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Canadian indirect tax Key change to GST/HST and QST election for closely related groups in 2015

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Commencing in 2015, there is a significant change to the filing requirements of companies that are part of a related group that sign the election Form GST25 - *Closely Related Corporations and Canadian Partnerships – Election or Revocation of the Election to Treat Certain Taxable Supplies as having been made for Nil Consideration*. This election allows the qualifying parties to the election to not account for Goods and Services Tax/Harmonized Sales Tax (GST/HST) on taxable transactions between them, creating administrative ease and cash-flow savings.

As of January 1, 2015, all GST/HST related company elections will need to be filed with the Canada Revenue Agency (CRA) and will be effective for 2015 and subsequent years. In the past, the election Form GST25 was only required to be kept on file to be available to CRA on request. However, during its audits, CRA identified many corporate groups for which the eligibility requirements for a valid election were not satisfied in some or all prior years. In order to address this problem and to make the election more visible to CRA, the legislation has been changed so that all GST/HST related company elections will need to be filed with CRA.

For a pre-existing election (i.e., an election made before 2015), the parties will need to file a new form (yet to be prescribed) with CRA anytime in 2015, as long as it is filed by December 31, 2015. For corporations wishing to enter into a new election in 2015, the election will have to be filed by the first date on which any of the parties to the election are required to file a GST/HST return for the period in which the election becomes effective.

GST/HST registrants who rely on the existence of a current election to not charge tax among related companies and want to benefit from the election after 2015 should (1) ensure the related group still meets all the eligibility requirements and (2) file the new form with CRA no later than December 31, 2015. If the elections are not filed with CRA and tax is not collected, then the parties are jointly and severally liable for the payment of uncollected tax, plus interest and penalty, if applicable.

Rules applicable in the QST regime

Since the Québec Sales Tax (QST) regime is harmonized with the GST regime, the rules described above are also applicable to QST. Therefore, companies that are eligible to make such election for QST purposes must file the new prescribed form (FP-2025) with Revenu Québec following similar new filing requirements as outlined above.

Once the elections start to be filed, we anticipate increased audit activity by CRA and Revenu Québec. The cost of non-compliance will likely result in penalties and interest being levied.

Please contact your Deloitte indirect tax representative to discuss these changes further.

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