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2014-2015 OFFICERS

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Re: Follow-Up Questions on Form for GST/HST Election for Nil Consideration

Dear Ms. McAnulty,

On February 11, 2014, the Federal Budget announced a number of changes to section 156 “Election for Nil Consideration” of the *Excise Tax Act* (“ETA”), which allows supplies between qualifying members of a closely related group to be made free of GST/HST. The new rules require all section 156 elections or revocations occurring on or after January 1, 2015 to be filed with Canada Revenue Agency (“CRA”) on Form RC4616 by the filing deadline of the month in which the election or revocation occurred. Parties to an existing election will also need to complete and file Form RC4616 with CRA to continue qualification for nil consideration treatment by December 31, 2015.

During the annual liaison meeting last month with representatives from Tax Executives Institute (“TEI” or “the Institute”) and CRA, we were informed that CRA is currently drafting the new paper Form RC4616 and related instructions. The new form will permit a group of closely related entities making the election to consolidate their elections in a single form. The timeframe for release of the new paper form is January 2015. Electronic filing of the election through *My Business Account* is expected to be available in April 2015. As businesses analyze their filing

obligations under the new section 156 rules, a number of concerns have arisen that would be best addressed in the new election form and its instructions. This letter summarizes those concerns for CRA to consider as it finalizes its guidance for publication in January.

TEI is the preeminent international association of in-house tax professionals worldwide. The Institute's nearly 7,000 professionals manage the tax affairs of more than 3,000 of the leading companies across all industry sectors in North and South America, Europe, and Asia. Canadians constitute approximately fifteen-percent of TEI's membership, with our Canadian members belonging to chapters in Calgary, Montreal, Vancouver, and Toronto (which is TEI's largest chapter). TEI members must contend daily with the planning and compliance aspects of Canada's business tax laws. TEI espouses organizational values and goals that include integrity, effectiveness and efficiency, and dedication to improving the tax system for the benefit of taxpayers and tax administrators alike. The comments set forth in this letter reflect the views of TEI as a whole, but more particularly those of our Canadian constituency.

Practical Issues and Concerns with the "Election For Nil Consideration"

The items below describe areas of concern for taxpayers in managing their compliance obligations for making and managing their section 156 elections under the new rules:

1. CRA has indicated that groups of closely related entities will be permitted to file a single Form RC4616 that includes all qualifying members of the group making the section 156 election. The election will apply to every combination of qualifying members on the form.
 - a. Parties to an existing election (one made prior to January 1, 2014) will need to complete and file Form RC4616 with CRA by December 31, 2015 to continue qualification for nil consideration treatment. The effective dates for those existing elections may be different for the various members of a group of closely related entities eligible to file a single Form RC4616.

Will the new Form RC4616 allow each qualifying member of a group making the election on a single form to indicate their own individual effective date(s)?

- b. In the case where the effective dates for section 156 elections of multiple members of a closely related group are not the same, consider the following example: Parent Co made the election with Subcos A and B on January 1, 2013. Subcos A and B made the election on June 30, 2013.

Will Parent Co and Subcos A and B be required to indicate the earliest effective date (*i.e.*, January 1, 2013) or the most recent effective date (*i.e.*, June 30, 2013) if they file a single Form RC4616 that includes all three entities?

- c. Would CRA permit all qualifying members included in a Form RC4616 to use an effective date of December 31, 2014?
 - d. Relevant to point 1.c. immediately above, subsequent to filing the new Form RC4616, will CRA auditors accept a duly completed section 156 election retained in the registrant's books and records for transactions occurring before January 1, 2015, and accept the filed new Form RC4616 for all transactions occurring after December 31, 2014?
 - e. When a change occurs after 2014, what effective date should the member identify on the Form RC4616? For example, when a new member joins an existing group of closely related entities and makes a section 156 election, does this affect the effective dates of any other entities of the closely related group that already have an election in place?
 - f. Please confirm that an existing section 156 election will not require any updating or modification in the event a member that has made the election no longer meets the qualifications for the election.
2. For elections made by a group of closely related persons prior to or after 2015 (*i.e.*, when filing a Form RC4616 after January 1, 2015 that includes multiple entities), who should sign the election form?
 - a. Will an authorized person of each closely related person have to sign the form?
 - b. Would the signature of an authorized person of the ultimate parent entity alone be acceptable?
3. For elections made by a group of closely related persons on a single Form RC4616, should each member of the closely related group file the Form RC4616 or only one member (*e.g.*, the ultimate parent entity)?
4. If a group of closely related persons filing a Form RC4616 also makes the section 156 election for QST purposes, will the QST elections have to be filed with the Revenu Quebec Agency separately or will CRA accept elections filed with Revenu Quebec? Please note that some members of groups of closely related persons have head offices in different provinces.
5. Will Forms RC4616 filed before electronic filing with My Business Account is available be uploaded to each registrant's My Business Account?

6. Once an election has been filed electronically using the My Business Account or on paper, will modifications to elections be permitted online in the My Business account (e.g., adding or removing an entity from a group filing)?

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TEI would be pleased to meet with CRA and Finance representatives to discuss our comments or any administrative issues relating to the section 156 election filing procedures. Our goal is to ensure the tax system is designed in the most practical, effective, and efficient manner for the benefit of the Government and the business community.

TEI's comments were prepared under the aegis of the Institute's Canadian Commodity Tax Committee, whose chair is Richard Taylor. Should you have any questions, please do not hesitate to contact Mr. Taylor at 416.935.2568 (richard.taylor@rci.rogers.com) or Paul Magrath, TEI's Vice President for Canadian Affairs, at 905.804.4930 (paul.magrath@astrazeneca.com).

Respectfully submitted,

Tax Executives Institute



Mark C. Silbiger
International President

cc: Paul Magrath, TEI Vice President for Canadian Affairs
Richard Taylor, Chair of TEI's Canadian Commodity Tax Committee