

Election for Exempt Supplies

NOTE: This version replaces the one dated January 2001.

Section 150 of the *Excise Tax Act* (the Act) provides an election that permits corporations that are members of a closely related group of which a listed financial institution is a member to elect to treat every taxable supply between them of property by way of lease, licence or similar arrangement or of a service (with certain exceptions) as an exempt supply of a financial service. A corporation making the election is deemed to be a financial institution under section 151. This memorandum examines what is meant by a closely related group and closely related corporation and outlines the effects of making the election, particularly as it relates to a registrant corporation being deemed to be a financial institution. The memorandum also refers to an election under subsection 225.2(4) that is available to selected listed financial institutions that have made an election under section 150.

- Disclaimer The information in this memorandum does not replace the law found in the *Excise Tax Act* (the Act) and its regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate regulation, or contact any CRA GST/HST rulings office for additional information. A ruling should be requested for certainty in respect of any particular GST/HST matter. Pamphlet RC4405, *GST/HST Rulings – Experts in GST/HST Legislation* explains how to obtain a ruling and lists the GST/HST rulings offices. If you wish to make a technical enquiry on the GST/HST by telephone, please call 1-800-959-8287.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, contact Revenu Québec at 1-800-567-4692. You may also visit the Revenu Québec Web site to obtain general information.
- Note Reference in this publication is made to supplies that are subject to the GST or the HST. The HST applies in the participating provinces at the following rates: 13% in Ontario, New Brunswick and Newfoundland and Labrador, 15% in Nova Scotia, and 12% in British Columbia. The GST applies in the rest of Canada at the rate of 5%. If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province*.
- Proposed amendments This memorandum refers to the *Proposed Amendments to the GST/HST Legislation* and Part 1 – *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* of the *Draft Regulations Amending Various GST/HST Regulations* released on January 28, 2011. At the time of publication, these amendments have not been promulgated in final form. Any reference should not be taken as a statement by the CRA that such amendments will in fact be promulgated in their current form.
- Note All references are to the *Excise Tax Act* unless stated otherwise.

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La version française de la présente publication est intitulée *Choix visant les fournitures exonérées*.



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Nature of the election

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|---|--|
| Deemed exempt supplies of financial services | 1. The election under section 150 permits corporations that are members of a closely related group of which a listed financial institution is a member to elect to treat every taxable supply between them of property by way of lease, licence or similar arrangement or of a service (with certain exceptions) as a supply of a financial service. Supplies deemed to be supplies of financial services under subsection 150(1) are exempt supplies pursuant to section 2 of Part VII of Schedule V to the Act and therefore are not subject to GST/HST. The supplier of the deemed exempt financial service is not eligible to claim input tax credits (ITCs) related to making these supplies. |
| Deemed financial institutions 151 | 2. A corporation that has made an election under subsection 150(1) is deemed for GST/HST purposes to be a financial institution throughout the period during which the election is in effect. This means that an electing corporation that was not a financial institution before the election becomes subject to the particular GST/HST rules that apply to financial institutions. |
| Special provisions: Credit unions and mutual insurance groups ss 150(6) and (7) | 3. Special provisions in section 150 apply to credit unions and mutual insurance groups whereby the election is deemed for them to be in effect at all times. In particular, every credit union is deemed to have elected with every other credit union and all members of a mutual insurance group are deemed to have jointly made the election. These and other special provisions affecting credit unions and mutual insurance groups are discussed in detail later in this memorandum. |

Eligibility for the election

4. Unless the special provisions for credit unions and to mutual insurance groups apply, only persons that are closely related corporations that are also members of a closely related group of which a listed financial institution is a member are permitted to make the election under subsection 150(1).

Closely related corporations

Closely related corporations s 128

5. Section 128 sets out the rules for determining if corporations are closely related. Section 128 applies to corporations only. Specifically, a particular corporation is closely related to another corporation at any time if at that time:

- the corporations satisfy one of the five ownership tests set out in subparagraphs 128(1)(a)(i) to (v),
- the other corporation is a prescribed corporation under paragraph 128(1)(b) in relation to the particular corporation, or
- both corporations are closely related to a common third corporation as set out in subsection 128(2).

Each of these possibilities for corporations to be closely related is explained below.

Patterns of close ownership

Qualifying subsidiaries 123(1)

6. Some of the patterns of close ownership set out in paragraph 128(1)(a) refer to qualifying subsidiaries. A “qualifying subsidiary” is defined in subsection 123(1) and means that one corporation (Corporation B) is a qualifying subsidiary of a particular corporation (Corporation A) if Corporation A owns 90% or more of the value and number of the issued and outstanding shares of the capital stock, having full voting rights under all circumstances, of Corporation B. Moreover, the definition of qualifying subsidiary includes:

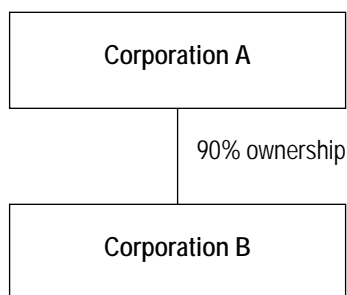
- a corporation that is a qualifying subsidiary of a qualifying subsidiary of the particular corporation;
- every other credit union where the particular corporation is a credit union; and
- every other member of a mutual insurance group where the particular corporation is a member of that mutual insurance group.

