Inland Revenue
Te Tari Taake

INTERPRETATION GUIDELINE | ARATOHU WHAKAMĀORI

GST - Types of unincorporated bodies

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Some GST rules apply specifically to unincorporated bodies and not to co-ownership or cost-sharing arrangements. Other specific rules apply only to joint ventures. This interpretation guideline discusses the nature of various types of unincorporated bodies, with the aim of assisting taxpayers to determine which GST rules apply to their arrangement.

Legislative references are to the Goods and Services Tax Act 1985 (GSTA) unless otherwise stated.

REPLACES | WHAKAKAPIA

- **QB 19/11: GST - administrative or management services provided by an unincorporated body to its members** to the extent it is not consistent with this Interpretation Guideline. This is discussed in more detail at [35].

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Summary | Whakarāpopoto

1. Some GST rules apply specifically to unincorporated bodies and not to co-ownership or cost-sharing arrangements. Other specific rules, namely the newly introduced flow-through joint venture rules, apply only to joint ventures. This interpretation guideline discusses the nature of various types of unincorporated bodies, with the aim of assisting taxpayers to determine which GST rules apply to their arrangement. This is important given the recent introduction of the flow-through rules that only apply to joint ventures.
2. In particular, this interpretation guideline discusses the nature of:
   - partnerships;
   - joint ventures;
   - trustees of a trust; and
   - unincorporated bodies that are not partnerships, joint ventures or trustees of a trust, such as clubs and syndicates.
3. The analysis also discusses situations where co-ownership or cost-sharing arrangements will not give rise to an unincorporated body.

Introduction | Whakataki

4. Goods and services tax (GST) is charged on the supply (but not including an exempt supply) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person (s 8). A person is required to become a registered person where they carry on a taxable activity and make supplies over the registration threshold (see s 51).
5. For GST purposes, an unincorporated body is treated as a separate "person" (see definition of "person" in s 2). An "unincorporated body" is defined as an unincorporated body of persons, which includes a partnership, a joint venture and the trustees of a trust but does not include a flow-through joint venture (s 2). The definition is inclusive, meaning that a body that does not fit within the description of a partnership, a joint venture or the trustees of a trust could still be an unincorporated body for the purposes of the definition (*Case U19* (1999) 19 NZTC 9,186). However, simple cost-sharing or co-ownership arrangements will not necessarily be unincorporated bodies.
6. Under s 57, where an unincorporated body is carrying on a taxable activity:
   - the registered person must be the body and not the members of that body;

- any supply of goods and services made in the course of carrying on the body's taxable activity is deemed to be supplied by the body and not by any member of the body; and
- any supply of goods and services to, or acquisition of goods by, any member of the body acting in the capacity as a member of the body and in the course of carrying on the body's taxable activity is deemed to be supplied to or acquired by the body and not the member.

7. Where the unincorporated body is a joint venture that is not a partnership, the members of the joint venture can either register the joint venture as an unincorporated body (an ordinary joint venture), in which case s 57 will apply, or they can elect to become a flow-through joint venture (s 57B). If the joint venture is a flow-through joint venture, s 57 will not apply and the members must account for their share of the joint venture supplies and acquisitions individually.

8. This interpretation guideline discusses the nature of unincorporated bodies in the following categories: partnerships, joint ventures, trusts and other unincorporated bodies. The aim of this item is to assist taxpayers to determine which of the above GST rules apply to their arrangement. This is important given the recent introduction of the flow-through rules that only apply to joint ventures. It then discusses some factors that should be considered when deciding the nature of an arrangement.

9. In all cases, the taxpayer will need to show the type of relationship they have entered into in support of their tax position.

Analysis | Tātari

Partnerships

10. A "partnership" is the relationship that exists between persons carrying on a business in common with a view to profit (s 8(1) of the Partnership Law Act 2019 (PLA)). The nature of the relationship between the partners is contractual. There is no requirement in law for a partnership agreement to be in writing; many are oral (*Clark v Libra Developments Ltd* [2007] 2 NZLR 709 (CA) at [155]). A partnership is not a legal entity separate from its partners (*Sadler v Whiteman* [1910] 1 KB 868 (CA) at 889; *R v Holden* [1912] 1 KB 483 (CA) at 487; *Meyer & Co v Faber (No 2)* [1923] 2 Ch 421 (CA); *Mephistopheles Debt Collection Service v Lotay* [1995] 1 BCLC 41 (CA)).

