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Dear Catherine,

PUB00530: GST - Types of unincorporated bodies

Thank you for the opportunity to comment on the amended 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 welcomes the opportunity to further comment on Inland Revenue's amended draft guideline on GST and types of unincorporated bodies. Overall, we support guidance that improves certainty for taxpayers, but recommend further refinement to ensure the final guideline accurately reflects the GST Act and provides clear, practical guidance for trustees, joint ventures and other collective arrangements.

In particular, we recommend that the guideline distinguish more clearly between a corporate trustee acting in its trustee capacity and the same company acting on its own account. We also consider that the structural requirements for an unincorporated body should remain sufficiently robust, requiring more than contractual reciprocity or shared expenditure. Finally, while differences between GST joint venture treatment and Pillar Two accounting outcomes may create practical reconciliation issues, these should be addressed as administrative guidance rather than as technical corrections.

Key responses

We make the following key responses:

- Clarify that a corporate trustee may act in different capacities for GST purposes. A sole corporate trustee should not be categorically excluded from the section 57 regime when acting in its trustee capacity, although the same company remains a separate company when acting on its own account.
- Confirm that the plural reference to "trustees" can include a sole trustee, supported by the *Legislation Act 2019*, while making clear that the substantive basis for treatment under section 57 is the GST Act's express inclusion of trustees of a trust.
- Retain a robust structural threshold for identifying an unincorporated body. Mutual rights, cost sharing or contractual reciprocity should not be sufficient unless there is meaningful internal regulation and an entity-like collective structure.
- Distinguish ordinary commercial arrangements from unincorporated bodies. Co-location, shared expenditure, lease covenants and bilateral service arrangements should not be treated as unincorporated bodies without rules governing the collective operation or funding of the arrangement.

- Treat interactions between GST joint venture rules and Pillar Two as practical reconciliation issues, rather than technical errors. Additional guidance should focus on record mapping between section 57B allocations, financial accounts and GloBE (Global Anti-Base Erosion) workpapers.
- Provide practical transitional guidance for existing joint venture arrangements, including the effect of elections before 1 April 2027 and the irrevocable nature of section 57B elections.

Please refer to the Appendix for our detailed response 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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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

Key Technical & Statutory Submissions

1. Sole corporate trustee and s 57: largely incorrect

The objection focuses on the corporate trustee's incorporated status but overlooks its distinct trustee capacity. The GST Act's definition of "unincorporated body" expressly includes "the trustees of a trust".

Section 19 of the Legislation Act 2019 provides that plural words include the singular, so "trustees" can include one trustee. Accordingly, Inland Revenue's current position is:

"For GST purposes, a trustee, including a corporate trustee, is treated as an unincorporated body of persons (s 57)."

The proper distinction is between capacities:

- **Trustee capacity:** a sole corporate trustee is treated under the s 57 regime, with registration in the trust's name. Section 57 attributes relevant supplies and acquisitions to the body rather than the member.
- **Corporate capacity:** the same company is a company for GST purposes, distinct from its trustee capacity. It may therefore have separate GST registrations in those capacities and further registrations for other trusts.
- **Joint individual trustees:** likewise fall within the express inclusion of "the trustees of a trust".

Section 19 assists with the singular/plural point but does not, by itself, convert an incorporated company into an unincorporated body. The substantive result follows from the GST Act's express inclusion of trustees and the recognition of the trustee's separate capacity.

Recommendation: replace the categorical exclusion with wording distinguishing a corporate trustee acting in its trustee capacity from that company acting on its own account.

2. Structural requirement: substantially correct

If the redraft says that merely "some definition of mutual rights and obligations" is sufficient, it sets the threshold too low. The authorities require more than contractual reciprocity.

QB 19/11 identifies:

- a "significant degree of regulation" governing the members' relationship;
- mutual duties and obligations beyond loose consultation; and
- sufficient regulation of internal affairs to produce a structure recognisable as a collective entity—the "unincorporated equivalent of a body corporate".

In *Edwards v Legal Services Agency*, the Court of Appeal described the relevant concept as persons who:

"together are properly to be regarded as a body rather than as a number of individuals".

That test prevents ordinary bilateral service contracts, co-location arrangements and simple cost-sharing agreements from becoming unincorporated bodies merely because they create mutual rights. QB 19/11 itself says that co-ownership, joint decision-making and cost sharing will ordinarily be insufficient without material internal regulation and collective structure. Its example also concludes that lease covenants and shared expenditure do not establish such a body where there are no rules governing its operation or funding.

Recommendation: retain both limbs:

1. members are bound for a common purpose by mutual undertakings; and
2. there is sufficient internal regulation and entity-like structure for them to be recognised collectively.

3. Section 57B and Pillar Two: practical observation, not a technical error

Section 57B allows an eligible ordinary joint venture to elect irrevocably into flow-through treatment. Joint supplies are divided into supplies by the members; acquisitions used by members are attributed accordingly; and members must maintain adequate records or agree written allocation proportions. Each member can also become liable for GST registration from the date on which the ordinary joint venture would have been liable.

OECD Pillar Two applies a different statutory and accounting framework. GloBE calculations generally begin with each constituent entity's financial accounting net income and covered taxes. For a qualifying joint venture (JV) at least 50% owned by a multinational enterprise (MNE) group, the JV group calculates its Effective Tax Rate (ETR) and top-up tax separately; its profits and taxes are not blended with the wider MNE group.

Therefore:

- differing GST and GloBE boundaries are not inherently inconsistent;
- not every JV involving an MNE is necessarily a GloBE JV;
- no identified GST provision requires s 57B allocations to follow Pillar Two accounting boundaries; and
- accounting reconciliation may be operationally burdensome, but that does not make the GST treatment technically erroneous.

Recommendation:

Additional guidance could usefully explain record mapping between s 57B allocations, financial accounts and GloBE workpapers. That should be presented as a policy or administrative recommendation, not as correction of a legal defect.

For existing arrangements, the transitional provisions also matter: qualifying previously registered JVs may elect before 1 April 2027, and the election is irrevocable. Historic flow-through positions may receive transitional treatment where the statutory conditions and election requirements are met