Ownership tests para 128(1)(a)

7. The patterns of close ownership under paragraph 128(1)(a) set out that a particular corporation (Corporation A) and another corporation (Corporation B) are closely related to each other at any time if at that time not less than 90% of the value and number of the issued and outstanding shares of the capital stock, having full voting rights under all circumstances (the required shares) of Corporation B are owned by:

subpara 128(1)(a)(i)
Example

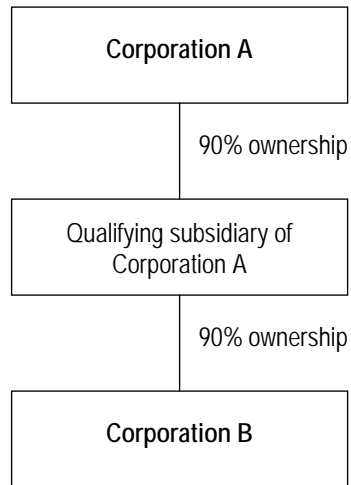
- Corporation A:



subpara 128(1)(a)(ii)

Example

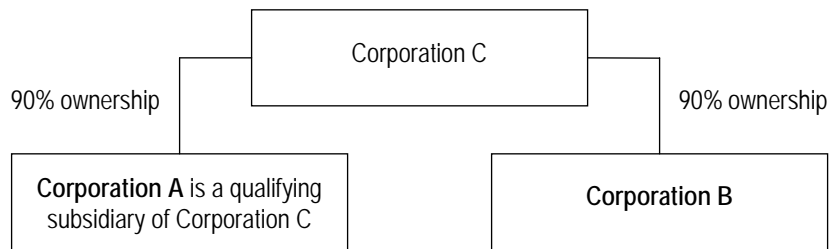
- a qualifying subsidiary of Corporation A:



subpara 128(1)(a)(iii)

Example

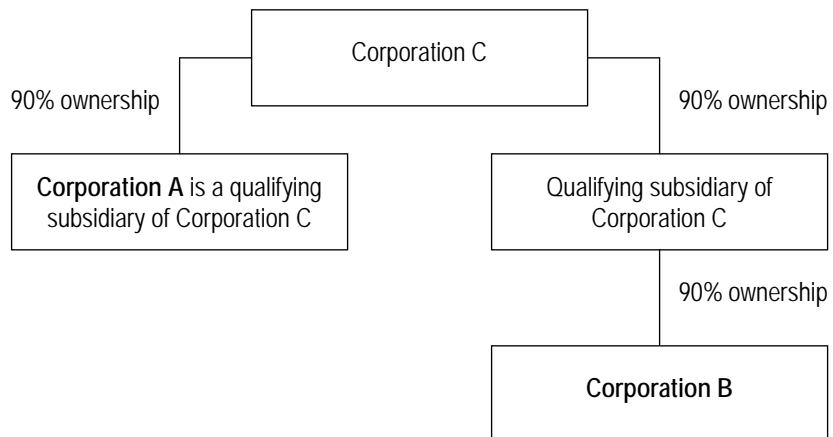
- a corporation (Corporation C) of which Corporation A is a qualifying subsidiary:



subpara 128(1)(a)(iv)

Example

- a qualifying subsidiary of a corporation (Corporation C) of which Corporation A is a qualifying subsidiary:

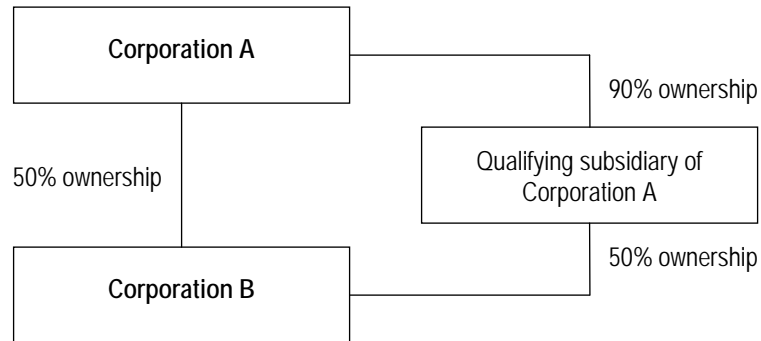


or

subpara 128(1)(a)(v)

- any combination of the corporations or subsidiaries referred to in subparagraphs 128(1)(a)(i) to (iv):

Example



In this example, Corporation A and Corporation B are closely related since Corporation A and its qualifying subsidiary together own more than 90% of the required shares of Corporation B.

