

FACT SHEET | PUKA MEKA

GST – Who can group register?

Issued | Tukuna: 22 March 2024

IS 24/03 FS

This fact sheet accompanies IS 24/03: GST – Who can group register? which considers who can group register under s 55 of the Goods and Services Tax Act 1985 (GSTA).

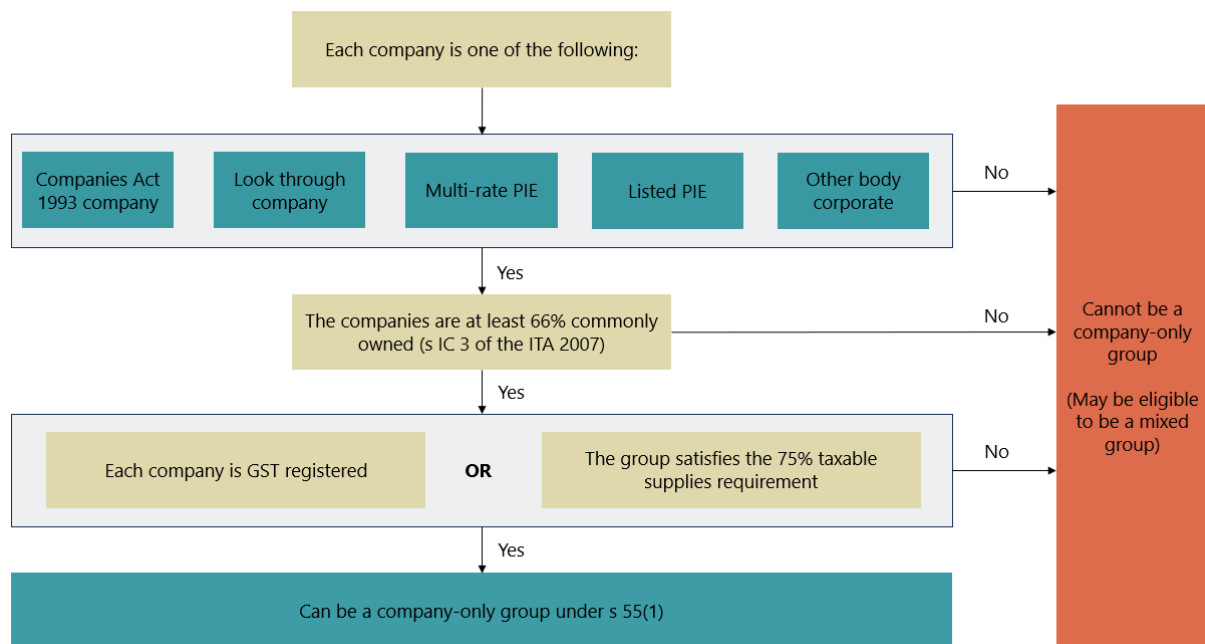
Introduction | Whakataki

1. There are two options for GST group registration:
 - **Company-only groups** – two or more companies that are a “group of companies” or part of a “group of companies” under s IC 3 of the Income Tax Act 2007 (ITA 2007) can group register, provided the companies are at least 66% commonly owned (s 55(1)). This group can also include multi-rate PIEs, listed PIEs and look-through companies that are at least 66% commonly owned.
 - **Mixed groups** – two or more registered persons, which can include companies, limited partnerships and other entities may group register as a mixed group if they are under common control (s 55(8)). At least one of the registered persons in a mixed group must not be a company, or must be a limited partnership (a limited partnership is treated as a “company” under the GSTA).

Company-only groups

2. The requirements for grouping two or more companies under s 55(1) are (shown in Figure | Hoahoa 1):
 - Under s IC 3 of the ITA 2007, the “companies” are a group of persons (the **eligibility group**) that:
 - is a group of companies; or
 - is part of a group of companies; or
 - would be a group of companies but is not, only because one or more members are a multi-rate PIE, a listed PIE or a look-through company (s 55(1)(a)).
 - In addition, the companies must meet **either** or **both** of the following requirements:
 - The companies are each a registered person.
 - The companies, as the eligibility group (in a 12-month period that includes the current time) make at least 75% taxable supplies (as a percentage by value of their taxable and other supplies) to persons outside the eligibility group (**75% taxable supplies requirement**). For this purpose, “taxable supplies” include supplies that would be “taxable supplies” if a registered person made them (s 55(1)(b)).

