

## Corporate Groups — File GST Closely Related Elections by December 31

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Businesses that have GST/HST and QST closely related group elections must ensure that they file all the required forms with the CRA and Revenue Quebec based on new rules introduced in 2014. Corporations and partnerships with elections that applied before January 1, 2015 that were still in place on that date but have not yet filed the election forms with the tax authorities have until December 31, 2015 to do so under a transitional measure. Before filing these forms with the CRA or Revenue Quebec, if applicable, businesses should ensure that they still meet all the conditions of the closely related elections and that they have properly completed the required forms. Corporations and partnerships that have undertaken reorganization transactions over the years, such as sales of shares, should take additional care to determine whether they still qualify to make the election.

Some businesses may be surprised to learn that, while they qualify to make the election for GST/HST purposes, some of the corporations and partnerships in their closely related group across Canada may not meet the election conditions for QST purposes. A careful review of the corporations and partnerships in your group will help you determine which entities are eligible to make the closely related group election, which inter-company transactions are eligible under the elections, and help you take measures to address potential errors.

### **Background**

The closely-related group election is one of the most popular GST/HST elections between businesses engaged in commercial activities. A corporation or a partnership that meets the conditions of a specified member of a qualifying closely related group may elect with another qualifying member of the same group to deem most transactions of property and services between the two electing members as having been made for nil consideration for GST/HST purposes. The election effectively removes the GST/HST on many intercompany transactions and can potentially improve cash flow. However, the election comes with strict conditions. Misunderstanding these conditions can create a significant risk of tax assessments for the parties. Similar rules apply for QST purposes.

The government introduced new filing rules for these elections in 2014 which require electing members to file a new election form with the CRA. A closely related group election is between two qualifying members. For closely related groups with two or more qualifying members, the CRA allows all these members to use one election form to cover all the two-member election combinations between them. Previously, the electing members did not have to file the closely related group election forms, but simply had to

keep the completed form in their books and records. The new rules also include a transitional rule for elections in place before 2015 that were still in effect on January 1, 2015.

The 2014 rules also extend the election to some new members of a qualifying group. Due to the strict conditions for these new members that do not yet have any property or revenue, these businesses will have to carefully determine if they qualify. They may consider if other approaches can apply to help alleviate cash flow issues. Quebec announced similar changes to the QST rules.

The closely related group election should not be confused with a similar election that applies in the case where one member of the group is a listed financial institution and that deems certain taxable supplies to be treated as supplies of financial services.

### **Are your closely related group elections valid?**

Qualifying corporations and partnerships must review their closely related group elections to make sure they meet all of the election's required conditions. Some entities that have undertaken certain transactions, including a sale of assets or shares, may no longer qualify for the election. Where a member no longer meets the required conditions, such as where a corporation is no longer closely related to the other corporation, the election immediately ceases to apply. In this case, these closely related entities are now required to collect and pay the appropriate amount of GST/HST on their intercompany transactions, since they no longer benefit from the election.

While many errors can occur with closely related group elections, here are a few common mistakes:

- One of the entities is not a “qualifying member” or no longer meets the property or revenue test
- The entities have applied the election to non-eligible property and services
- The entities do not or no longer meet the conditions of “closely related” for GST/HST purposes because of the degree of ownership between the two entities (i.e., at least 90%)
- One of the entities to a closely related election has made another election with a financial institution (known as a section 150 election)
- One of the entities is not a registrant
- One of the entities does not qualify because it is a non-resident corporation.

Businesses must remember that the CRA will assess generally the entire amount of tax where the election is mistakenly applied and interest. While purchasers may be entitled to claim input tax credits in cases of errors, a tax reassessment for the amount of tax payable can create a significant cash flow issue.

### **Don't miss deadline to file election forms under new rules**

*New elections after 2014*

Qualifying corporations and partnerships that make new closely related group elections after 2014 must file the election forms no later than the earliest of the day one of the members that makes the election is required to file a GST/HST return for the reporting period that include the day on which the election becomes effective.

*Elections in place before 2015 and still in effect*

Under the transitional rule, qualifying corporations and partnerships with elections in place before 2015 that were still in effect as of January 1, 2015 must file the new election form in 2015. Qualifying corporations and partnerships that have such elections and have not yet filed the election form must make sure to file the forms by December 31, 2015.

Note that qualifying members with elections in place before 2015 that were still in effect on January 1, 2015 and that make the election with one new member in the group in 2015 must file two closely related group election forms in 2015 under the new rules. For example, if a new qualifying member elects on June 1, 2015 with other qualifying members with an existing closely related group election, and all the members are monthly GST/HST filers, the group must file one election form (form RC4616) no later than July 31, 2015 to account for the new member. In addition, the qualifying members of the group (other than the new member) also have to file a second election form for the election in place on and before January 1, 2015, which must be filed by December 31, 2015. The members are also required to indicate the appropriate “effective date” of the election, which may cause some confusion for the older elections.

**KPMG observations**

Now that qualifying members must file closely related group election forms, they should regularly review their corporate group structure to ensure that all members continue to meet the election conditions and rules. Where an election ceases to apply, this could lead to significant assessment and cash flow issues for the entities.

The qualifying members to closely related group elections should also note that, under the new rules, they are jointly and severally, or solidarily, liable for GST/HST amounts that should have been collected for supplies made between them. As such, the tax authorities can hold both entities accountable for failure to collect GST/HST on transactions between them if an election is invalid or no longer in effect.

**We can help**

Your KPMG adviser can help you determine how the new rules apply to your closely related group and if all the corporations and partnerships qualify to make the closely related group election. For more details on these filing requirements or any other indirect tax obligations, contact your KPMG adviser.

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