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GST/QST Election: Get Ready for 2015

Carolyne Corbeil and Emmanuel Sala

Generally, certain corporations or partnerships within a same group who are engaged exclusively in commercial activities, may make intra-group supplies of taxable goods or services without having to collect or remit the GST/QST otherwise applicable to such supplies. This tax relief is possible thanks to the joint election made under subsection 156(2) of the *Excise Tax Act* (Canada)[1] ("ETA") and the first paragraph of section 334 of the *Act Respecting the Québec Sales Tax* ("QSTA")[2] (hereinafter the **"section 156 election"**). More specifically, by making this election, the consideration for most supplies of taxable services or goods between the qualifying corporations of the same group is deemed to be nil (certain types of supplies are excluded from the section 156 election, particularly a supply by way of sale of real property). Recently, following the tabling of the 2014 federal budget, several major amendments were made to the section 156 election, including the fact that corporations benefitting or seeking to benefit from this election will henceforth be required to file it with the tax authorities on or after January 1, 2015, failing which the election will not be valid. Similarly, Quebec's 2014-2015 budget announced that amendments would be made to the same election under the QSTA for purposes of harmonizing the QST with the GST.

According to the current provisions of the section 156 election, "specified members" of a "qualifying group", as defined by the ETA, may file the election jointly. Generally speaking, a specified member is a corporation resident in Canada or a "Canadian partnership" which is a GST/QST registrant, and which is engaged exclusively in commercial activities. A qualifying group is a group of corporations

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each member of which is closely related for purposes of the ETA.[3] Closely related members include, in particular, two corporations one of which, either directly or indirectly, holds not less than 90% of the value and number of shares of the other corporation (*i.e.* parent-subsidiary), or sister corporations of which not less than 90% of the value and number of shares are held by the same person. Currently, the section 156 election is made or revoked by the members of the qualifying group on a prescribed form (*i.e.* Form GST25), which need not be filed with the appropriate tax authorities, but simply kept in the records of the corporations concerned in the event of an audit. The section 156 election remains in effect until it is revoked by the parties, or when one of the corporations ceases to be a member of the qualifying group. Moreover, it is important to mention that, where a new specified member joins the qualifying group, the section 156 election must be amended in order to be valid in respect of any supplies made to or by this new member. Conversely, where supplies are made to or by a corporation that has left the group (for example, following a reorganization in which the percentage of share ownership in said corporation has changed) the section 156 election automatically ceases to be effective and the GST/QST becomes applicable to the taxable supplies.

According to the proposed amendments to the relevant provisions of the ETA, in order to be effective for GST/QST reporting periods subsequent to January 1, 2015, the section 156 election, or revocation thereof, must henceforth be filed with the appropriate tax authorities before the first day on which any of the parties to the election must file its GST/QST return for the period. For example, if one member of the group has a monthly reporting period, the entire group must file their section 156 election with the tax authorities by no later than February 28, 2015, if supplies are made on January 1, 2015. However, the amendments to the ETA give some relief to corporations already having a section 156 election in effect prior to 2015 by enabling them to file the election with the appropriate tax authorities by no later than December 31, 2015 instead. It is important to note that having a valid section 156 election in your file for 2014 has no effect on your obligation to submit the section 156 election on the prescribed form to the tax authorities at some time between January 1, 2015 and December 31, 2015. Lastly, please note that the section 156 election cannot be filed prior to January 1, 2015, since it will not be recognized by the tax authorities. Consequently, where the group of corporations makes an unofficial section 156 election (*i.e.* where the parties act as if an election was made, without signing the prescribed form), it will henceforth only be valid if it is presented to the tax authorities in accordance with the prescribed requirements.

In conclusion, the new requirements for filing the section 156 election present an excellent opportunity for reviewing the relevance, and especially the eligibility, of such election that one has made to date. Since it is impossible to file the section 156 election in advance, it is strongly recommended that one set a reminder to do so in the new year.

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[1] ETA (R.S.C.,1985), c. E-15.

[2] CQLR c T-0.1.

