

QUESTION WE'VE BEEN ASKED

QB 19/11

GST – administrative or management services provided by an unincorporated body to its members

Sometimes a group of property owners, tenants or professionals might form an unincorporated body to manage and administer their common property or practice areas. This item looks at what is an unincorporated body in those circumstances and when it must register for GST.

Key provisions

Goods and Services Tax Act 1985, ss 2, 5(8A), 6(1), 10(1), 51, 57

Question

When must an unincorporated body that provides administrative or management services to its members register for GST?

Answer

An unincorporated body that provides administrative or management services to its members must register for GST if:

- it is carrying on a taxable activity; and
- the value of its supplies of goods and services made in New Zealand exceeds the \$60,000 registration threshold. This includes the value of supplies of administrative or management services the body makes to its members.

An unincorporated body carrying on a taxable activity with supplies below the registration threshold may voluntarily register for GST. If registered, the body must account for GST on all its supplies of goods and services.

Explanation

Introduction

1. This Question We've Been Asked (QWBA) provides guidance on when a group of property owners, tenants or professionals who join together for administration or management of their common interests will be an "unincorporated body" for GST purposes and required to register and charge GST under the Goods and Services Tax Act 1985 (GST Act).
2. This QWBA is consistent with the following items to the extent they address unincorporated bodies and it updates and replaces them:
 - "Question 62 - clinics providing administrative services – taxable activity?" *Public Information Bulletin* Vol 158 (November 1986): 11;
 - "Question 112 - residential management committee – taxable activity?" *Public Information Bulletin* Vol 158 (November 1986): 27; and

- “GST and property administration” *Public Information Bulletin* Vol 173 (April 1988): 7.
3. This QWBA addresses the GST treatment of unincorporated bodies formed to provide administrative or management services to its members. However, it does not address the GST position of unincorporated bodies formed to provide administrative or management services to its members that are partnerships, joint ventures or the trustees of a trust.
 4. In addition, this QWBA does not address bodies corporate under the Unit Titles Act 2010 (or its predecessor, the Unit Titles Act 1972). The GST Act includes specific rules for bodies corporate registered under the Unit Titles Act 2010. (See *Tax Information Bulletin*, Vol 28, No 3 (April 2016): 33.) Bodies corporate registered under the Retirement Villages Act 2003 should refer to the Interpretation Statement “IS 15/02: Goods and services tax – GST and retirement villages” *Tax Information Bulletin* Vol 27, No 11 (December 2015): 6.

Analysis

5. For a “person” to be required to register for GST, the person must:¹
 - carry on a “taxable activity”; and
 - the value of supplies it makes, or expects to make, in New Zealand in a 12-month period:
 - was \$60,000 or more in the last 12 months; or
 - will be \$60,000 or more in the next 12 months.
6. For GST purposes the term “person” includes:
 - a company; and
 - an unincorporated body of persons.
7. The term “company” in the GST Act is broader than simply companies incorporated under the Companies Act 1993 (or its predecessor). It means any body corporate (see s 2). A society incorporated under the Incorporated Societies Act 1908 is a body corporate, and so is treated as a company for GST purposes. This means an incorporated society is a “person” for GST purposes.
8. While the term “unincorporated body of persons” is not defined in the GST Act, the term “unincorporated body” is defined in s 2. An “unincorporated body” is an unincorporated body of persons, including a partnership, a joint venture or the trustees of a trust. It follows then that this definition is not exclusive and includes unincorporated bodies of persons that are not partnerships, joint ventures or the trustees of a trust.

What is an unincorporated body of persons?

9. The meaning of the term “unincorporated body of persons” (and the similar term “unincorporated association”) has been considered by the courts in the context of whether a group of individuals, or co-owners of property, are an unincorporated body. The courts have held that:

¹ It is assumed none of the exclusions for registration in s 51(1) apply.

- an unincorporated association is an organisation formed by members to effect their purpose in an agreed manner (*Taunton Syndicate v CIR* (1982) 5 NZTC 61,106);
- a significant degree of regulation governing the relationship between the co-owners of the property is required before finding there is an unincorporated association or body (*Case P70* (1992) 14 NZTC 4,469);
- the agreement between the members of an unincorporated association might be in the bodies' rules and constitution and include some basic terms covering:
 - 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 v Burrell (Inspector of Taxes)* [1982] 2 All ER 1);
- an unincorporated association involves two or more persons bound together for one or more common purposes by mutual undertakings (*Conservative and Unionist Central Office*);
- the necessity to co-operate where common decisions are needed about commonly-owned property does not amount to an unincorporated body (*Anglesea Builders Partnership v CIR* (1987) 9 NZTC 6,181);
- for there to be an unincorporated association there must be some sense of mutual duties and obligations between the co-owners, beyond the loosest of moral obligations to consult co-owners (*McElwee v CIR* (1988) 10 NZTC 5,181);
- while an unincorporated body is more likely to be found to exist where there is a contract between the members, a written contract may not be essential (*Conservative and Unionist Central Office, Anglesea Builders, McElwee*); and
- a "body of persons" are persons who together are properly to be considered as a body rather than as a number of individuals as there is such regulation of their internal affairs that there is 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).

