

# Joint Ventures: Action to Take Before January 1, 2015!

October 2014

## On-line Tax Strategies

In general, a person carrying on a business is required to collect and remit GST and QST to the government. However, for the purposes of the *Excise Tax Act (ETA)* and *An Act respecting the Québec sales tax (AQST)*, a joint venture is not a person. Consequently, each co-venturer is required to collect and remit tax and claim tax credits on its share of supplies carried out through the joint venture. The accounting treatment of these transactions may be complex and may not reflect the business reality. For this reason, the participants in a joint venture may elect to have one of the co-venturers (called “operator”) handle all the GST/HST/QST accounting.

### Current criteria

The criteria for making a joint venture election require that the existence of a joint venture be evidenced in writing, and that the operator be a participant in the joint venture and registered for sales tax purposes. The definition of “participant” used by the tax authorities is restrictive. In fact, while the ETA and AQST do not have a definition as such, the Canada Revenue Agency (CRA) and the Agence du revenu du Québec (ARQ) require a “participant” to invest resources and keep its share of returns or assume its portion of the joint venture’s debt, or, if it has no financial interest, that it be actively responsible for managing or operating the joint venture.

Also, only certain specific activities targeted by this rule, such as, for example, the construction or rental of buildings, or the use of facilities to produce or transport electricity, may be subject to a joint venture election.

### Proposed changes

In connection with the 2014 federal budget, the Department of Finance Canada announced that joint venture election provisions would be reviewed to extend their application to more participants. As such, the election will also be possible for all joint ventures whose overall activities are exclusively performed as part of a commercial activity.

### Tax authorities’ audit

In 2013, the federal and provincial tax authorities audited several joint ventures in the real estate sector. The purpose of these audits was to ensure that the existence of a joint venture was evidenced in writing and these entities were truly joint ventures and not using nominees, partnerships or any other business arrangements. According to the tax authorities, the members of these other entities do not meet the criteria of a participant and are therefore not eligible for making a joint venture election. Consequently, all input tax credits and input tax refunds claimed by the operator for the actual acquirer were refused.

Following representations from tax professionals, the CRA and ARQ have temporarily suspended files treatment and have provided relief until December 31, 2014. Therefore, in the case of an actual joint venture where a joint venture election has been made, but that all criteria are not met,<sup>1</sup> no assessment will be issued in so far as the agent has filed all returns and has remitted all taxes before January 1, 2015. Subsequently, the joint venture and participants will have to comply with all ETA and AQST requirements.

<sup>1</sup> For example, if the co-venturer is not an “active” participant according to administrative criteria.

In the case of a sole owner or entity that does not qualify as a joint venture, if the agent meets the above-mentioned conditions, assessments would only cover the last 24 months, with penalties and interest, which could be limited to 4% in the case of transactions with no tax impact.

## Conclusion

There is still time to ensure that joint venture transactions are appropriately processed, that the joint venture's existence is evidenced in writing and that the participant is eligible for the election. It is also important to review the application of taxes for the other structures that are not eligible for the joint venture election to ensure their compliance (taxes claimed by right person), since it could be difficult to limit the costs of a possible assessment as of January 1, 2015.

Your Raymond Chabot Grant Thornton advisor can help you determine which measures apply to your business and undertake the necessary steps to use them. Do not hesitate to contact us.

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