Prescribed corporations – Employee and trust shares

Prescribed corporations
para 128(1)(b)

8. Under the provisions of paragraph 128(1)(b), a particular corporation is closely related to another corporation if the other corporation is a prescribed corporation under the *Closely Related Corporations (GST/HST) Regulations* in relation to the particular corporation.

Closely Related Corporations (GST/HST) Regulations

9. The *Closely Related Corporations (GST/HST) Regulations* extend the definition of closely related corporations in certain circumstances where shares are owned by employees or held in trust.

Conditions

10. Under these Regulations, a particular corporation and another corporation are closely related where:

- (a) the following persons together own at least 90% of the total value and number of the issued and outstanding shares of the capital stock having full voting rights under all circumstances (the specified shares) of the other corporation;
 - (i) the particular corporation or its employees,
 - (ii) a corporation closely related to the particular corporation under paragraph 128(1)(a), or its employees,
 - (iii) employees of the other corporation or of a corporation closely related to it,
 - (iv) a corporation 90% of the total value and the number of specified shares of which are owned by employees referred to in (i), (ii) or (iii) above, or
 - (v) a trust for the benefit of the other corporation, or of employees referred to in (i), (ii) or (iii) above;
- (b) the shares of the corporation that are owned by employees cannot be publicly traded on a stock exchange and the ownership of those shares by an employee arose in respect of the employment of the employee; and

- (c) at least 50% of the total value and number of the voting shares of the other corporation must be owned by the particular corporation or a corporation closely related to the particular corporation as determined by paragraph 128(1)(a).

11. The other corporation is also prescribed as closely related to the particular corporation where at least 90% of the total value and number of the issued and outstanding shares of the capital stock having full rights under all circumstances of the other corporation are owned by:

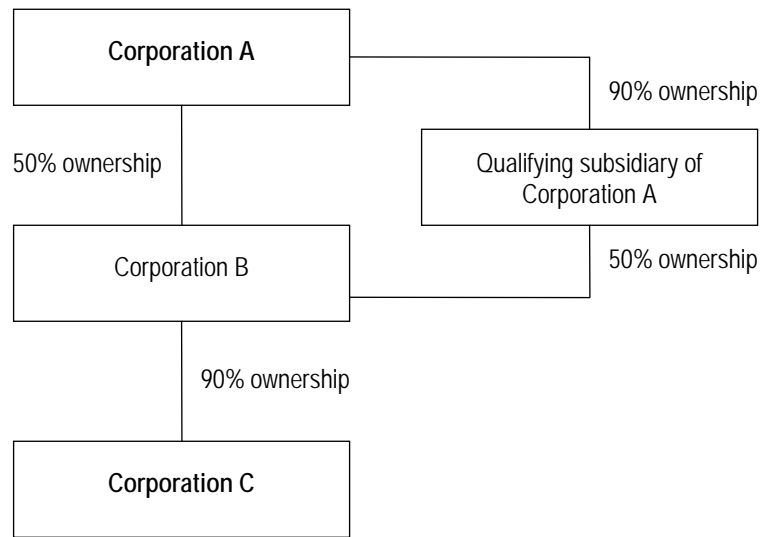
- (a) the particular corporation;
- (b) a corporation closely related to the particular corporation by reason of paragraph 128(1)(a); or
- (c) a corporation that is prescribed in relation to the particular corporation under the rules described in the preceding paragraph relating to employees and shares held in trust.

Closely related to a common third corporation

ss 128(2)

12. Where two corporations are closely related to the same corporation under the provisions of subsection 128(1), they are considered closely related to each other.

Example



In this example,

- Corporation A and Corporation B are closely related under subparagraph 128(1)(a)(iv) because Corporation A and its qualifying subsidiary together own more than 90% of the value and number of the issued and outstanding shares having full voting rights under all circumstances of Corporation B, and
- Corporation B and Corporation C are closely related under subparagraph 128(1)(a)(i) because Corporation B owns 90% of the required shares of Corporation C.

Consequently, under the provisions of subsection 128(2), Corporation A and Corporation C are closely related to each other since they are both closely related under the rules of subsection 128(1) to the same corporation (Corporation B).

Closely related group

- Definition of closely related group ss 123(1)
13. Besides being closely related, corporations wishing to make the election under section 150 must also be members of a closely related group of which a financial institution is a member. “Closely related group” is defined in subsection 123(1) to mean a group of corporations each member of which is a registrant resident in Canada and is closely related, within the meaning assigned by section 128, to each other member of the group and for the purposes of this definition,
- (a) a non-resident insurer that has a permanent establishment in Canada is deemed to be resident in Canada, and
 - (b) credit unions and members of a mutual insurance group are deemed to be registrants.

Resident in Canada

- Requirement ss 123(1)
14. The definition of closely related group stipulates that, besides being a registrant, a corporation must be a Canadian resident to be a member of a closely related group.

- Rules for deemed residence s 132
15. Section 132 sets out provisions that deem certain persons to be resident in Canada for purposes of the GST/HST. Under section 132, any corporation incorporated or continued in Canada and not continued elsewhere is deemed to be resident in Canada. If a corporation is continued both in Canada and elsewhere at the same time, this deemed resident rule does not apply.

