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Dear Sir/Madam,

PUB00530: GST - Types of unincorporated bodies

Thank you for the opportunity to comment on the targeted consultation on exposure draft interpretation guideline **PUB00530: GST - Types of unincorporated bodies** (the Guideline) prior to its finalisation.

CPA Australia represents the diverse interests of more than 176,000 members, including over 3,500 members in New Zealand, working in over a 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

Executive summary

CPA Australia supports Inland Revenue's initiative to clarify the GST treatment of unincorporated bodies, including the distinction between simple co-ownership, joint ventures and partnerships. The draft Guideline is a positive step, but the current framework remains highly fact-dependent and may leave taxpayers uncertain about when separate GST registration and compliance obligations arise.

We recommend practical tools to support consistent application, including a diagnostic checklist or matrix, a safe harbour for low-risk arrangements, clearer liability guidance, and practical processes for input tax and invoicing issues. The Guideline should also include more worked examples, trust-specific guidance and a post-implementation review.

Key responses

We make the following key responses:

- We support Inland Revenue's initiative to clarify the GST treatment of unincorporated bodies, while noting that the current framework remains highly fact-dependent and uncertain in borderline cases.
- We recommend:
    - a diagnostic checklist, classification matrix or flowchart to help taxpayers distinguish simple co-ownership, joint ventures, partnerships and other unincorporated bodies with greater confidence.
    - an administrative safe harbour for low-risk informal arrangements to reduce the risk of retrospective GST reclassification, penalties and unnecessary compliance costs.
    - that Inland Revenue acknowledge the limitations of the current section 57B joint venture election and consider whether a broader policy review is needed.
    - clearer practical guidance on managing joint and several liability, including documenting membership changes and the start and end of member obligations.
    - a practical process for resolving input tax and invoicing mismatches where expenses are incurred by members on behalf of the body.
    - expanding the Guideline with trust-specific guidance, more worked examples and a post-implementation review to ensure the final guidance remains practical and fit for purpose.

Please refer to the Appendix for our response to the questions raised in the consultation paper. If you have any queries about this submission, please contact me on jenny.wong@cpaaustralia.com.au or Bill Leung, Tax Technical Advisor on bill.leung@cpaaustralia.com.au.

Yours sincerely,

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Mr Rick Jones
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Acknowledgements

CPA Australia would like to acknowledge the following Tax Committee members for their input and guidance in shaping this submission:

- Mr Angus Ogilvie FCPA (Aust.), Chair of Tax Committee – New Zealand
- Mr Jeffrey Owens FCPA (Aust.), Tax Committee – New Zealand
- Mr Darshana Elwela – Tax Committee – New Zealand
- Mr Richard Ashby CPA (Aust.), Tax Committee – New Zealand
- Mr Jamil Eldar, CPA (Aust.), Tax Committee – New Zealand
- Professor Adrian Sawyer, FCPA (Aust.), Tax Committee – New Zealand
- Mr Peter Loerscher, CPA (Aust.), Tax Committee – New Zealand
- Mr Mark Davies, CPA (Aust.), Tax Committee – New Zealand

Appendix

Detailed discussion

1. Introduction

This submission is in response to the exposure draft interpretation guideline PUB00530: GST – Types of unincorporated bodies (the Guideline).

We support Inland Revenue's initiative to provide clarity in this complex area. Distinguishing between simple co-ownership, joint ventures, and unincorporated bodies is fundamental to correct GST compliance, and proactive guidance is a valuable part of the Generic Tax Policy Process (GTPP).

This submission combines general observations with specific, practical recommendations. While the Guideline is a positive step, it also highlights an inherently rigid area of tax law. Our goal is to suggest improvements that will provide taxpayers with greater certainty, minimise compliance burdens, and address the operational friction that arises when dynamic commercial collaborations meet fixed legal definitions.

2. General comments

We commend Inland Revenue for its consultative approach. However, the core challenge for taxpayers is the highly subjective, fact-dependent nature of these arrangements. The boundary between a cost-sharing agreement and a formal "unincorporated body" for GST purposes is often unclear, creating significant uncertainty.

For the final Guideline to be effective, it must move beyond abstract principles to provide clear, objective tools that taxpayers and their advisors can apply with confidence. Our recommendations are aimed at achieving this by incorporating diagnostic checklists, administrative safe harbours, and specific examples (including for a range of types of unincorporated bodies) that address the real-world operational issues taxpayers face. Ensuring the tax system minimises compliance and administration costs is a key policy objective.

3. Specific analysis and recommendations

3.1 The need for certainty: distinguishing co-ownership from an unincorporated body

The problem: Subjectivity and the "accidental" partnership

The Guideline's central difficulty lies in its reliance on broad common-law principles to define an unincorporated body.