11. "Business" includes every trade, occupation or profession (s 7(1) of the PLA). This can include isolated or one-off ventures. In determining whether a partnership exists, the following factors must be considered (s 11 of the PLA):

- The fact that two or more persons own or hold property as joint tenants, tenants in common, or joint or part owners does not by itself create a partnership in

relation to the property, whether or not the persons share any profits made by the use of the property (s 12 of the PLA).

- Sharing gross returns does not by itself create a partnership (s 13 of the PLA).
- If a person receives a share of the profits of a business it is presumed, in the absence of evidence to the contrary, that the person is a partner in the business. However, the fact that a person receives a share of the profits or a payment that is contingent on, or varies with, the profits does not by itself make a person a partner in a business (s 14 of the PLA).
- Receiving a share of the profits of the business as an employee or agent, by way of payment of a debt or by way of an annuity, does not of itself make a person a partner in a business (s 15 of the PLA).

12. The persons must carry on a business "in common". This means that they are carrying on a single business together for their common benefit and that they have between themselves expressly or impliedly accepted some level of mutual rights and obligations in relation to the business (Roderick Banks, *Lindley & Banks on Partnership* (20th ed, Sweet & Maxwell, London, 2017) at [2–07]). The parties agree that they are acting jointly, rather than independently, and that each person's actions bind the others.

13. The express intentions of the parties are relevant but should be considered in the context of the other terms of the arrangement and the conduct of the parties when dealing with each other and third parties. Whether a partnership exists is a "legal question to be determined by the Court on the basis of what the parties said and did" (*Clark v Libra* at [51]). The labels the parties used are relevant but not determinative (*Woodcock v Woodcock* [2018] NZHC 470 at [86]). However, because of the legal consequences of partnership, it will be relevant to consider any express statements that there will not be mutual agency and joint and several liability (*Lindley & Banks* at [5-04]).[1]

14. As noted above, co-ownership of property does not by itself create a partnership in relation to the use of the property. Where co-owners share the profits realised by using their joint property, the question is whether, considering all the circumstances, an agreement for a partnership should be inferred (*Ellis Family Trustee Ltd v Clegg* [2021] NZHC 3201 at [64]). The courts have concluded that a partnership will exist where co-owned property is dealt with in line with the view of the majority of owners or managed by one co-owner on behalf of all co-owners, no member can sell their interest without the consent of the other members, and losses and profits are shared (*Ellis Family Trustee*, *National Insurance Co of New Zealand Ltd v Bray* [1934] NZLR 67 (SC)). Example | Tauira 1 and Example | Tauira 3 illustrate situations that meet these

[1] For more information on the income tax treatment of partnerships refer to **IS 25/11: Income tax – Partnerships (including limited partnerships) – general guidance**

criteria and Example | Tauira 2 illustrates that a partner and a partnership are treated as different persons for GST purposes.

15. However, it is unlikely that a partnership will exist where a group of individuals are co-owners of property but otherwise have no association, other than the fortuitous one of owning a common asset (*Taunton Syndicate v CIR* (1982) 5 NZTC 61,106 (HC) and *Anglesea Builders Partnership v CIR* (1987) 9 NZTC 6,181 (HC)). Where there is mere co-ownership, the parties will have entered into ownership quite separately on the basis of independent assessment; they will not meet regularly and will be free to sell the interest they have purchased at any time, without reference to the other co-owners (*Anglesea Builders*).

16. Co-owners will have no common purpose or agreement to deal collectively with the asset (*Taunton Syndicate*, *Anglesea Builders*, *Case U19*). In addition, co-owners will have no contractually agreed mutual rights or obligations towards each other, with the exception that they must co-operate in making common decisions on major matters related to the asset they own in common (eg, on weather tightness remediation or earthquake strengthening of a building) (*Taunton Syndicate* and *McElwee v CIR* (1988) 10 NZTC 5,181 (HC)). Example | Tauira 4 illustrates one situation of mere co-ownership.

17. Whether the co-ownership of a single asset gives rise to a business and, therefore, a partnership may depend on the degree of effort required to manage the asset, the type of decisions and nature of decision-making, the method of dealing with third parties, as well as the financial arrangements between the co-owners in respect of income and expenditure.

18. Factors that are likely to indicate the existence of a partnership are summarised in Figure | Hoahoa 1.

Figure | Hoahoa 1 – Partnership factors

FACTORS THAT ARE LIKELY TO INDICATE A PARTNERSHIP

No factor will be determinative. Each case must be considered on its facts.