- Permanent establishment of non-resident ss 132(2)
16. Subsection 132(2) provides that where a non-resident person has a permanent establishment in Canada, the person is deemed to be resident in Canada in respect of, but only in respect of, activities of the person carried on through that establishment. This deeming under subsection 132(2) does not meet the residency requirement of the definition of “closely related group” for purposes of the election under subsection 150(1) since the corporation must be resident to make the election and the election applies to a corporation as a whole, not just to particular activities of the corporation carried on through a permanent establishment.

- Non-resident insurer – definition “closely related group” para 123(1)(a)
17. As noted in paragraph 13, paragraph (a) of the definition of “closely related group” sets out that a non-resident insurer that has a permanent establishment in Canada is deemed to be resident in Canada for purposes of that definition.

- Additional information
18. Further information on determining if a person is resident in Canada is available in GST/HST Memorandum 3.4, *Residence*.

Listed financial institutions

Definition of listed financial institution ss 149(1)	19. To make an election under subsection 150(1), one of the members of the closely related group must be a listed financial institution. A person is a listed financial institution throughout a particular taxation year if, at any time in the particular year, the person is included in any of subparagraphs 149(1)(a)(i) through (xi). Generally, the persons listed in the first ten subparagraphs, that is subparagraphs 149(1)(a)(i) through (x), are conventional providers of financial services. These include banks, trust companies, insurance companies, credit unions, investment plans, segregated funds, tax discounters, corporations whose principal business is the lending of money, and persons whose principal business is as a trader or dealer in, a broker or salesperson of, financial instruments or money.
Deemed financial institution	20. The last subparagraph, subparagraph 149(1)(a)(xi), adds to the list of financial institutions those corporations that are deemed under section 151 to be a financial institution. Section 151 deems corporations that have elected under subsection 150(1) to be a financial institution throughout the period during which the election is in effect. Consequently, once a corporation has elected under subsection 150(1), it becomes a listed financial institution.
Election requirement ss 150(1) & 150(4)	21. However, paragraph 150(4)(b) provides that the election ceases to be in effect on the first day that the closely related group does not include a listed financial institution, other than a person that is a financial institution only by reason of being deemed to be one by section 151. Consequently, to make an election under subsection 150(1), at least one of the members of the closely related group must be a listed financial institution as defined in subparagraphs 149(1)(a)(i) through (x).
Additional information	22. For information concerning the effects of being deemed to be a financial institution, see paragraph 54 in this memorandum. 23. GST/HST Memorandum 17.6, <i>Definition of “Listed Financial Institution”</i> , provides more information on what is a listed financial institution.
<i>Special considerations: Credit unions</i>	
Deemed members para 150(6)(a)	24. To enable credit unions to benefit from the provisions available to a closely related group, every credit union is deemed to be a member of a closely related group of which every other credit union is a member.
Deemed registrant	25. Since only registrants can be members of a closely related group, a credit union is deemed in paragraph (b) of the definition of “closely related group” in subsection 123(1) to be a registrant for the purposes of that definition.
Qualifying subsidiary ss 123(1)	26. Paragraph (b) of the definition of “qualifying subsidiary” provides that a credit union is a qualifying subsidiary of every other credit union. Therefore, where not less than 90% of the shares of a resident and registrant corporation are owned by a credit union or a group of credit unions, the corporation is regarded as being closely related to all credit unions.

Prescribed corporations para 128(1)(b)	<p>27. In addition, for purposes of the closely related corporation’s provision in paragraph 128(1)(b), the <i>Closely Related Corporations (GST/HST) Regulations</i> provide that two corporations are prescribed corporations in relation to every credit union provided that these corporations are registrants and resident in Canada. The prescribed corporations are:</p> <ul style="list-style-type: none"> • CDSL Canada Limited, and • CUE Datawest Ltd.
Deemed election para 150(6)(b)	<p>28. Every credit union is deemed to have filed an election under subsection 150(1) with every other credit union and the election is deemed to be in effect at all times. Therefore, a credit union does not have to follow the procedures to file the election and cannot revoke the election.</p>
Deemed supplies para 150(6)(c)	<p>29. Every supply of tangible personal property (with the exception of capital property) by one credit union to another credit union is deemed to be a supply of a financial service.</p>
<i>Special considerations: Mutual insurance groups</i>	
Deemed members para 150(7)(a)	<p>30. All members of a mutual insurance group are deemed to be, at all times, members of a closely related group of which every other member of the mutual insurance group is a member.</p>
Deemed registrant	<p>31. All members of a mutual insurance group are deemed in paragraph (b) of the definition of “closely related group” in subsection 123(1) to be registrants for the purposes of that definition.</p>
Deemed election para 150(7)(b)	<p>32. All members of a mutual insurance group are deemed to have jointly elected under subsection 150(1), and this election is deemed to be in effect at all times.</p>
Deemed incorporation ss 128(3)	<p>33. As it is possible for an investment fund that is a member of a mutual insurance group to not be incorporated, such a fund is deemed to be a corporation for the purposes of the closely related corporation rules of section 128.</p>
Deemed qualifying subsidiary	<p>34. In addition, paragraph (c) of the definition of “qualifying subsidiary” in subsection 123(1) sets out that where a particular corporation is a member of a mutual insurance group, every other member of that group is a qualifying subsidiary of the particular corporation.</p>
Parallel treatment to credit unions	<p>35. This treatment generally parallels the treatment accorded to credit unions. However, it does not extend to deem every supply of tangible personal property other than capital property to be a supply of a financial service as is the case for credit unions.</p>