Figure | Hoahoa 1: Requirements for grouping two or more companies



3. “Other body corporate” includes a body corporate incorporated in New Zealand or elsewhere (eg a foreign company), but excludes local and public authorities. It can group if there is 66% common ownership between it and the other companies. However, if the body corporate is a non-resident registered under s 54B, it can only group with other non-residents.
4. An unregistered company can be a member of a company-only group, provided the eligibility group meets the 75% taxable supplies requirement in s 55(1)(b)(ii) and the representative member is GST-registered.
5. A non-resident company can be a member of a “group of companies” under s IC 3 of the ITA 2007: *C of IR v Alcan New Zealand Ltd* (1994) 16 NZTC 11,175 (CA). Therefore, a non-resident company can be a member of a company-only group, provided the eligibility group meets the other requirements in s 55(1).
6. For information on how to calculate common ownership interests for groups of companies, see “[IS 22/07: Company losses – ownership continuity, sharing and measurement](#)”.¹

¹ *Tax Information Bulletin* Vol 34, No 11 (December 2022): 53. Some provisions discussed in IS 22/07 are only relevant to the loss continuity rules. The provisions relevant to s IC 3 “groups of companies” are ss YC 2 – YC 6, s YA 5, s YB 21, and the related definitions in s YA 1 of the ITA 2007.

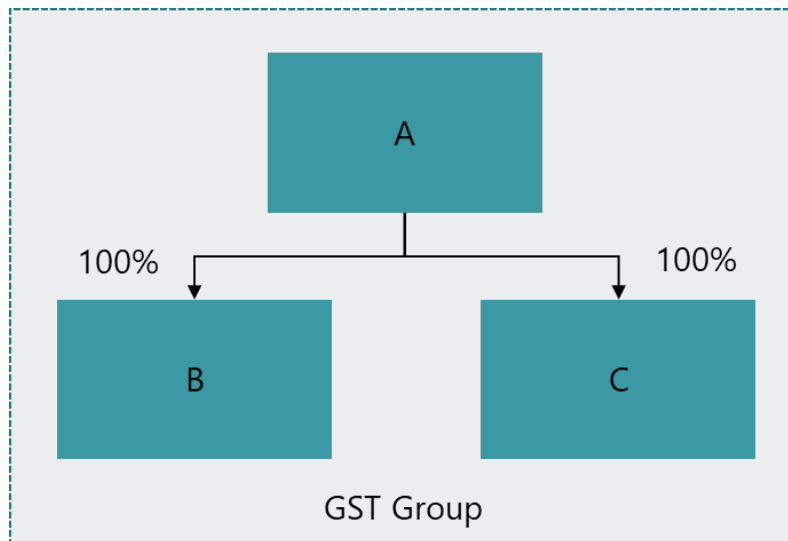
Mixed groups

7. The requirements for grouping two or more entities that are not all companies are (s 55(8)):
 - All persons in a mixed group must be registered persons.
 - Instead of the 66% common ownership test for companies, **legal control** of the entities is needed. Legal control requires that:
 - one of them controls each of the others (s 55(8)(a)); or
 - one person controls all of them (s 55(8)(b)); or
 - two or more persons carrying on a taxable activity in partnership control all of them (s 55(8)(c)).

Control test

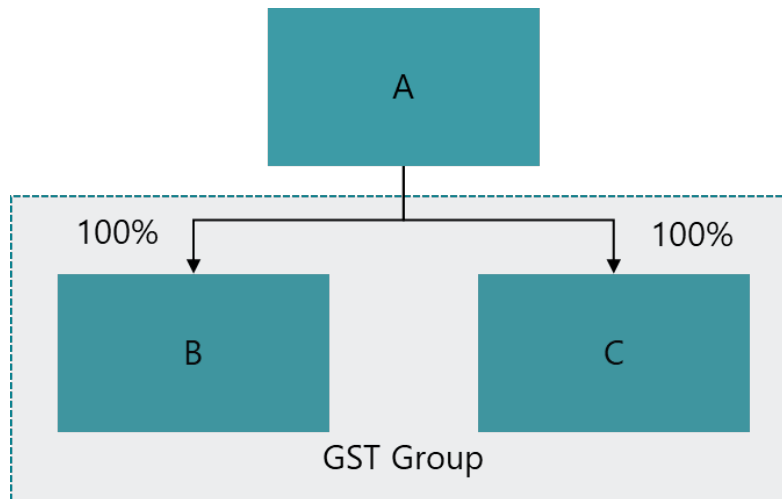
8. Figure | Hoahoa 2 illustrates the first of three ways control may exist under s 55(8) – one member of the group controls each of the others. In this scenario, A, B and C can be members of a mixed group. This is because A (a member of the group) controls B and C.