10. Based on this case law, a group of individuals or co-owners of property including a residents' association, a property management committee or a clinic or practice manager established by professionals to carry out administrative services may be an "unincorporated body of persons" for GST purposes if they have the following kinds of characteristics:

- is formed by its members for one or more common purposes;
- has a significant degree of regulation governing the relationship between its members;
- has agreed rules, setting out matters like:
 - how it is governed and how decisions are made by the body;
 - how its funds may be used;
 - what happens when members join and leave the group; and
- is a structure recognised as a collective entity of its members.

11. An unincorporated body will also usually have a name and a bank account.
12. Special rules in s 57 of the GST Act support treating a GST registered unincorporated body as a separate person for GST purposes. These rules are discussed further at [24].

What is not an unincorporated body of persons?

13. A group of people will not usually be an “unincorporated body of persons” for GST purposes if:
 - they simply own property together, and all that is involved is a loose moral obligation to consult with their co-owners;
 - they make decisions together, but without forming a body with mutual duties and obligations between members;
 - there is no significant degree of regulation or agreement between them governing their relationship; and
 - their relationship is confined to a cost-sharing arrangement.
14. 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 an ad hoc-basis, or a regular basis, to particular expenditure on common property. For example, regular payments might be made by property owners to cover the expense of having a gardener maintain their shared garden every month.
15. Co-owners of cross-leased properties will usually be in a cost-sharing arrangement and not an unincorporated body, unless their cross-leasing arrangements establish a body with agreed rules setting out matters like:
 - how the body is governed,
 - how decisions are made by the body;
 - how its funds may be used; and
 - what happens when lessees join and leave the group.

When will an unincorporated body be carrying on a “taxable activity”?

16. To establish whether an unincorporated body must register and charge GST the body must be carrying on a taxable activity. Based on s 6(1) of the GST Act, an unincorporated body that provides administrative or management services to its members will be carrying on a taxable activity when:
 - it carries on an activity continuously or regularly, whether or not for a pecuniary profit;
 - the activity involves or is intended to involve, in whole or in part, the supply of goods and services to any other person; and
 - the supply of goods and services is for consideration.

Continuous or regular activity

17. An unincorporated body that provides administrative or management services to its members must carry on an activity that is organised in some coherent way. The activity must be carried on continuously or regularly.
18. The definition of a taxable activity is very broad and applies to any activity carried on

continuously and regularly by any person. A taxable activity is not limited to a “business” but also includes any activity carried on in the form of a “... profession, vocation, association, or club”. It is not necessary for the activity to have a profit-making purpose.

19. Therefore, in the Commissioner’s view an activity carried on in the form of an unincorporated body is recognised as being an activity that, if carried on continuously and regularly, will satisfy the first requirement of the definition of “taxable activity”.
20. In the context of an association, a committee, or a society that provides administrative or management services for its members on a not-for-profit basis, it is to be expected that the body will be undertaking an activity on a continuous and regular basis for the members. For example, in the context of a property management committee, the committee would likely be regularly involved in engaging, managing and paying employees or contractors to perform repairs, maintenance, and cleaning. The committee might also take on a financial management and planning role to determine the residents’ contributions, and to timetable maintenance requirements. In the Commissioner’s view these duties would amount to an activity carried on continuously or regularly by such a committee.
21. Similarly, it is expected an unincorporated body that is a “clinic” established by a group of medical professionals to undertake the administration of their practices would be carrying on an activity regularly and continuously.