Exclusions from the election

Sales of property

Purchase options 36. In most cases, this election does not apply to supplies of personal property by way of sale or to the acquisition of property under a lease purchase option where the lease payments have been exempt by virtue of the election. However, as noted in paragraph 29, the election applies to every supply of tangible personal property (with the exception of capital property) by one credit union to another credit union, which includes sales of non-capital personal property.

Joint ventures

para 150(2)(a) 37. The election to treat intra-group transactions as supplies of financial services does not apply to property held or services rendered by a member of a closely related group in the member's capacity as a participant in a joint venture where an election has been made under section 273 designating an operator for the joint venture.

Example A subsidiary of a financial institution is also the operator for a joint venture. The supplies the subsidiary makes on behalf of the joint venture to members of the closely related financial institution group retain their tax status. The supplies to the group cannot be deemed to be exempt supplies under the section 150 election.

Imported taxable supplies

para 150(2)(b) 38. The election does not apply to imported taxable supplies as defined in section 217.

39. It should be noted that, while an imported taxable supply received by a person who is a party to an election under section 150 is not itself exempt, any re-supply of an imported service to another party to the election continues to be treated as an exempt supply of a financial service. Therefore, the importer is engaged in the making of an exempt supply and, as such, is subject to the self-assessment rules under Division IV with respect to the imported service.

Services and the national payment system

Para 150(2)(c) 40. Paragraph 150(2)(c) excludes from the election certain supplies of services in relation to the clearing or settlement of cheques and other payment items under the national payment system.

Financial Services and Financial Institution (GST/HST) Regulations, s 3

41. Clearing and settlement services are included as financial services under the prescribed services of paragraph (m) of the definition of "financial services" in subsection 123(1), only when supplied by the Canadian Payments Association (CPA) or by any of its member deposit-taking institutions. The CPA and its members are the only entities that can perform the financial component of the service, which is the settling of accounts among financial institutions once the payment items have been processed.

42. A clearing service that is separated from that financial component and is supplied by a non-CPA member can also be treated as exempt when it is supplied between members of a closely related group under a section 150 election. However, paragraph 150(2)(c) denies exempt treatment for otherwise taxable clearing services that are in fact provided to persons outside the group.

43. Specifically, paragraph 150(2)(c) disallows the application of the section 150 election in the case of services in relation to the clearing or settlement of cheques and other payment items where a financial institution acquires such services from a closely related corporation (the related purchaser) in order to resupply them to:

- (i) an unrelated party, or
- (ii) a supplier that is a member of a closely related group of which the related purchaser is a member and that acquires all or part of the exempt services for the purpose of making a supply of exempt services to an unrelated party or to a supplier described by this subparagraph.

Definition: exempt services
ss 150(2.1)

44. The “exempt services” mentioned in paragraph 150(2)(c) are defined in subsection 150(2.1) to mean services prescribed by section 3 of the *Financial Services and Financial Institutions (GST/HST) Regulations*. These services are any service in relation to the clearing and settlement of cheques and other payment items under the national payments system of the CPA that is supplied by the CPA or any of its members.

Definition: unrelated party
ss 150(2.1)

45. For purposes of the exclusion in subsection 150(2), subsection 150(2.1) defines “unrelated party” in respect of a supply of services to mean, a person that is not a member of the closely related group (as defined in subsection 123(1)) of which the supplier is a member and that is acquiring the services for the purpose of making a supply of services in relation to the clearing or settlement of cheques and other payment items under the national payments system of the CPA. An example of an unrelated party would be a smaller bank which obtains cheque clearing services from an unrelated larger bank so that the smaller bank can allow its customers to deposit payment items issued by other financial institutions.

Election procedures

Form GST27
ss 150(3)

46. The election must be made jointly by the members of the closely related group who are parties to the election by completing Form GST27, *Election or Revocation of an Election to Deem Certain Supplies to be Financial Services*. The member must file the completed form with the Minister not later than the day on which the member is required to file a return for the reporting period in which the election is to become effective. The election must also specify the day on which it becomes effective.

Timing

47. The form is to be filed by the earliest date that the GST/HST returns are due from the members who intend to make the election. For example, where Corporation X has a quarterly reporting period based on calendar quarters and Corporation Y is an annual filer on a calendar year basis, the election by the two corporations must be filed on or before April 30 of a particular year, that is, the due date of the return for Corporation X if it is to become effective on January 1 of that year.