- ✓ A common purpose and an agreement to deal collectively with co-owned property
- ✓ Carrying on a business (includes every trade, occupation or profession and isolated or one-off ventures)
- ✓ The business is carried on "in common" (ie, the parties are carrying on a single business together for their common benefit with mutual rights and obligations)
- ✓ Sharing of profits and losses
- ✓ Agreement to act jointly, that each person's actions bind the others (ie, there is mutual agency), and that there is joint and several liability
- ✓ Where there is co-owned property, no member can sell their interest without the consent of the other members

Example | Tauira 1 – Taxable activity carried on by a partnership

Amir and Brody (who may or may not be life partners) decide to acquire a property at a popular holiday location and rent it out for short-stay accommodation. They acquire the property as tenants in common with equal shares. They agree to run the property together, sharing the expenses and profits. For decision making, they agree to act jointly and on the basis that each of them can make decisions on the short stay accommodation business that bind the other. They also agree that neither party can sell their interest to another person without agreement.

Amir and Brody have entered into a partnership. The factors indicating this are:

- They have a common purpose and an agreement to deal collectively with the property to provide the short-stay accommodation, which mean they are not merely co-owners.
- They are carrying on a business of providing short-stay accommodation.
- The business is carried on "in common". There is a single business that they are carrying on together for their common benefit.
- They share profits and losses.
- They have agreed that they are acting jointly, and that each person's actions bind the others.
- They have agreed no member can sell their interest without agreement.

Any GST registration must be in the name of the partnership, which is an unincorporated body, as required by s 57.

It would make no difference to the conclusion if Amir and Brody owned the property as joint tenants rather than tenants in common.

Example | Tauira 2 – Unincorporated body is a separate person

Amir from Example | Tauira 1 is already registered for GST because he carries on business as a piano tuner. He asks if he can just include the GST for his share of the short-stay accommodation business in the GST returns he is already filing for his piano tuning business.

Amir cannot include the GST for his share of the short-stay accommodation business in the GST returns he is already filing. Under s 57, the partnership, which is an unincorporated body, must be registered as a separate person for GST purposes. Amir and the partnership will have separate GST numbers and are required to file separate returns.

Example | Tauira 3 – Commercial rental by a partnership

The Weiti Trust and two individuals, Xaviour and Yesim, who are unrelated to the trust, own a commercial property subject to a lease. Xaviour and Yesim manage the property and the lease, including filing GST returns and managing the accounts and rent. Expenditure on the property is funded by all parties from a joint bank account, and profits and losses are shared. The trustees of the Weiti Trust are not involved in the day-to-day running of the property. Xaviour and Yesim manage the property on behalf of all co-owners, and act on behalf of the Weiti Trust as agent (ie, their decisions bind the trust).

The parties have entered into a partnership. The factors indicating this are:

- They have a common purpose and an agreement to deal collectively with the property in using it to derive income from the commercial lease, which means they are not merely co-owners.
- The courts have accepted that commercial rental is sufficient to give rise to a business.
- They are carrying on the business "in common". There is a single business they are carrying on together for their common benefit.
- They share profits and losses.
- Xaviour and Yesim's actions bind all of the co-owners (ie, there is mutual agency).

Any GST registration must be in the name of the partnership, which is an unincorporated body, as required by s 57. This example is based on the facts in the *Ellis Family Trustee* case.

Example | Tauira 4 – Mere co-ownership

Caitlin and David inherit beachfront land from their father as tenants in common in equal shares. Caitlin lives relatively close to the area and chooses to construct a holiday home on her half of the land, which she intends to use with her own family on the weekends. David decides to construct a holiday home on his half of the land, which he intends to rent for short-stay accommodation. While they agree to each pay their share of the rates for the land, the two parties make no other agreement on the use of the land.

This is a situation of mere co-ownership. There is no common purpose or agreement to deal collectively with the land. Caitlin and David will each have to independently consider the GST outcomes relating to their separate activities.

Joint ventures

19. There is no particular legal definition of a joint venture (*United Dominions Corp Ltd v Brian Pty Ltd* (1985) 157 CLR 1 and *Commercial Factors Ltd v Scenic Hotel Group Ltd* [2019] NZHC 2370, followed in *Case P70* (1992) 14 NZTC 4,469 and *Newman & Ors v CIR* (2000) 19 NZTC 15,666 (HC)). However, case law indicates that a joint venture has the following features.