This creates two significant problems for taxpayers:

1. **High uncertainty in borderline cases:** For fractional property investments, family farming arrangements, or shared infrastructure projects, it is incredibly difficult to pinpoint when a collaborative arrangement transforms into an "unincorporated body" requiring separate GST registration.
2. **The "accidental" partnership:** Many co-owners inadvertently step over the legal line into a partnership as defined in the *Partnership Law Act 2019*. If Inland Revenue subsequently classifies the arrangement as a partnership (a type of unincorporated body), any GST returns filed by individual members become retroactively incorrect. This can trigger complex adjustments and the forced registration of a new GST entity under section 57 of the *Goods and Services Tax Act 1985* (the Act).

Recommendation 1: Incorporate a diagnostic checklist or "classification matrix":

To move from a subjective test to a predictable compliance tool, the final Guideline should include a definitive, weighted checklist or flowchart. This would allow taxpayers to systematically score their arrangement against concrete indicators. Such tools have been used effectively in past legislative rewrites to improve clarity and aid interpretation.

Suggested indicators include:

- **Separate legal identity:** the body operates under a collective name, has a dedicated bank account, or prepares separate financial statements.

- **Governance:** Has a formal or informal governance structure, a constitution or rules, or appointed managers with decision-making authority.
- **Commercial purpose:** A joint enterprise for profit, rather than simple cost-sharing.
- **Membership:** Has defined criteria for joining or leaving, with the body able to continue despite membership changes.

Recommendation 2: Establish an administrative safe harbour:

To mitigate the risk of retroactive reclassification, Inland Revenue should introduce a "de minimis" or safe harbour framework. If an informal arrangement (such as fractional property co-ownership) meets basic co-ownership criteria and remains under a designated annual turnover threshold, Inland Revenue should commit to not challenging its GST structure. This would provide certainty and eliminate the threat of penalties for minor, low-risk collaborative activities.

3.2 Addressing operational friction and legislative constraints

Problem 1: The rigidity of the flow-through joint venture election

The Guideline correctly notes section 57B (of the Act) election for unincorporated joint ventures (JVs). However, this flexible "flow-through" option is strictly unavailable to JVs that meet the legal definition of a partnership. Because many commercial JVs are structured with shared net profit mechanisms, they are often classified as partnerships and barred from the election. This forces complex, centralised accounting on entities that were commercially intended to be independent operations.

Recommendation 3: Propose a legislative review of section 57B of the Act:

While beyond the scope of an interpretation guideline, this is a significant systemic constraint. We recommend that the finalised Guideline explicitly note this issue and recommend a policy review to Treasury. The goal should be to expand the section 57B election to allow ordinary partnerships to choose flow-through treatment where all members unanimously agree. Addressing issues in GST and JVs has been the subject of prior policy work.

Problem 2: Joint and several liability: Under section 57(3) of the Act, every member of an unincorporated body is jointly and severally liable for all GST obligations incurred by the body while they are a member. This creates significant operational risk, as tracking precisely when liability begins and ends requires meticulous documentation. An outgoing member can be penalised for the subsequent defaults of the body if the Commissioner is not properly notified.

Recommendation 4: Provide clear guidance on managing liability:

The Guideline should include practical examples and best-practice guidance for unincorporated bodies on how to manage and document changes in membership to ensure liability is clearly delineated.

Problem 3: Input tax and invoicing complications:

Section 57(2)(c) of the Act deems that supplies acquired by a member in their capacity as a member are acquired by the body.

In practice, individual members frequently purchase assets or pay expenses from their own funds, with invoices issued in their personal or corporate name. This can lead to the denial of legitimate input tax credits due to minor administrative or naming errors.

Recommendation 5: Detail a process for curing invoicing errors:

The final Guideline needs a comprehensive section detailing how an entity can cure these invoicing mismatches under sections 24 and 57 of the Act. This should include a simple process where an agency agreement or reimbursement resolution is sufficient to validate the input tax claim for the body.

3.3 Improving scope and practical application

Recommendation 6: Include specific guidance for trusts:

The application of these rules to trusts is underdeveloped. It is often unclear when a trust's activities move beyond passive asset administration to become a taxable activity carried on by an unincorporated body. We recommend adding a dedicated section that contrasts, for example, a simple family trust with a trading trust.

Recommendation 7: Expand worked examples:

To enhance practical utility, the Guideline should include several detailed case studies that analyse different scenarios against the recommended classification checklist. This should cover common situations such as a property syndicate, a small sports club, and a construction industry JV.

3.4 Ensuring future effectiveness

Recommendation 8: Commit to a post-implementation review:

As with any guidance in a complex area, there may be unintended consequences. We recommend that Inland Revenue formally commit to a post-implementation review of the Guideline within 18 to 24 months of its publication. This is a vital part of the GTPP framework and ensures that guidance remains fit for purpose by allowing for refinement based on real-world application.

This approach has been used effectively for other significant tax changes and is a valuable part of the policy process.

4. Conclusion

We thank Inland Revenue for the opportunity to provide a submission on this important Guideline. By incorporating these recommendations, particularly a diagnostic checklist, safe harbours, and practical guidance on operational friction points, the final document will become an invaluable resource that provides much-needed certainty to taxpayers.

We would be pleased to discuss any aspect of this submission further.