

November 2005

# NZ Minerals Conference

Joint Ventures – Taxation Risks and  
Advantages

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 ERNST & YOUNG

Quality In Everything We Do

# NZ Minerals Conference

## Outline:

- Tax Losses
  - How JV's assist - preservation and carry forward
- GST
  - Right of members to be separately registered
  - Supplies to and from a JV

# JV Fundamentals

## Company

A B



## JV

A B



## Partnership

A B



### **Distributions to owners**

- Dividends
- Production
- Net Profit

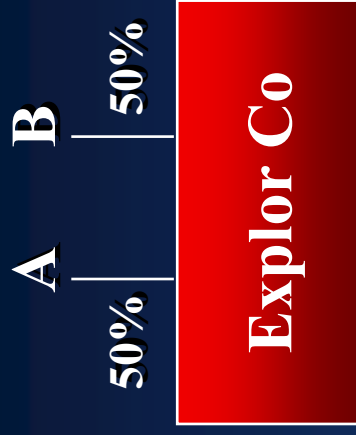
### **Liability for Costs**

- Limited
- Several and separate
- Joint and Several

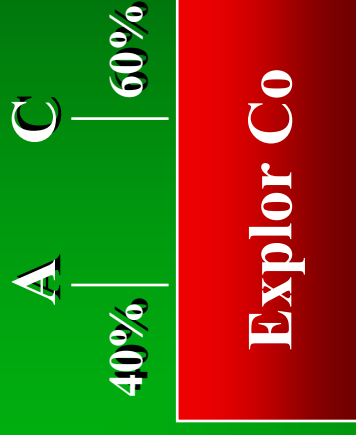
### **Access to Tax Losses**

- Only if Mining Co is in a group.
- For Gold Coys - No loss offsetting allowed
- JV does not file a tax return
- A and B return their share of partnership loss from Partnership tax return

# Preserving Tax Losses

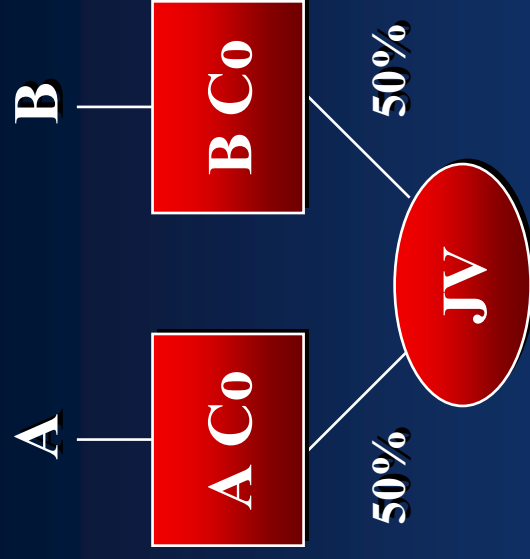


- Tax losses from exploration
- Tax losses trapped in Explor Co
- B wants out
- Explor Co needs more cash

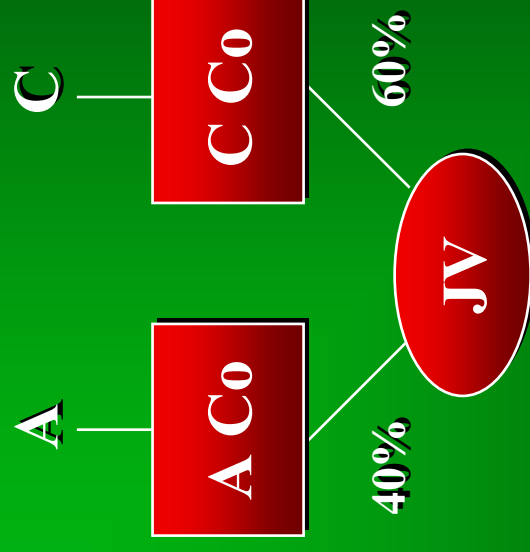


- C buys 50% of Explor Co from B
- Explor Co issues more shares to C for cash. A's interest diluted by 10%
- Explor Co tax losses forfeited; Gold Explor Co - quarantined