No late filing

48. Since subsection 150(3) specifies that that the form must be filed on or before a certain day, retroactive elections are not permitted.

Duration of election
ss 150(4)

49. The election made by two members of a closely related group continues to be in effect until the earliest of the following dates:

- (a) the day on which one of the electing members ceases to be a member of the closely related group;

-
- (b) the first day the closely related group does not include a listed financial institution (other than a person that is a financial institution only by reason of having previously made the election for exempt supplies); and
 - (c) the day specified by the members in a notice of revocation filed jointly by the members with the Minister. The revocation may not take place until at least 365 days after the day on which the election came into effect. The prescribed form for revoking the election is Form GST27, which is the same form for making the election.

50. [Removed]

Subsequent elections
ss 150(5)

51. When an election ceases to be in effect, the two members concerned cannot thereafter make an election without the written concurrence of the CRA. Request for the CRA's concurrence, together with an explanation and reasons for the filing of the new election, should be sent to the nearest CRA tax services office.

Effects of the election

Exempt supplies

Sch. V, Part VII, s 2

52. Where an election for exempt supplies under subsection 150(1) is in effect, a supply of property between electing parties by way of lease, licence or similar arrangement or of a service (see paragraphs 36 to 45 for the exceptions) that would but for the election be a taxable supply is deemed to be a supply of a financial service. Part VII of Schedule V lists financial services that are exempt. Section 2 of Part VII lists a supply deemed under subsection 150(1) to be a supply of a financial service. Consequently, these supplies are exempt.

Election for nil consideration

Election for nil
consideration
ss 156(1) and (2)

53. Persons who have made an election for exempt supplies cannot also make an election for nil consideration under subsection 156(2). An election for nil consideration between specified members of a qualifying group treats certain supplies between these members as if they had been made for no consideration. To be a specified member of a qualifying group, generally a registrant must be a qualifying member of a qualifying group. The definition of "qualifying member" excludes registrants that are party to an election under subsection 150(1).

Deemed financial institution

Deemed financial
institution
s 151 and
subpara 149(1)(a)(xi)

54. Parties to the election under subsection 150(1) are deemed under the provisions of section 151 to be financial institutions while the election is in effect. Further, under subparagraph 149(1)(a)(xi), these persons are listed financial institutions. Generally, these deemed financial institutions are subject to the GST/HST provisions that are specific to financial institutions. However, there are significant exceptions that apply to these deemed financial institutions with respect to reporting requirements, time limits for ITCs, and change-in-use rules.

Reporting requirements

ss 245(2)

55. Registrants who otherwise qualify as listed financial institutions have an annual reporting period unless they make an election under section 246 (election for fiscal

months) or section 247 (election for fiscal quarters). However, registrants who are deemed to be listed financial institutions only as a result of making an election for exempt supplies determine their reporting periods according to the threshold amounts set out in the general rules for reporting periods under subsection 245(2). Information concerning thresholds and reporting periods is available in Guide RC4022, *General Information for GST/HST Registrants*.

Time limits for ITCs

ss 225(4) 56. For a registrant who is a listed financial institution under any of subparagraphs 149(1)(a)(i) to (x), the general rule is that an ITC must be claimed on or before the day the GST/HST return is required to be filed for the last reporting period of the registrant that ends within two years after the end of its fiscal year that includes the reporting period in which the GST/HST became payable. This two-year time limit does not apply to a person that is deemed to be a listed financial institution as a result of making the section 150 election (i.e., a person described under subparagraph 149(1)(a)(xi)). This person generally continues to be subject to the four-year time limit.

Change-in-use rules – Financial institution makes a section 150 election

General rule
s 204 57. Special rules apply for determining ITCs for capital personal property of a financial institution. The change-in-use rules that generally apply to capital personal property of a financial institution are set out in section 204 which specifies that the rules do not apply to capital personal property of a financial institution having a cost to the financial institution of \$50,000 or less.

Financial institution makes
the election
ss 205(1) 58. However, if a registrant that is a financial institution prior to entering into an election under subsection 150(1) makes that election, subsection 205(1) applies to the financial institution. Under subsection 205(1), where a registrant financial institution makes an election under subsection 150(1) and, as a result of the election, the registrant reduces the extent to which its capital personal property is used in its commercial activities, subsections 193(1), 206(4) and 206(5) apply as if the property were real property without regard to the \$50,000 threshold.

Ceasing use
ss 206(4)
Credit
ss 193(1) 59. Where, as the result of a registrant financial institution entering into an election under subsection 150(1), the financial institution ceases using capital personal property in commercial activities, subsection 206(4) deems the financial institution to have sold the capital personal property immediately before the election came into effect and, except where the supply is an exempt supply, to have collected and paid, at the time the election comes into effect, GST/HST equal to the basic tax content (BTC) of the property. This amount must be included in the net tax of the financial institution. Further, subsection 193(1) may entitle the registrant to claim an ITC in respect of the GST/HST deemed to have been collected on the deemed sale.

