MEMO

TO: ALL CLIENTELE

FROM: THE PARTNERSHIP

DATE: November 25, 2014

SUBJECT: REAL ESTATE JOINT VENTURES AND GST/HST
A CHANGE IN CRA'S POSITION – ACTION REQUIRED

Generally speaking, each participant of a joint venture is required to account for its share of both the GST/HST collected and the GST/HST paid as it relates to the joint venture activity. To facilitate reporting in this situation, Section 273 of the Excise Tax Act permits the participants to elect for one of the participants that is a GST/HST registrant to be the operator. As such, the operator accounts for all the GST/HST collectible and claims any input tax credits in respect of the joint venture activity on behalf of all participants.

Note that the joint venture, generally referred to as a co-tenancy in the real estate context, must be governed by a written agreement and must be engaged in a prescribed activity such as real estate construction/development or commercial rental.

To date, it has been common business practice to have a GST/HST registered bare trustee corporation be the legal, but not beneficial, owner of the property and, as well, to have the participants in the joint venture make the joint venture election for the bare trustee corporation to be the operator. As the bare trustee corporation generally did not meet the CRA's administrative definition of a participant for purposes of the election, i.e. it does not have an investment in the joint venture property nor does it have managerial or operational control of the joint venture, it could not properly have been a party to the S. 273 election. As such, CRA could propose to deny all input tax credits claimed by the bare trustee corporation (though they would generally be allowed to be beneficial owners, if indeed, such beneficial owners were GST/HST registered). Interest could, however, be charged on the ITC's denied to the bare trustee corporation and failure to file penalties could be charged to the beneficial owner.

CRA has stated, however, that their auditors have been advised not to assess for any GST/HST owing where an assessment could be raised solely because the bare trustee or nominee corporation is not, in their view, a participant for purposes of the election. They have stated, however, that their administrative tolerance is contingent upon all returns having been filed, all amounts having been remitted and the joint venture participants being fully compliant. Moreover, this administrative concession will only be allowed with the understanding that, on a go forward basis, the joint venture will arrange its affairs to ensure that a participant, as defined by CRA, who is a GST/HST registrant, is an operator of the joint venture. Importantly, this administrative tolerance is only available for periods ending before January 1, 2015 with the result that steps must be taken immediately to become compliant prior to that date.

As there are various options available to become compliant, contact your KRP Partner to discuss the next steps.