Figure | Hoahoa 2 – Common control: one group member controls each of the others



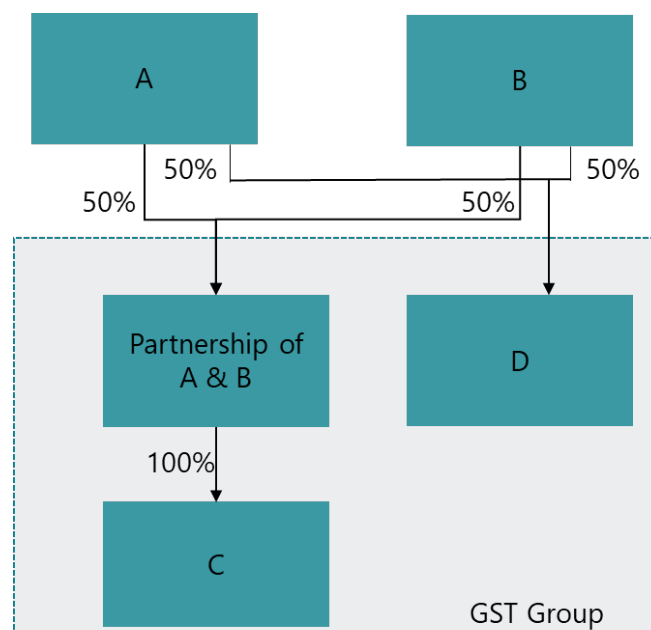
9. Figure | Hoahoa 3 illustrates the second way control may exist under s 55(8) – one person controls all the group members. In this scenario, B and C can be members of a mixed group. This is because A controls B, and A also controls C.

Figure | Hoahoa 3 – Common control: one person controls all the group members



10. Figure | Hoahoa 4 illustrates the third way control may exist under s 55(8) – two or more persons carrying on a taxable activity in partnership control all the group members. In this scenario, a partnership of A and B, and persons C and D can be members of a mixed group. This is because two persons carrying on a taxable activity in partnership (A and B) control the Partnership of A & B, C and D.

Figure | Hoahoa 4 – Common control: two or more persons carrying on a taxable activity in partnership control all the group members



11. Table | Tūtohi 1 summarises, for various types of registered person, considerations that can help you determine who has legal control of the registered person, and therefore when it may group register for GST under s 55(8).

Table | Tūtohi 1: Legal control for members of mixed groups

Person	Comments
<p>An individual (eg a sole trader)</p>	<p>An individual acting in their individual capacity (eg as a sole trader) is registered for GST in this capacity. The question of control does not arise for an individual who is registered for GST in their individual capacity.</p> <p>If an individual becomes incapacitated (including on death or bankruptcy), a specified agent may be appointed under s 58. The appointment of a specified agent does not affect GST grouping (s 55(4A)).</p>
<p>A "company" as defined in s 2, excluding a limited partnership. For example, it may be:</p> <ul style="list-style-type: none"> • a company incorporated under the Companies Act 1993, • a look-through company, • a multi-rate PIE or listed PIE that is established as a body corporate, or • a foreign company. <p>A multi-rate PIE or a listed PIE that is not established as a body corporate, but is a "company" as defined in s YA 1 of the ITA 2007.</p>	<p>A person has legal control of a company (or multi-rate PIE or listed PIE) if they hold more than 50% of the ownership interests.</p> <p>At least one member of the group must be a non-company or a limited partnership.</p>
<p>A trust</p>	<p>The general rule is that the trustee or trustees have legal control of a trust and so "control" the trust in their capacity as trustee(s) of that trust.</p> <p>Despite the above, the Commissioner considers that the following person(s) have legal control of the trust (where they exist):</p> <ul style="list-style-type: none"> • a person with the power under the trust deed to appoint and remove trustees, or • two or more persons carrying on a taxable activity in partnership who jointly hold the power under the trust deed to appoint and remove trustees.

<p>A partnership</p>	<p>Under s 51 of the Partnership Law Act 2019, a majority of the partners generally exercise legal control of a partnership. Where a majority of the partners exercise legal control, there will be no “one person” that controls the partnership.</p> <p>However, where all partners have consented to one partner making decisions about ordinary matters connected with the partnership business, that partner will have legal control of the partnership.</p>
<p>A limited partnership</p>	<p>The general rule is that a partner “controls” the limited partnership if they can make resolutions of the limited partnership without the support of the other partners. Under a standard limited partnership agreement, a partner will be able to do so if they have contributed at least 75% of the partnership capital.</p> <p>If there are multiple limited partners (or two 50% limited partners), there may be no “one person” that controls the limited partnership.</p> <p>In a limited number of cases, legal control may be determined by referring to the partners’ respective partnership interests.</p>
<p>A joint venture</p>	<p>The general approach to determining legal control of a joint venture is by referring to the respective interests of the joint venture partners in the joint venture. In most cases it will be sufficient to refer to the voting powers of the joint venturers contained in the joint venture agreement.</p> <p>If the joint venture agreement requires decisions to be made unanimously, this approach will establish that no “one person” controls the joint venture.</p> <p>In some cases, where voting powers do not accurately reflect legal control of the joint venture, it may be necessary to adopt an alternative approach of referring to the profit-sharing arrangements and the joint venturers’ respective capital contributions.</p>

About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by a fact sheet that summarises and explains an item's main points. While it summarises the Commissioner's considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner's advice](#) (Commissioner's Statement, Inland Revenue, December 2012).