Supply of goods to another person

22. For an activity to be a taxable activity it must involve, or be intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration. Therefore, the next question is whether an unincorporated body’s activity involves making supplies to any other person.
23. This is an important requirement when considering an unincorporated body that provides administrative or management services to its members. For GST purposes an unincorporated body is treated as a separate entity, distinct from its members. Therefore, in the Commissioner’s view, when an unincorporated body provides administration or property management services to its members, the unincorporated body is making a supply to another person (the members individually) and has not been implicitly acting as the agent of the members.
24. This view is supported by the definition of “person” and in the case of unincorporated bodies, by the provisions of s 57 of the GST Act. In particular, s 57(2) confirms that an unincorporated body is a separate person for GST purposes by providing that:
 - the members of an unincorporated body cannot register in relation to carrying on the taxable activity carried on by the body (s 57(2)(a));
 - any supply made in the course of carrying on an unincorporated body’s taxable activity is treated as supplied by the unincorporated body and not by the members of that body (s 57(2)(b));
 - any supply made to or by a member acting in their capacity as a member of the body *and in the course of the carrying on of the body’s taxable activity* is treated as being made to or by the unincorporated body and not the member (s 57(2)(c)). Conversely, where a supply is made to or by a member, and the member is not acting in their capacity as a member of the body nor in the course of the carrying on of the body’s taxable activity, then the supply is made to or by the member and not the unincorporated body;
 - the unincorporated body is registered under the body’s name (s 57(2)(d)); and

- any change of members of the unincorporated body has no effect for GST purposes (s 57(2)(e)).
25. This approach is also supported by Gallen J in *Taupo Ika Nui Body Corporate v CIR* (1997) 18 NZTC 13,147 (HC). *Taupo Ika Nui* was an appeal by the taxpayer against the Taxation Review Authority decision reported as *Case S34* (1995) 17 NZTC 7,228. Gallen J upheld Judge Barber's decision in *Case S34* that a unit title body corporate was a separate entity from the proprietors of the land, and so there were supplies between that entity and the proprietors. Gallen J (like Judge Barber) rejected the argument that there were no supplies because the proprietors were merely acting on their own behalf.
26. Accordingly, when an unincorporated body makes supplies of administrative or management services to its members, that activity involves the body making supplies to another person, so the second requirement of the definition of "taxable activity" is met. It is also possible a body may be making supplies to third parties.

Consideration

27. Finally, the supply of goods and services must be for consideration. The Commissioner considers that any levies or other amounts paid by the members of an unincorporated body for supplies of administrative or management services are consideration.
28. This is because "consideration" is a very widely defined term and includes payments made "in respect of, in response to, or for the inducement of, the supply of any goods and services". The words "in respect of" are words of the very widest meaning. For an unincorporated body that is providing services to its members the question is whether the amounts paid by members are paid "in respect of" the supply of any goods and services so as to amount to consideration.
29. As Cull J notes in *Canterbury Jockey Club Inc v CIR* [2018] NZHC 2,569 at [124] the case authorities are clear that "there needs to be some reciprocity or nexus between the supply made and the consideration passing between supplier and recipient". In the Commissioner's view, a nexus or link exists between the goods and services supplied by an unincorporated body and the levies or other amounts paid by its members (ie, reciprocity). Therefore, the levies or other amounts are paid "in respect of" the supplies of services, so are "consideration".
30. Judge Barber in *Case S34* was easily satisfied that the payment of levies by proprietors to a unit title body corporate was consideration for the supply of services. On the other hand, Gallen J in *Taupo Ika Nui* held there was no consideration because there was no reciprocity. While the facts in *Taupo Ika Nui* are somewhat similar to the situation being addressed in this QWBA, the Commissioner considers the Court of Appeal's decisions in *Turakina Maori Girls College Board of Trustees v CIR* (1993) 15 NZTC 10,032, *Chatham Islands Enterprises Trust v CIR* [1999] 2 NZLR 388 and *CIR v New Zealand Refining Co Ltd* (1997) 18 NZTC 13,187 are better authority on reciprocity and consideration. This is because those decisions are from a higher court and have been more widely applied in subsequent judgments concerning GST and consideration.
31. For example, in *Rotorua Regional Airport Ltd v CIR* (2010) 24 NZTC 23,979 the High Court held that a development levy, charged under the Airport Authorities Act 1966, was consideration for a service supplied. Departing passengers used the airport to gain access to their plane and the payment of the levy enabled them to access the plane at the Rotorua Airport. Mallon J applied *Turakina* but distinguished *NZ Refining* and *Chatham Islands* (which both found no reciprocity) to find a nexus (or reciprocity) existed between the payment and the service. She held that the levy was consideration "in respect of" or "in response to" the supply of services.
32. Accordingly, in the Commissioner's view any levies or other amounts paid by the

members of an unincorporated body for supplies of administrative or management services are consideration, so the third requirement for a taxable activity is met.

