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Collins Barrow periodically publishes *Indirect Tax Flash* for its clients and associates. It is designed to highlight and summarize the continually changing tax and business scene across Canada. While *Indirect Tax Flash* suggests general planning ideas, we recommend professional advice always be sought before taking specific planning steps.

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NIL CONSIDERATION ELECTION – THEN AND NOW

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The nil consideration election found in section 156 of the *Excise Tax Act* (ETA), sometimes referred to as the related party election, has recently been updated with changes to be in effect January 1, 2015. For those of you not familiar with this election, it allows members of a closely related group to treat certain taxable supplies between them as having been made for no consideration. Essentially, this eliminates the need to collect and remit taxes by one member and then claim an input tax credit by the other member, which can sometimes result in cash flow issues, especially with large transactions and differing reporting periods.

Currently, when members qualify for the election they are required to complete a prescribed form, GST25 “Closely Related Corporations and Canadian Partnerships,” and retain a copy of that form with their books and records. The Canada Revenue Agency (CRA) does not currently require that members file this form.

Effective January 1, 2015, members who qualify for the election and wish to apply it are required to complete a new prescribed form, RC4616, not yet released. The due date for this new election form will depend on whether the election is a new election (the members did not previously complete an election) or a continuation of an existing election (the members previously completed an election). Generally, where the members are completing an election form for the first time, the due date of the form will be the earlier of the GST/HST return filing deadlines of the members that includes the effective date of the election. For example, if the effective date of the election is January 1, 2015 and there are two members listed in the election form, each with different filing frequencies – monthly and quarterly – the election form would be due February 28, 2015 which is the earliest return filing deadline amongst the two members, i.e., the member with the monthly filing frequency. The assumption in this scenario is that the total revenue

of the two is less than \$6 million and one member has elected to file their GST/HST monthly. Where the members are currently applying the election (have previously completed an election form) before January 1, 2015, the election form is deemed never to have been filed and they are required to complete a new election form. The due date for the new election form in these circumstances is between January 1, 2015 and December 31, 2015.

Other changes to this section of the ETA include a change to the definition of a “qualifying member,” which may allow additional members to elect under the new election who didn’t previously qualify under the old election. Also, a joint and several liability subsection has been added.

Given these recent changes, it is a good time to reconsider the nil consideration election – this is true for both corporations and partnerships currently using the election and those that are not. For those that are currently using the election, it is a good time to review the conditions to qualify for the new election to determine if any new members can be added to the election and to confirm that all existing members continue to qualify for the election; to verify that the election exists and has in fact been filed in the books and records and that the election has not been used for transactions to which the election does not apply. For corporations and partnerships who are not currently using the nil consideration election, it may be a good time to consider if you qualify for this election, as it may simplify record keeping for bookkeeping transactions and GST/HST filings and potentially improve cash flow.