Reducing use
ss 206(5)

60. Where, as the result of a registrant financial institution entering into an election under subsection 150(1), the financial institution continues to use capital personal property in commercial activities but to a reduced extent, subsection 206(5) deems the financial institution to have supplied a portion of the property immediately before the election came into effect and, except where the supply is an exempt supply, to have collected GST/HST equal to the amount determined by the formula

$$A \times B$$

where

A is the BTC of the property at the time the election came into effect, and

B is the extent (expressed as a percentage of the total use of the property by the registrant at the time the election came into effect) to which the registrant reduced the use of the property in its commercial activities.

Example

Trust Co. is a registrant in a non-participating province and a financial institution immediately prior to making an election under subsection 150(1). Prior to the election, Trust Co. acquired for use and was using a computer as capital property 30% in its commercial activities. As a result of the election becoming effective, Trust Co. reduces its use of the computer in commercial activities to 10%. At that time, the computer has a fair market value of \$40,000 and a BTC of \$2,000.

Subsection 206(5) applies to this change in use because Trust Co.

- is a registrant,
- was a financial institution immediately before making the election under subsection 150(1),
- had last acquired its computer for use as capital property in commercial activities, and
- had reduced the extent to which the computer is used (but had not ceased using it) as capital property in commercial activities as a result of making the election.

Under subsection 206(5), Trust Co. is deemed to have sold a portion of the property and to have collected GST/HST in respect of the sale equal to $A \times B$

where

A = BTC of the property at the time (\$2,000)

B = % decrease in use in commercial activities at the time (20%)

Therefore, Trust Co. is deemed to have collected GST/HST of \$400 ($\$2,000 \times 20\% = \400) which is included in the determination of its net tax under section 225.

Change-in-use rules – Non-financial institution makes a section 150 election

Registrant becomes a
financial institution
ss 205(2)

61. Corporations that make the section 150 election are deemed under section 151 to be financial institutions while the election is in effect. Persons that become financial institutions are subject to the change-in-use rules set out in subsection 205(2) that apply to all capital personal property of the electing registrant regardless of the \$50,000 threshold that applies to changes in use of capital personal property of a financial institution that are not covered by this election. Where the extent of use of capital personal property in commercial activities increases due to a person becoming a financial institution, the person may be able to claim ITCs based on the extent of the change in use. Where the extent of use of capital personal property in commercial activities decreases due to a person becoming a financial institution, there is generally a recapture of ITCs to the extent of the change in use. As a result, ITCs that were granted or disallowed under the primary-use rule for non-financial institutions upon acquisition or importation of the property are recaptured or credited, as the case may be.

Increasing use
para 205(2)(a)

62. Under paragraph 205(2)(a), where at any time a registrant becomes a financial institution and, immediately before that time, it was not using capital personal property primarily in commercial activities and, immediately after becoming a financial institution, it is using the property in commercial activities, the registrant is deemed to have changed at that time the extent to which the property is used in commercial activities. Paragraph 205(2)(a) also deems that subsection 206(2) applies to the change in use as if the property were real property that was not used immediately before that time in commercial activities. Under the provisions of subsection 206(2), the registrant is generally deemed to have received a supply of the property by way of sale and, except where the supply is an exempt supply, to have paid tax in respect of the supply equal to the BTC of the property at the time of the change in use.

Decreasing use
para 205(2)(b)

63. Under paragraph 205(2)(b), where at any time a registrant becomes a financial institution, the registrant was using capital personal property primarily in commercial activities and, immediately after becoming a financial institution, the property is not for use exclusively in commercial activities, the registrant is deemed to have changed at that time the extent to which the property is used in commercial activities.

64. The following rules apply as a result of the application of paragraph 205(2)(b):

- Where the financial institution ceases to use capital personal property in commercial activities, subsections 193(1) and 206(4) apply. The financial institution is deemed to have sold the property and unless the sale of the property is exempt, is deemed to have collected GST/HST equal to the BTC of the property at the time of ceasing its use in commercial activities. The financial institution is required to account for GST/HST deemed to have been collected in its net tax calculation.
- Subsection 206(5) applies where the financial institution reduces its use in commercial activities of capital personal property without ceasing to use it in commercial activities. The financial institution is deemed to have supplied a portion of the property and, except where the supply is an exempt supply, to have collected GST/HST equal to the amount determined by the formula

$$A \times B$$

where

A is the BTC of the property at the time the election came into effect, and

B is the extent (expressed as a percentage of the total use of the property by the financial institution at the time the election came into effect) to which the financial institution reduced the use of the property in its commercial activities.