33. It is noted that a legislative change was made to the GST Act following *Taupo Ika Nui* to clarify for unit title body corporates that a levy or other amount paid to a unit title body corporate by a member of the body corporate is to be treated as being consideration received for services supplied by the body corporate to the member (see s 5(8A) of the GST Act). As noted earlier, unit title bodies corporate are not included in this QWBA but s 5(8A) could arguably be seen as clarifying for other bodies that members' levies can be consideration for supplies.

When must an unincorporated body register for GST?

34. An unincorporated body's liability to be registered for GST depends on it carrying on a taxable activity and also the value of supplies it makes, or expects to make, in the course of that activity in a 12-month period (s 51 of the GST Act). The unincorporated body must register for GST, when the value of supplies the unincorporated body makes, or expects to make, in a 12-month period:
- was \$60,000 or more in the last 12 months; or
 - will be \$60,000 or more in the next 12 months.
35. When calculating the value of supplies it makes, or expects to make, an unincorporated body that is carrying on a taxable activity must include the value of any supplies it makes to its members. (Unit title bodies corporate are treated differently for GST purposes. They are not required to account for the value of supplies made to their members (see s 51(1B) of the GST Act)).
36. Generally, the value of a supply is equal to the consideration for the supply or, where the consideration is not in money, the open market value of the consideration (see s 10(1) of the GST Act).
37. Where the value of an unincorporated body's supplies is under \$60,000 it can voluntarily register for GST (see s 51(3) of the GST Act) but it must account for GST on all its supplies of goods and services.
38. The following examples are included to assist in explaining what an unincorporated body is and when an unincorporated body must register for GST.

Examples

Example 1 – Residents' committee of a housing community

The residents of the four freestanding town houses at 10 Harbour Close establish a residents' committee to help them manage the upkeep of their properties and the tree-lined shared driveway, and to provide a forum for addressing any concerns of residents. The committee is not a body corporate under the Unit Titles Act 2010.

Each town house has its own fee simple title, subject to some covenants regarding use and maintenance. For instance, under a covenant the residents must paint their town houses every four years using an agreed colour scheme.

The residents' committee is responsible for ensuring the trees along the driveway are trimmed, the grass by the roadside and under the driveway trees is cut, the electronic security gate is maintained, pot holes in the driveway are repaired, and the drive is re-sealed every 10 years.

The residents draw up some rules for the residents' committee, which provide that the committee comprises one representative from each of the four town houses, and sets out what happens when an owner sells their town house and a new owner joins. Meetings are to be held by the committee on a six-monthly basis. The rules also establish how decisions can be made by the committee and what will happen if there is not unanimous agreement between the committee members. The rules also set out that a separate bank account is to be opened in the residents' committee's name and that any quotes for work must be obtained in the committee's name.

The rules specify that the residents of each town house are to make an annual contribution to the residents' committee of \$2,000. These funds are used to meet the residents' committee's ongoing costs. Any surplus funds are retained in the committee's bank account for future expenditure.

The residents' committee is an unincorporated body of persons.

While the residents' committee is not seeking to make a profit, it still carries on a regular and continuous activity involving the making of supplies to another person for consideration. In return for the monthly levies paid by the residents, the committee makes supplies of property management services. Accordingly, the residents' committee is carrying on a taxable activity.

The value of the supplies made by the residents' committee will not exceed the GST registration threshold, so the committee is not required to register for GST. However, the committee may choose to register for GST and in that case would be required to charge GST on the annual contributions requested from residents but the committee can also claim GST input tax deductions for supplies made to them.

Example 2 – Co-owners of cross-leased land

Brian, Hemi and Penelope each live in a house on a piece of land in Auckland. A shared driveway on the land leads to the houses, a small turning bay for cars, and a communal garden area.

The land, including the driveway, is subject to a cross-lease. Brian, Hemi and Penelope own the land as tenants in common in equal shares. Each leases their house and a small area for a private courtyard from the others. The term of the lease is 999 years.

The cross-lease arrangements were established some time ago when the houses were developed. The leases contain a number of covenants. They set out that the costs of maintaining the common areas are to be shared between the three lessees, unless any damage or wear is attributable to the use of one of the lessees. They also set out how the three neighbours can use the common areas – for instance, they restrict the lessees from parking their cars in the turning bay.

