities eligible for the election.

It was for this reason, for example, that in 2022, the federal government proposed prescribing “the operation of a pipeline, rail terminal or truck terminal used for the transportation of oil, natural gas or related or ancillary products” as an activity that qualified for the GST/HST joint venture election, and notably doing so retroactively to the introduction of the GST in Canada on 1 January 1991. This proposed amendment to the existing joint venture rules was included in Bill C-59, *Fall Economic Statement Implementation Act, 2023*, tabled in the House of Commons on 30 November 2023.

Who can elect under the proposed new rules

The draft legislation proposes to add a new section to the GST/HST legislation and thereby expand access to the joint venture rules to more GST/HST registered persons whose activities are not on the existing prescribed list of activities.

For those joint ventures whose activities are not on the existing lists, the draft legislation provides that any joint venture could now elect to appoint a single person to be the operator of the joint venture to account for the related GST/HST provided all or substantially all of the activities of the joint venture are commercial activities for GST/HST purposes.

There are proposed conditions, however.

First, the joint venture would have to operate under an agreement evidenced in writing that describes the property that is the subject matter of the joint venture and the activities, obligations and entitlements of each of the participants and operator of the joint venture.

Second, only a person who is resident in Canada, registered for GST/HST purposes, who is engaged all or substantially all in commercial activities, and who has fiscal monthly GST/HST reporting periods could be appointed as the operator of the joint venture for GST/HST purposes. Notably, public sector bodies and listed financial institutions would be excluded.

Third, the appointed operator of the joint venture would not need to be a participant in the joint venture.

Fourth, not only the operator, but each qualifying participant would be required to be registered for GST/HST purposes. This is different from the existing joint venture election provision, which only requires the operator to be a “registrant”, and participants are not expressly required to be registered.

Finally, and different from the existing rules, for the joint venture election to be valid under the proposed new additional rule, the election would be required to be filed with the CRA. And further, the election would cease to be valid on the day a party to the election ceased to meet the criteria set out above (such as a party ceasing to be registered for GST/HST purposes).

Effects of the election under the proposed rules

Broadly speaking, once the election is validly made:

- ▶ The operator would be responsible for invoicing, collecting, reporting and remitting any GST/HST collectible in respect of any supply of property or service made by the operator on behalf of the joint venture. The operator would also be responsible for accounting for any associated bad debt or credit note adjustments related to such supplies on behalf of the joint venture.
- ▶ With respect to GST/HST incurred on joint venture expenses incurred by the operator, the operator could deduct an amount in respect of such GST/HST in determining its net tax, but the participant would not be entitled to any input tax credit in respect of such expenses.
- ▶ Any supply of property or service by the operator to the participant would be deemed to be made for no consideration provided the property or service was acquired by the participant all or substantially all in the course of the joint venture activities or the participant’s own commercial activities.
- ▶ Both the operator and the participant would be jointly and severally, or solidarily, liable for all GST/HST obligations that result from the joint venture activities.

Notably, the new rules as currently proposed would not apply to the various deemed supplies found in the Special Cases and Capital Property rules set out in subdivisions C and D of Division II of the *Excise Tax Act*. These include the rules with respect to employee benefits, employee allowances and reimbursements, and the capital property change-in-use rules. As such, the participant of the joint venture would have to account for the GST/HST in respect of these matters rather than the operator. The government has specifically invited input and feedback on this point from joint venture participants as to how they currently account for GST/HST under these special cases and capital property rules.

The government is also seeking input into the coming into force of the proposed rules and how the existing rules should be transitioned to the new rules.

What's next

All participants in any joint venture in Canada are well advised to consider the impact the draft legislative proposals may have on how GST/HST is accounted for by each joint venture as between the co-venturers and any operator of the joint venture, review the proposed changes with a GST/HST advisor, and provide comments and feedback to the government by 15 March 2024.

Learn more

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