[3] We will not describe the concept of “closely related” under the ETA in detail herein, or its application to partnerships, since the complexity thereof would exceed the scope of our text. Please contact the authors should you require more information.

“Laying Yourself Bare” to Get the Best Insurance Coverage! Clear Communication Between the Client and the Insurance Broker: The Key to Success

Jonathan Lacoste-Jobin with the collaboration of Léa Pelletier-Marcotte, student-at-law

It is before the occurrence of a loss that businesses should ensure they have adequate insurance

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coverage which meets their needs and their specific characteristics, and which is adapted to the market in which they operate. This can save them a lot of trouble.

However, it can be difficult to find your way in the world of insurance; hence the interest in doing business with a broker whose mandate is to assess the client's needs and offer insurance coverage which best fits those needs.

Brokers have a two-tiered duty of advice toward their client.[1] On the one hand, they must personally gather the information that will enable them to offer their clients a product meeting their specific needs. On the other hand, they must adequately inform and advise their clients so that they can make informed and considered decisions.[2] The broker must therefore be able to describe the insurance product being offered as accurately as possible, while also clearly explaining its terms, -conditions and exclusion.[3]

The broker [translation] "is not a mere vendor or conduit between the insured and the insurer, but an insurance professional."[4] He must be proactive in the pre-contractual period, that is, before the insurance policy is issued, for example, by informing himself of the nature of the business and its insurance needs. He must also stay abreast of the needs of his clientele after the conclusion of the contract and make adjustments as those needs change.

However, this duty to advise is largely dependent on the nature of the mandate given to him by the client, the client's general conduct, and the information provided[5]. It is therefore important for the client to act diligently in his interactions with the broker.

Since the broker recommends an insurance product based on the information provided to him, the client should accurately describe the nature of the activities and characteristics of his business. It is not up to the broker to guess the client's needs, but rather the client to communicate his expectations to the broker. While the broker's primary duty is to advise, the client's duty is to inform his broker accurately and unambiguously of what he needs[6].

One should also keep in mind that the broker does not necessarily have the requisite knowledge to handle all the aspects of a file. For example, the appraisal of the value of the property being insured is not within the purview of the broker. The client is responsible for obtaining an accurate appraisal, preferably by a certified appraiser, so that the broker can obtain sufficient insurance coverage[7].

We also recommend that the client pay attention to the documents provided by the broker, including the coverage summaries as well as the insurance policies, and properly understand their terms and conditions before signing them. In case of uncertainty, many problems can be avoided by asking questions and requiring clarifications[8]. It is also important to properly document your file and keep records of the various exchanges with your broker for future reference, particularly since losses often occur many months or even years after your discussions with the broker.

In summary, the basis of proper insurance coverage is clear communication to your insurance broker of the specific needs of your business and its activities. When in doubt, do not hesitate to ask questions and require any necessary clarifications. As the saying goes: too much is always better than not enough!

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[1] See the *Act Respecting the Distribution of Financial Products and Services, chapter* D-9.2; *Code of ethics of the Chambre de la sécurité financière* (D-9.2, r. 3); *Regulation Respecting the Issuance and Renewal of Representatives' Certificates* (D-9.2, r. 7) and the *Regulation respecting the pursuit*

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of activities as a representative (D-9.2, r. 10).

[2] *125057 Canada inc. (Tricots LG ltée) c. Rondeau*, 2011 QCCS 94 (C.S.).

[3] Baril c. L'Industrielle Compagnie d'assurance sur la vie, [1991] R.R.A. 191 (C.A.).

[4] *Ibid*.

[5] *2164-6930 Québec Inc. c. Agence J.L. Payer Compagnie Ltée*, [1996] R.R.A. 549 (C.A.).

[6] *Les marbres Waterloo Ltée c. Gérard Parizeau ltée*, [1987] R.R.A. 938 (C.A.).

[7] See, for example, *Renaud c. Promutuel Dorchester, société mutuelle d'assurances générales,* [2006] R.R.A. 641 (C.S.).

[8] For example, 2751-9636 *Québec Inc. c. Cie d'assurance Jevco,* [2004] R.R.A. 954 (C.S.).

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