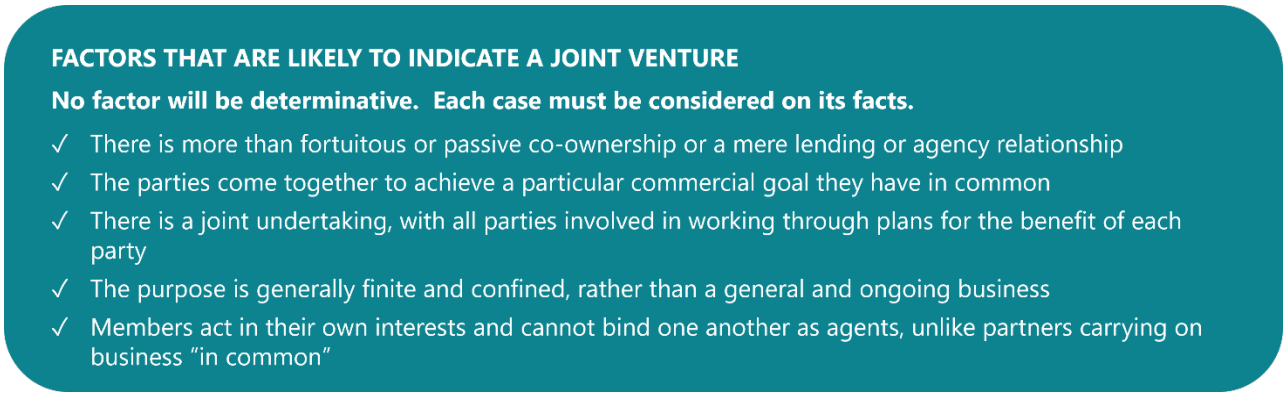
20. The term "joint venture" usually refers to a situation where parties come together to achieve a particular commercial goal they have in common (*Commercial Factors*). A joint venture must involve a joint undertaking where all of the parties are involved in working through plans for the benefit of each party (*Commerce Commission v Fletcher Challenge Ltd* [1989] 2 NZLR 554 (HC), *Chirnside v Fay* (2006) 8 NZBLC 101,831 (SC). *Gibson Motor Sport Merchandise Pty Ltd v Forbes* [2005] FCA 749).

21. Joint ventures are fundamentally contractual associations (although the contract does not need to be formal or in writing). Joint ventures are usually distinguishable from partnerships because they tend to have a finite and confined purpose rather than being formed to conduct a general and ongoing business (*Commercial Factors*). In addition, unlike partnerships, the members will be acting in their own interests towards a single common purpose, rather than "in common" or jointly in business and will not be able to bind each other as agent.

22. To be a joint venture, an arrangement needs something more than mere fortuitous co-ownership as would have occurred if somehow each side independently purchased 50% of an asset without reference to the other (*Fletcher Challenge*). It must also have something more than mere passive co-ownership, where each party advances money and is interested merely in a return without participating in any joint decision-making (*Fletcher Challenge*). More is also needed than a mere contractual relationship, such as exists in, for example, a lending or agency relationship (*Fletcher Challenge*, *Paper Reclaim Ltd v Aotearoa International Ltd* [2007] 3 NZLR 169 (SC)).

23. Figure | Hoahoa 2 sets out some factors that are likely to indicate when a joint venture exists. The factors are then applied to the following examples to illustrate some circumstances in which an arrangement is a joint venture (Example | Tauira 5, Example | Tauira 6 and Example | Tauira 7, Variation 2) and circumstances in which it is not (Example | Tauira 7, Variation 1).

Figure | Hoahoa 2 – Joint venture factors



Example | Tauira 5 – Joint venture – bloodstock training and breeding

Ethan is a bloodstock breeder and trainer. He sees a promising colt at the Karaka yearling sales that he is interested in buying to race and, potentially, breed from in the future. Ethan contacts Freya, who is another bloodstock breeder, and Gordon, who is a doctor but has other interests in bloodstock. The three of them agree to acquire the colt together.

Ethan, Freya and Gordon agree that the three of them must agree to all decisions about the colt, including its management, training, racing, and breeding, and that if they cannot agree, then no action will be taken. Each is obliged to pay their proportionate interest of the gross expenditure and is entitled to their proportionate interest of the gross earning. Ethan, Freya and Gordon are free to dispose of their interests without any requirement to offer the share to the other co-owners.

Based on these facts, Ethan, Freya and Gordon have entered into a joint venture regarding the colt. The factors indicating this are:

- The parties have come together to achieve a particular commercial goal they have in common, being the racing and potential breeding of the colt.
- There is a joint undertaking, with all parties involved in working through plans for the benefit of each party. They must all agree to all decisions about the colt before any action can be taken.
- The purpose is finite and confined, being limited to the racing and breeding of one specific colt.
- The members act in their own interests and cannot bind one another as agents. Each member must make independent decisions about the colt.

The arrangement does not amount to a partnership because the parties have not agreed to act "in common", or jointly, which would mean they bind each other.