Although Brian, Hemi and Penelope have all used the common areas reasonably, the driveway has not been resealed in some years and is in desperate need of repair. Brian, Hemi and Penelope agree Hemi will approach three contractors for quotes for the repair and resealing. The best quote is for \$20,000 which the three neighbours agree is reasonable. Brian and Penelope pay their one-third share of the \$20,000 to Hemi, who pays the contractor.

Brian, Hemi and Penelope all have busy jobs and in the past the shared garden area had become overgrown. The three neighbours decide that the simplest option is to hire a gardener to tend to the garden once a month. The gardener charges \$150 per month for the work. Hemi and Brian set up an automatic payment into Penelope's bank account for \$50 each per month. This covers the regular cost of the gardener.

Although there are rights and obligations between Brian, Hemi and Penelope arising from the lease covenants and general land law, these obligations do not establish a body with rules relating to its governance or funding. The covenants in the lease agreements are not sufficient to establish an unincorporated body of persons. Accordingly, there is no "person" for GST purposes so collectively Brian, Hemi and Penelope do not need to nor can register for GST as co-owners of the land.

Example 3 – Clinic supplying administrative services to its members

Four independent medical practitioners share an old converted villa. They each have a separate lease with the landlord giving 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).

The four resident practitioners enter into a shared service provider arrangement. The arrangement is governed by a simple agreement signed by each practitioner. Under the arrangement, the practitioners agree to establish the Fit and Well Clinic to manage the day-to-day administration of their practices. The agreement sets out the rules of the arrangement, including:

- how the clinic will be governed;
- how decisions are to be made;
- how its funds may be used; and
- what happens when a practitioner joins or leaves the villa.

The clinic leases a photocopier, provides shared supplies, arranges cleaning and furnishing of the waiting room and employs an administrator/receptionist to greet patients, answer phone calls and take messages. The administrator/receptionist also organises the day-to-day operation of the clinic.

Each month the practitioners pay a levy of \$1,500 into the clinic's bank account to cover the clinic's costs. Any amounts left over at the end of each month are retained in the clinic's account to cover the clinic's future unplanned costs.

The clinic is an unincorporated body. While the clinic is not seeking to make a profit, it still carries on a continuous activity involving the making of supplies of administrative services in return for the monthly levies paid by the practitioners. Accordingly, the clinic is carrying on a taxable activity.

The value of the supplies made to the practitioners by the clinic exceeds the GST registration threshold and so the clinic must register for GST. This means the clinic must charge GST on the supplies it makes to the practitioners, but it can also claim GST input tax deductions for its expenses.

References

Subject references

Goods and services tax
Unincorporated bodies

Legislative references

Airport Authorities Act 1966
Companies Act 1993
Goods and Services Tax Act 1985, ss 2
("company"), 5(8A), 6(1) ("taxable activity"),
10(1), 51, 57
Incorporated Societies Act 1908
Retirement Villages Act 2003
Unit Titles Act 1972
Unit Titles Act 2010

Other references

"Question 62 - clinics providing administrative
services – taxable activity?" *Public
Information Bulletin* Vol 158 (November
1986): 11
"Question 112 - residential management
committee – taxable activity?" *Public
Information Bulletin* Vol 158 (November
1986): 27
"GST and property administration" *Public
Information Bulletin* Vol 173 (April 1988): 7

"IS 15/02: Goods and services tax – GST and
retirement villages" *Tax Information Bulletin*
Vol 27, No 11 (December 2015): 6
"GST and bodies corporate" *Tax Information
Bulletin*, Vol 28, No 3 (April 2016): 33.

Case references

Anglesea Builders Partnership v CIR (1987) 9
NZTC 6,181
Case P70 (1992) 14 NZTC 4,469 (TRA)
Case S34 (1995) 17 NZTC 7,228 (TRA)
Canterbury Jockey Club Inc v CIR [2018] NZHC
2,569
Chatham Islands Enterprises Trust v CIR [1999]
2 NZLR 388 (CA)
CIR v NZ Refining Co Ltd (1997) 18 NZTC
13,187 (CA)
*Conservative and Unionist Central Office v
Burrell (Inspector of Taxes)* [1982] 2 All ER 1
Edwards v Legal Services Agency [2003] 1 NZLR
145
McElwee v CIR (1988) 10 NZTC 5,181
Rotorua Regional Airport Ltd v CIR (2010) 24
NZTC 23,979 (HC)
Taunton Syndicate v CIR (1982) 5 NZTC 61,106
Taupo Ika Nui Body Corporate v CIR (1997) 18
NZTC 13,147 (HC)
*Turakina Maori Girls College Board of Trustees v
CIR* (1993) 15 NZTC 10,032 (CA)