# Preserving Tax Losses

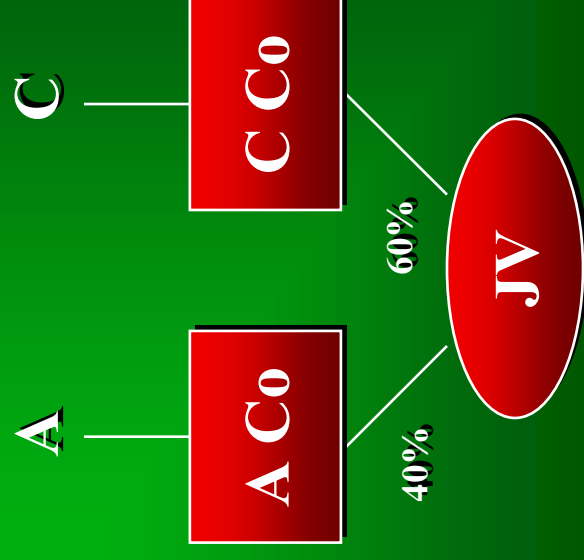
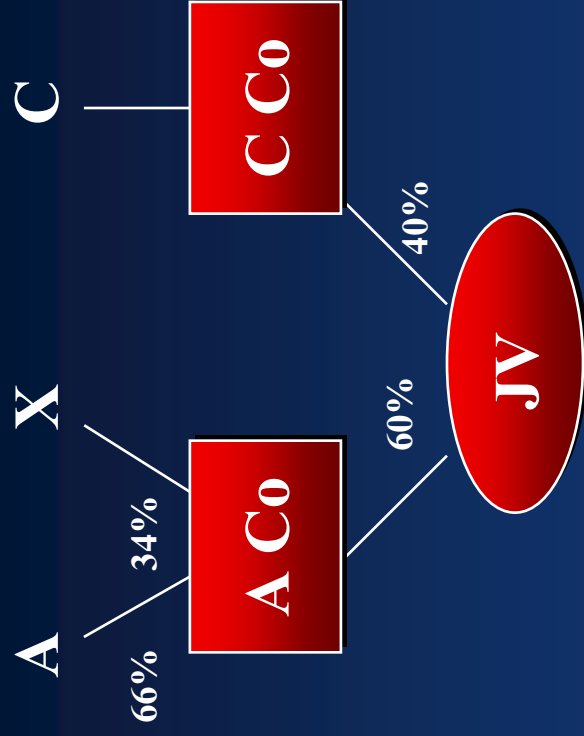


- A Co and B Co have tax losses
- B wants out
- JV needs more cash



- C buys 50% of JV from B
- C Co puts cash into JV for a further 10% of JV
- A Co tax losses not affected

# Preserving Tax Losses & Control





- Same scenario, but A wants to keep control of A Co and the JV
- X introduced as mezzanine investor in A Co

# Loss Burning Issue for Gold Co

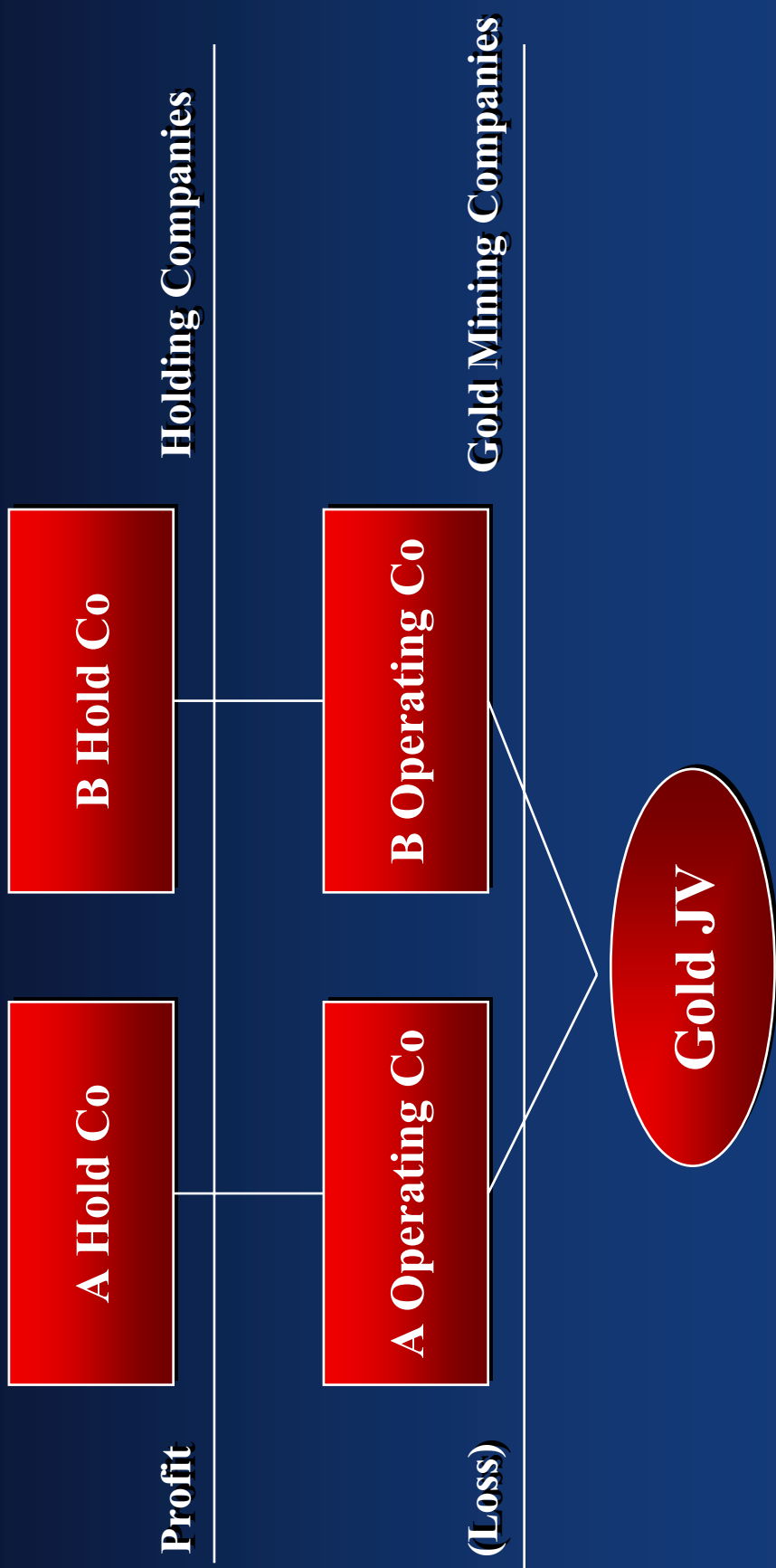
Gold Co

<u>Mining</u>	<u>Non-mining</u>	<u>Losses Wasted</u>
(\$300)	\$200	\$100
\$200	(\$200)	\$0

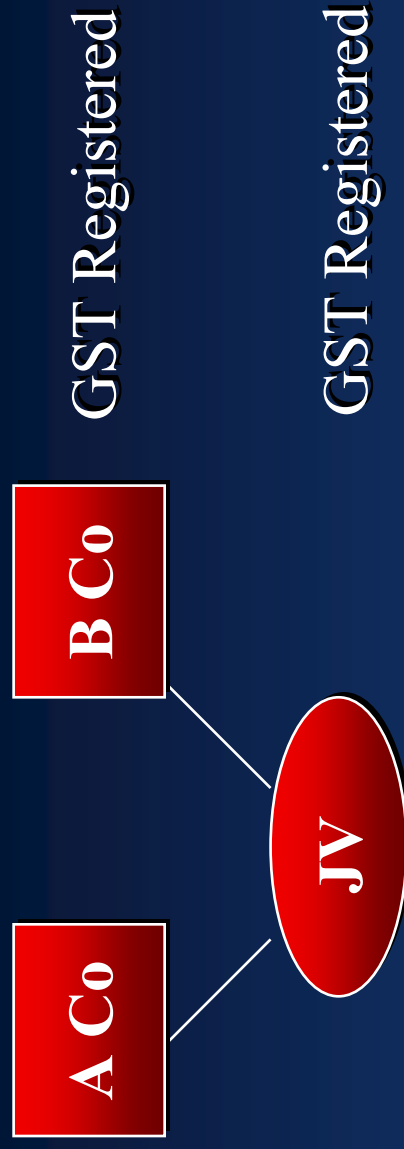
Loss Offset

# Minimising Loss Burning



# GST – Can B Co be GST registered?

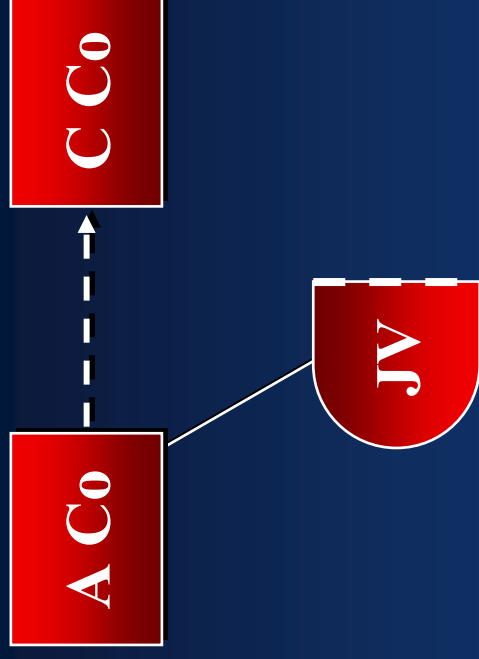


## Section 57(2)

Where a JV is GST registered for a taxable activity ...

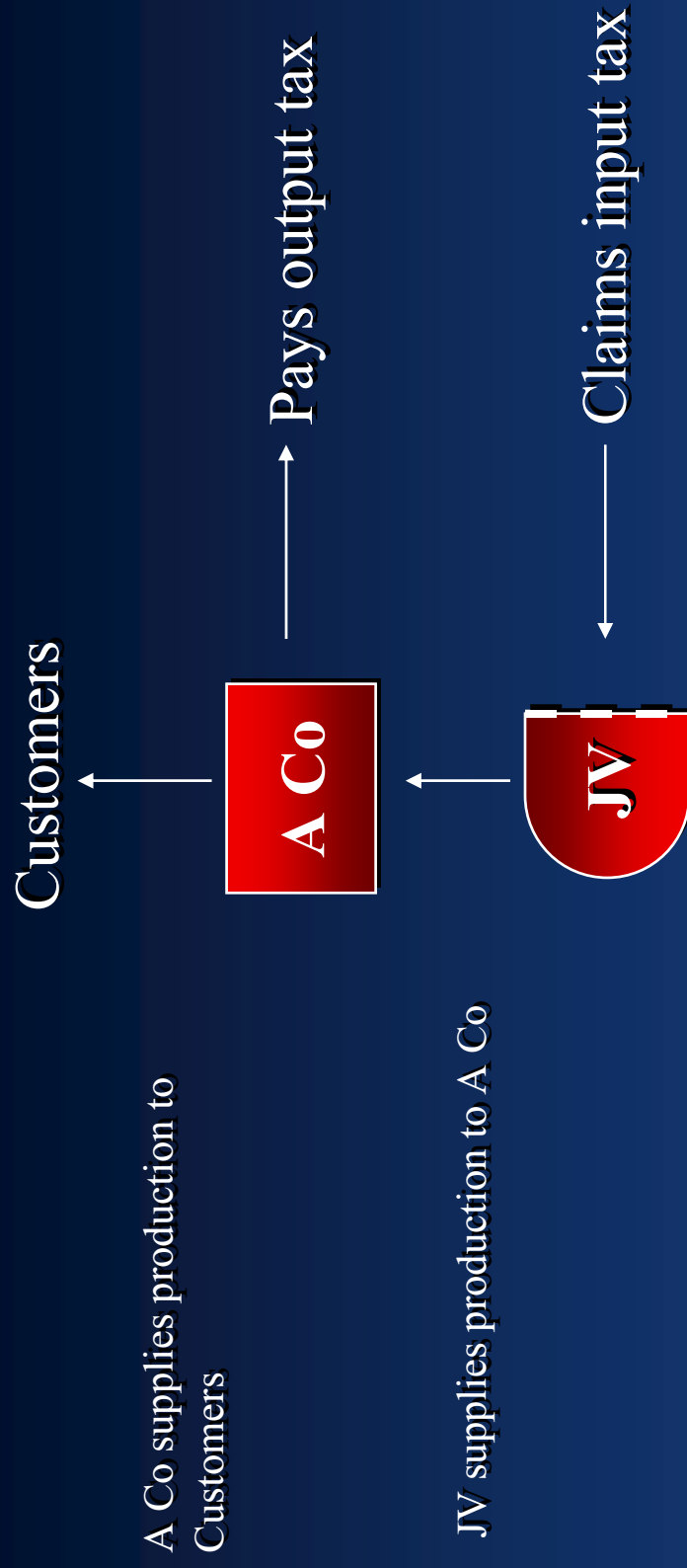
“The members of [the JV] shall not themselves be registered ... in relation to ... that taxable activity”

# GST- Sale of part of JV



- Vendor commonly charging GST
- Purchaser needs to be GST registered to claim GST back
- Vendor is assuming any risk that it may not be entitled to be GST registered

# GST – Can JV claim input tax?



A Co supplies production to Customers

JV supplies production to A Co

Defn of “Input Tax” – tax charged on goods and services acquired for the principal purpose of making taxable supplies

Question - Is the JV making taxable supplies (i.e. a supply that is charged with tax) if it does not charge A Co for supplies made?