Any GST registration must be in the name of the joint venture, which is an unincorporated body, as required by s 57. Alternatively, Ethan, Freya and Gordon have the option of agreeing to elect to become a flow-through joint venture under s 57B.

Example | Tauira 6 – Joint venture – property development

Romeo is a property developer, who has been involved in a number of large property developments. He finds a property in a great location that he considers has potential for a large-scale development. However, he does not have funds himself to do the development. He approaches an associate, Samantha, who is in the business of lending. Romeo and Samantha agree to work together to develop the property, with Romeo undertaking the property development work and Samantha providing the finance. They agree that all decisions must be mutually agreed, and that neither party can act as agent for the other. They agree that they are each obliged to pay their proportionate interest of the gross expenditure and are entitled to their proportionate interest of the gross earnings.

Romeo and Samantha have entered into a joint venture. The factors indicating this are:

- The parties have come together to achieve a particular commercial goal they have in common, being the large-scale property development.
- There is a joint undertaking, with all parties involved in working through plans for the benefit of each party. They have agreed that all decisions must be mutual.
- The purpose is finite and confined, being limited to the particular property development.
- They have agreed that neither party can act as agent for the other.

Any GST registration must be in the name of the joint venture, which is an unincorporated body, as required by s 57. Alternatively, Romeo and Samantha have the option of agreeing to elect to become a flow-through joint venture under s 57B.

Example | Tauira 7 – Syndicate that is not a joint venture

Hanno is a racehorse trainer. At the annual sales, he comes across a colt that he considers to be a good prospect. To be able to afford the purchase price, Hanno decides to form a syndicate to acquire, train and race the colt, with a view to breeding in the future.

Variation 1

The syndicate agreement records that Hanno, in his capacity as a racehorse trainer, is to be appointed the manager, and is to be given all the decision-making power over training and racing the colt. Hanno is contracted for the duration of the venture and may not be removed by the members. The members have no control over the decisions of the manager. The syndicate members are required to pay proportionate shares of the ongoing costs and are entitled to a proportionate share of any profits. There are rules about how members are to make contributions, and how they can enter and leave the syndicate.

This is a situation of mere passive co-ownership, where each party advances money and is interested merely in a return without any participation in decision-making. It is not a joint venture because the syndicate members are not involved in working through plans. The syndicate members have no involvement in the activity or the decision-making.

However, the syndicate is an unincorporated body that is not a partnership, joint venture or trustees in a trust (see further discussion on this point from [29]). The factors indicating this are:

- The members have come together to achieve a common purpose, training and racing the colt, in an agreed manner.
- There are agreed rules that govern matters such as membership, management and withdrawal or disposal of an interest.
- The is an internal structure that makes it recognisable as a collective entity, rather than simply a number of individuals.

Any GST registration must be in the name of the unincorporated body, as required by s 57.

Variation 2

Instead of Hanno having all the decision-making power over training and racing the colt, and the syndicate members having no control, Hanno is appointed as agent by each member of the syndicate. Hanno acts independently for each member of the syndicate. No member can bind the other members. Hanno's appointment is made on the basis that he is only able to make decisions about the day-to-day care, training and racing of the horse in line with a business plan and budget agreed by the members. Hanno is required to provide the members with regular updates on performance against the plan and budget. Hanno must obtain agreement from the members before making any substantive decisions outside of the business plan and budget (for example, in relation to any sale of the colt). The members can remove Hanno as their agent at any time with notice.

As for Variation 1, the syndicate members are required to pay proportionate shares of the ongoing costs and are entitled to a proportionate share of any profits. There are rules about how members are to make contributions, and how they can enter and leave the syndicate.

Under this variation, the parties have formed a joint venture. The factors indicating this are:

- The parties have come together to achieve a particular commercial goal they have in common, being the training and racing of the colt.
- There is a joint undertaking, with all parties involved in working through plans for the benefit of each party. While Hanno has been appointed to act as agent for each of the members in relation to day-to-day care, training and racing of the horse, his actions are subject to the control and direction of the members and the members can remove Hanno as their agent at any time with notice. In addition, the members must agree the annual business plan and budget and substantive decisions outside the plan and budget. Therefore, the ultimate decision-making still lies with the members.
- The purpose is finite and confined, being limited to the racing and breeding of one specific colt.
- The members act in their own interests and cannot bind one another as agents.

Any GST registration must be in the name of the joint venture, which is an unincorporated body, as required by s 57. Alternatively, the members have the option of agreeing to elect to become a flow-through joint venture under s 57B.

Trustees of a trust

24. The definition of "unincorporated body" in the GSTA expressly includes "trustees of a trust". Under s 19 of the Legislation Act 2019, words in the singular include plural and vice versa. Therefore, this would include a trust where there is a single trustee, including a trust that has a single corporate trustee (acting in its capacity as trustee of a trust).

25. A trust is a creation of the law of equity. Rather than being a legal entity distinct from its trustee, a trust is a fiduciary relationship where a trustee holds property for the benefit of beneficiaries or, where the trust is a charitable trust, for the specified charitable purposes. Although the trustee has legal ownership of the trust property, they hold it subject to the beneficial interests of the beneficiaries and must act in accordance with the terms of the trust and the Trusts Act 2019. A trustee may be a

natural person or an entity such as a company. A trust may have multiple trustees, who may retire, be removed or be replaced from time to time.

26. A trust is established by a settlor. A settlor can be a natural person while they are alive (inter vivos) or by way of their will (a testamentary trust). A settlor can also be an entity. Alternatively, a trust may arise by operation of law (eg, a constructive trust). The property settled on the trust is known as the corpus. The trustees will often use the corpus to derive income and capital gains.

27. Many trusts are created by a trust deed (or functional equivalent document). The trust deed generally specifies how a trustee can deal with the trust's property and make distributions to beneficiaries. The law of equity relating to trusts and the Trusts Act 2019 also governs the operation of a trust and the specific duties that trustees must fulfil.[2] Example | Tauira 8 illustrates an arrangement that qualifies as a trust.

28. A bare trust is not an unincorporated body for GST purposes. A bare trust is a type of trust under which the trustee holds property on trust without any duties to perform other than to convey the trust property to the beneficiary or as the beneficiary directs. For GST purposes, a bare trustee is treated as an agent for the beneficiary, and the beneficiary would be treated as carrying on any taxable activity and would be the registered person (see **QB 16/03: Goods and services tax – GST treatment of bare trusts**). This would include situations where, for example, a nominee company holds assets as bare trustee for the members of an ordinary joint venture. In that case the company would be treated as an agent of the ordinary joint venture for GST purposes and the joint venture would be the registered person. Example | Tauira 9 illustrates an arrangement where there is a bare trust.

Example | Tauira 8 – Trustees of a trust

Immogen decides to establish a trust to hold her holiday home, which is used to provide short-stay accommodation. Immogen appoints herself, and her friends Jayla and Kahurangi to be the trustees of the trust. A trust deed is drafted to establish the terms of the trust. The trustees appoint a property manager to run the short-stay accommodation business on their behalf.

The trust is an unincorporated body for GST purposes. Any GST registration must be as an unincorporated body under s 57.

[2] For more information on the income tax treatment of trusts see **IS 24/01: Taxation of trusts**.

Example | Tauira 9 – Bare trustee

Tama and Una establish a joint venture to construct an apartment block. They form a nominee company, Vista Apartments Ltd, which holds all the assets for the joint venture, including the land and building materials, as bare trustee for the two joint venture members in equal shares.

The joint venture established by Tama and Una is an unincorporated body under s 57 that must be registered for GST (they do not elect for flow-through treatment under s 57B). For GST purposes, Vista Apartments Ltd is acting as agent for Tama and Una and any supplies it makes or receives are treated as being made or received by the joint venture as part of the joint venture's taxable activity. The bare trustee is not a separate unincorporated body.

Other unincorporated bodies

29. As stated at [5], the concept of an unincorporated body is not limited to partnerships, joint ventures and trustees of a trust. Other types of bodies that may not fit exactly within those categories could still amount to unincorporated bodies for the purposes of the definition (*Case U19*).

30. The courts have commented on the features present where there is an unincorporated body in a number of cases. Those cases suggest that an unincorporated body or association is an organisation formed by members to effect their purpose in an agreed manner (*Taunton Syndicate*), or by two or more persons bound together for one or more common purposes by mutual undertakings (*Conservative and Unionist Central Office v Burrell (Inspector of Taxes)* [1982] 2 All ER 1). An unincorporated body must have some definition of the mutual rights and obligations of the members (*Case P70*). An unincorporated body involves persons who together are properly to be considered as a body rather than as a number of individuals because the regulation of their internal affairs is such that it establishes a structure by which they can be recognised as a collective entity – the unincorporated equivalent of a body corporate (*Edwards v Legal Services Agency* [2003] 1 NZLR 145).

31. The agreement between the members of an unincorporated body or association might be in the body's rules and constitution. Its basic terms might cover:

- the qualification to be a member of the association;
- the number of members the association may have;
- how the association is to be managed; and

- how a member withdraws or retires from the association or disposes of their share in the association (*Taunton Syndicate*, *Conservative and Unionist Central Office*).

32. While an unincorporated body is more likely to be found to exist where the members have a contract, a written contract is not essential (*Conservative and Unionist Central Office*, *Anglesea Builders*, *McElwee*).

33. The necessity to co-operate where common decisions are needed about commonly-owned property does not, alone, give rise to an unincorporated body (*Anglesea Builders*). Co-ownership will only amount to an unincorporated body when co-owners have some sense of mutual duties and obligations, beyond the loosest of moral obligations to consult (*McElwee*).

34. Equally, cost-sharing arrangements will usually not amount to an unincorporated body. Cost-sharing arrangements arise when a group of people simply agree between themselves to share in costs associated with pursuing a common interest. They can sometimes involve one person in the group incurring costs and then being reimbursed. Cost-sharing arrangements can also involve property owners contributing on either an ad hoc basis or a regular basis, to particular expenditure on common property. For example, property owners might make regular payments to cover the expense of having a gardener maintain their shared garden every month.

35. The above analysis is consistent with the Commissioner's consideration of the nature of unincorporated bodies that are not partnerships, joint venture or the trustees in a trust in **QB 19/11: GST - administrative or management services provided by an unincorporated body to its members**. However, QB 19/11 also states, relying on *Case P70*, that a significant degree of regulation governing the relationship between the members must exist. On review, the Commissioner considers the reference to a "significant degree of regulation" is not an accurate representation of the conclusion in *Case P70*. In that case, the Taxation Review Authority described the test for an unincorporated association as follows (at 4,477):

> An unincorporated association as His Honour says [in *Taunton Syndicate*] is akin to an unincorporated company. Even though it may lack such detailed definition of mutual rights and obligations of its members some definition of mutual rights and obligations is essential.

36. To the extent that QB 19/11 states "a significant degree of regulation" must exist, that is no longer the Commissioner's view. Instead, the Commissioner considers an unincorporated body must have some definition of the mutual rights and obligations of the members (as stated at [31]). This change in view does not otherwise affect the conclusions in QB 19/11.

37. Figure | Hoahoa 3 summarises the factors likely to indicate that a body is an unincorporated body for GST purposes. These factors are then applied in the following

examples to illustrate how an unincorporated body (Example | Tauira 10) differs from a cost-sharing agreement (Example | Tauira 11).

Figure | Hoahoa 3 – Unincorporated body factors

FACTORS LIKELY TO INDICATE ANOTHER TYPE OF UNINCORPORATED BODY

No factor will be determinative. Each case must be considered on its facts.

- ✓ The members have come together as an organisation to achieve one or more common purposes in an agreed manner
- ✓ There is some definition of the members' mutual rights and obligations beyond the loosest of moral obligations to consult
- ✓ Agreed rules or a constitution govern matters such as membership, management and withdrawal or disposal of an interest
- ✓ The group has an internal structure that makes it recognisable as a collective entity, rather than simply a number of individuals

Example | Tauira 10 – Unincorporated body

Logan, Marama and Neer are independent accountants who share an old converted villa. They each have a separate lease with the landlord, which gives them the right to occupy one particular room in the villa and use the villa's shared spaces (a reception/waiting room area, a bathroom and an office).

Logan, Marama and Neer enter into a shared service provider arrangement. A simple agreement that they each sign governs the arrangement. Under the arrangement, the practitioners agree to establish the OBITDA Group to manage the day-to-day administration of their practices. The agreement sets out the rules of the arrangement.

The OBITDA Group leases a photocopier, provides shared supplies, arranges cleaning and furnishing of the waiting room and employs an administrator/receptionist to greet clients, answer phone calls and take messages. The administrator/receptionist also organises the day-to-day operations. Each month the practitioners pay a levy of $1,500 into the OBITDA Group's bank account to cover the group's costs.

The OBITDA Group is an unincorporated body. The factors indicating this are:

- Logan, Marama and Neer have come together to achieve a common purpose, being the management of their practices, in an agreed manner.
- There is some definition of the members' mutual rights and obligations, including mutual obligations to pay a levy, open a joint bank account and employ an assistant.
- The OBITDA Group has agreed rules that govern the arrangement.

- The OBITDA Group has an internal structure that makes it recognisable as a collective entity, rather than simply a number of individuals.

These features take this arrangement beyond one of mere cost-sharing.

Any GST registration must be as an unincorporated body under s 57.

Example | Tauira 11 – Cost-sharing agreement

Pehi and Quentin each own 50% of a block of flats. Pehi and Quentin rent their flats independently, utilising the services of different property managers. They do not share profits. However, they agree to pay their share of any joint expenditure relating to the costs of the flats, such as maintaining the building and driveway and keeping the gardens in order.

Pehi and Quentin are mere co-owners who have entered into an agreement to share costs. There is no common purpose, agreed rules or internal structure. This is not an unincorporated body. Pehi and Quentin will each have to independently consider the GST outcomes relating to their separate activities.

Determining the nature of the arrangement

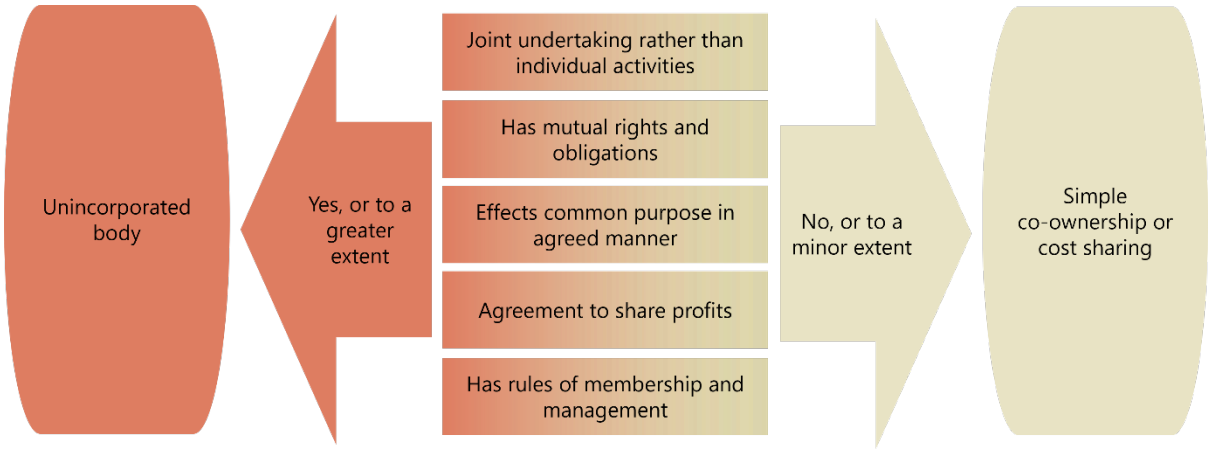
38. When determining the nature of the arrangement, it may be helpful to consider the following factors (summarised in Figure | Hoahoa 4). No one factor will be determinative:

    - The labels the parties use to describe their arrangement may indicate the type of arrangement that was intended. For example, entry into a partnership agreement is likely to indicate that the parties intended for there to be a partnership. However, labels are not always determinative.
    - Whether the parties have agreed to work together toward producing a joint product or outcome, or whether they are acting independently. If the parties have agreed to work together then it is likely there is an unincorporated body rather than mere co-ownership or cost sharing.
    - Whether the venture represents a passive investment or requires active participation. A lack of active participation means it is unlikely that there will be a partnership or joint venture.
    - Whether the parties made a joint decision to invest or made their decisions independently. If there is no joint decision to invest, then that makes it less likely that there is a partnership or joint venture. However, independent investment decisions do not necessarily mean there is not an unincorporated body. For

example, investors often invest independently in a syndicate, which will still be an unincorporated body.

- Whether the venture is one-off or continuous. Joint ventures are often, but not always, used for one-off ventures. Partnerships are usually used for an on-going business.
- Whether the parties have agreed to share profits. Profit sharing is a strong indication of an unincorporated body.
- Whether the parties have agreed rules for the organisation of their common undertaking. Agreed rules governing how a group is going to work together is an indication of an unincorporated body.
- Whether the parties intend to be jointly liable for any costs incurred, or whether each party is separately liable for their share of the costs. An indicator for this will be how they deal with third parties. Can one party incur costs or enter contracts on behalf of the other parties? If so, that is more likely to indicate that the parties are jointly liable. Where parties can bind each other and are jointly liable this is an indication of a partnership.

Figure | Hoahoa 4 – Factors relevant to unincorporated bodies



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About this document | Mō tēnei tuhinga

Interpretation guidelines are issued by the Tax Counsel Office. Interpretation guidelines set out the Commissioner's views and guidance on a general area of law that gives rise to tax implications. While they set out the Commissioner's considered views, interpretation guidelines are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further Status of Commissioner's advice (Commissioner's statement, Inland Revenue, December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in an interpretation guideline will not necessarily lead to the same tax result. Each case must be considered on its own facts.