

GST-QST: Election Between Closely Related Parties – January 1, 2015 Is a Key Date

April 2014

On-line Tax Strategies

Provisions in the *Excise Tax Act* permit closely related entities to make a joint election to eliminate the obligation to collect and remit GST/HST on certain taxable supplies¹ between them. Under the terms of this election, the supplies are deemed to be made for nil consideration and, accordingly, there are no taxes to remit.

Recap of Rules

To be eligible for this joint election, the two GST registrants must be specified members of a qualifying group.

Specified member

The entities must satisfy the following three conditions:

- Be resident in Canada;²
- Be engaged exclusively in commercial activities;
- Be members of a qualifying group.

Qualifying group

Generally, a qualifying group is a group whose members are solely Canadian partnerships³ or corporations that are each closely related to each member of the group.⁴ Generally, such entities are closely related when there is a degree of common

ownership of at least 90% or when they are closely related to the same corporation or partnership.

2014 Federal Budget

In its February 11, 2014 budget, the federal government amended the rules applying to the nil consideration election between closely related parties.

New filing requirement

Currently, entities making such an election are not required to file a completed form to this effect. They are simply required to keep a record of the election.

ELECTIONS AFTER DECEMBER 31, 2014

New elections made as of January 1, 2015 will have to be filed with the Canada Revenue Agency by the first date on which any of the parties to the election is required to file a GST/HST return for the period in which the election becomes effective.

ELECTIONS PRIOR TO JANUARY 1, 2015

Parties to an election made before January 1, 2015 that is in effect on January 1, 2015 will also be required to comply with this filing requirement by January 1, 2016. Failure to do so means the elections will be deemed not to have been made.

To date, the tax authorities have not released any details about the terms to be complied with or penalties that might apply for failure to file the elections.

¹ Election does not apply to a supply by way of sale of real property.

² Resident in Québec for Québec sales tax (QST) purposes.

³ I.e. a partnership each member of which is a corporation or partnership and is resident in Canada.

⁴ An individual or an entity other than a corporation or a Canadian partnership is not eligible to make the election.

Prior ownership of assets

To be eligible for the closely related parties election, an entity must have previously owned the assets. Because of this requirement, the election cannot be made in the case of a reorganization involving a new corporation. Effective January 1, 2015, previous ownership of the asset will no longer be required provided the corporation continues to be engaged exclusively in commercial activities for a period of 12 months following the election date.

Joint and several liability

As of January 1, 2015, entities having made a joint election shall be subject to a joint and several liability with respect to the tax liability that may arise in relation to supplies made between them.

Quebec Sales Tax

In its February 20, 2014 budget, the Quebec government announced its intention to amend the QST provisions to include the federal provisions regarding elections between closely related parties. We will have to keep a watch in the coming weeks to see how these measures will be applied in the *Quebec Sales Tax Act*.

Conclusion

Your RCGT advisor can answer your questions and help you comply with the requirements regarding elections between closely related parties. Do not hesitate to contact us.

For additional information visit us at rcgt.com.