Change in use upon
revoking the election –
ceasing to be a financial
institution
para 205(3)(a)

65. Where the election under subsection 150(1) is revoked, persons who were financial institutions only because they have made the election cease to be financial institutions. Subsection 205(3) applies to capital personal property of persons who cease to be financial institutions. Under paragraph 205(3)(a), where immediately prior to ceasing to be a financial institution, the registrant was using personal property as capital property but not exclusively in commercial activities and immediately after ceasing to be a financial institution the property is used primarily in commercial activities, the registrant is deemed to have begun at that time to use the property exclusively in commercial activities and subsections 206(2) and 206(3) apply with such modifications as the circumstances require, to the change in use as if the property were real property.

ss 206(2) and (3)

66. The following rules apply as a result of the application of subsections 206(2) and 206(3):

- As a result of ceasing to be a financial institution, subsection 206(2) applies where a registrant begins to use capital personal property in commercial activities. Under these provisions, the registrant is generally deemed to have received a supply of the property by way of sale and to have paid GST/HST on the deemed acquisition equal to the BTC of the property at that time. Since the registrant is using the property in commercial activities, an ITC would be available if the other requirements for an ITC set out in section 169 are met.
- As a result of ceasing to be a financial institution, subsection 206(3) applies where a registrant increases its use of capital personal property in commercial activities. Under this provision, the registrant is deemed to have received a supply of a portion of the property and, except where the supply is an exempt supply, the registrant is deemed to have paid GST/HST in respect of the supply equal to the amount determined by the formula

$$A \times B$$

where

A is the BTC of the property at that time, and

B is the extent (expressed as a percentage of the total use of the property by the registrant at the time of the deemed supply) to which the registrant increased the use of the property in commercial activities.

The registrant may claim an ITC equal to this amount of tax deemed paid if the other requirements for an ITC set out in section 169 are met.

67. Under paragraph 205(3)(b), where a registrant was using capital personal property in commercial activities and immediately after ceasing to be a financial institution the property is not for use primarily in commercial activities, the registrant is deemed to have ceased at that time to use the property in commercial activities. Subsection 206(4) applies to the change in use as if the property were real property. Under the provisions of subsection 206(4), the registrant is deemed to have sold and reacquired the property and, except where the supply is an exempt supply, to have collected and paid GST/HST equal to the BTC of the property at the time of the deemed sale. The registrant must include this amount in its net tax. Further, subsection 193(1) applies, which may entitle the registrant to an ITC with respect to the GST/HST deemed to have been collected on the deemed sale.

68. For information on calculating BTC, see GST/HST Memorandum 19.4.2, *Commercial Real Property – Deemed Supplies*.

Special considerations: Selected listed financial institutions

s 225.2

69. Section 225.2 sets out rules for determining the net tax of selected listed financial institutions (SLFIs). Based on the changes proposed in the *Amendments to the GST/HST Legislation* and Part I – *Selected Listed Financial Institution Attribution Method (GST/HST) Regulations* of the *Draft Regulations Amending Various GST/HST Regulations* published on January 28, 2011, a financial institution would generally be considered to be an SLFI throughout a reporting period in a fiscal year that ends in a particular taxation year of the financial institution if it is a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) at any time during the particular taxation year, and the financial institution has a permanent establishment in a participating province and a permanent establishment in any other province, at any time during the taxation year. A person that is a listed financial institution only because it is deemed under section 151 to be one because it entered into a section 150 election is not a SLFI.

SAM
ss 225.2(2)

70. Subsection 225.2(2) requires an SLFI to make an adjustment, determined by a formula, to its net tax, in respect of the provincial part of the HST, for each reporting period during which it is an SLFI.

71. In determining the adjustments to net tax under the formula in section 225.2, an SLFI that had made an election under section 150 is generally required to make further adjustments in respect of the supplies made to it on an exempt basis under that election.

Election
ss 225.2(4)

72. Subsection 225.2(4) allows an SLFI to elect with a closely related supplier to use a cost-based method of determining the value of certain supplies made between them for purposes of the financial institution's net tax calculation under the HST. This second election is made on Form GST497, *Election under the Special Attribution Method for Selected Listed Financial Institutions and Notice of Revocation*.

73. This second election applies to every supply to which the election under section 150 applies. Therefore, both elections would apply to the same set of supplies. However, the recipient SLFI is not able to make this election with a prescribed person or a person of a prescribed class. To date, there are no prescribed persons or prescribed classes of person. Accordingly, no person is prohibited from filing this election jointly with a SLFI if the other person and the SLFI also have a joint election under subsection 150(1).

Prior to July 1, 2010

74. However, for reporting periods that end before July 1, 2010, this election could only have been made between a SLFI purchaser and another person who is not a SLFI (non-SLFI supplier) and would have applied to supplies made by the non-SLFI supplier to the SLFI purchaser to which a section 150 election applied.

75. Information concerning SLFI requirements is available in the Guide RC4050, *GST/HST Information for Selected Listed Financial Institutions* or by calling a GST/HST rulings office at 1-800-959-8287.

Enquiries by telephone

Technical enquiries on the GST/HST: 1-800-959-8287

General enquiries on the GST/HST: 1-800-959-5525 (Business Enquiries)

If you are located in Quebec: 1-800-567-4692 (Revenu Québec)

All technical publications on GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthstech.