

CHANGES TO VARIOUS FISCAL MEASURES

This Information Bulletin makes public an ad hoc adjustment to the calculation of remunerated hours for the small business deduction and introduces temporary discretionary powers with respect to the administration of tax incentive measures to take into account the measures taken to mitigate the effects of the COVID-19 pandemic.

It also announces an easing of the refundable tax credit for childcare expenses in respect of expenses incurred to take distance courses. Similar changes are made to the disability supports deduction.

In addition, it amends certain Québec tax credits to take into account the new activities that specialized nurse practitioners will be able to carry out.

Lastly, this Information Bulletin sets out the position of the Ministère des Finances du Québec on various federal tax measures put in place as a result of the COVID-19 pandemic.

For information concerning the matters dealt with in this information bulletin, contact the Secteur du droit fiscal, de l'optimisation des revenus et des politiques locales et autochtones at 418 691-2236.

The English and French versions of this bulletin are available on the Ministère des Finances website at www.finances.gouv.qc.ca.

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1. AD HOC ADJUSTMENT TO THE CALCULATION OF REMUNERATED HOURS FOR THE SMALL BUSINESS DEDUCTION	3
2. ADDITION OF TEMPORARY DISCRETIONARY POWERS FOR THE ADMINISTRATION OF TAX INCENTIVE MEASURES.....	4
3. EASING OF THE TAX CREDIT FOR CHILDCARE EXPENSES IN RESPECT OF EXPENSES INCURRED TO TAKE DISTANCE COURSES	6
4. EASING OF THE DISABILITY SUPPORTS DEDUCTION IN RESPECT OF PAID EXPENSES TO TAKE DISTANCE COURSES	8
5. NEW CERTIFICATES AND PRESCRIPTIONS OF SPECIALIZED NURSE PRACTITIONERS FOR THE APPLICATION OF CERTAIN TAX CREDITS.....	9
6. FEDERAL TAX LEGISLATION AND REGULATION	10
6.1 <i>COVID-19 Emergency Response Act.....</i>	10
6.2 <i>A second act respecting certain measures in response to COVID-19.....</i>	11

1. AD HOC ADJUSTMENT TO THE CALCULATION OF REMUNERATED HOURS FOR THE SMALL BUSINESS DEDUCTION

In Québec, the general tax rate applicable to corporations is 11.5%.

A Canadian-controlled private corporation whose paid-up capital is \$10 million or less receives a tax rate reduction of 6.5 percentage points on the first \$500 000 of annual income—the business limit¹—from an eligible business, which lowers the tax rate applicable to the first \$500 000 from 11.5% to 5%.² This reduced tax rate is also known as the small business deduction, or SBD.

To fully benefit from the SBD, a corporation must also be a primary and manufacturing sectors corporation,³ or meet a criterion pertaining to the number of remunerated hours.

More specifically, a corporation satisfies, for a given taxation year, the criterion pertaining to the number of remunerated hours and may benefit from the highest rate of the SBD if, as applicable:

- for the given year, the remunerated hours of its employees totalled at least 5 500 hours;
- for the taxation year preceding the given year, the remunerated hours of its employees and those of the corporations with which it is associated totalled at least 5 500 hours (“previous year consolidated basis test”).

To ensure that a corporation does not lose all of its SBD because of a minor discrepancy with the required threshold, a corporation’s SBD rate for a taxation year is reduced linearly, where the total number of remunerated hours is between 5 500 and 5 000, and reaches zero when the total does not exceed 5 000 hours.

Moreover, where the given taxation year of a corporation has fewer than 365 days, its SBD rate is obtained by multiplying the number of remunerated hours of its employees by the proportion of 365 to the number of days in the given year.

As part of the measures put in place to mitigate the effects of the COVID-19 pandemic, some corporations have been forced to temporarily cease operating, which could have the effect of reducing the SBD rate that they would otherwise have been able to benefit from. Some corporations may even lose their SBD as a result.

In order to limit the impact of this temporary suspension of corporations' activities on the SBD, the tax legislation will be amended to provide for an ad hoc adjustment to the calculation of a corporation's remunerated hours, which will apply for the given taxation year.

¹ The \$500 000 business limit is gradually reduced if the corporation’s paid-up capital and that of the corporations with which it is associated is between \$10 million and \$15 million. It is eliminated when paid-up capital reaches \$15 million.

² Starting in 2021, the tax rate reduction will be 7.5 percentage points, which will reduce the tax rate applicable on the business limit from 11.5% to 4%.

³ A corporation is a “primary and manufacturing sectors corporation” for a taxation year if over 25% of its activities consist of primary and manufacturing sectors activities. A corporation whose proportion of primary and manufacturing sectors activities reaches 50% may benefit from the highest rate of the SBD. The corporation’s SBD rate is reduced linearly, where its proportion of primary and manufacturing sectors activities is between 25% and 50%, and reaches zero at 25%. A primary and manufacturing sectors corporation may also claim the additional deduction for primary and manufacturing sectors SMBs, which can reduce the corporation’s tax rate on its income qualifying for the SBD by 1 percentage point, lowering the tax rate on such income to 4%.

Accordingly, where all or part of the period that begins on March 15, 2020 and ends on the day of publication of this Information Bulletin (hereinafter referred to as the "closing period") is included in a corporation's given taxation year, the number of remunerated hours determined in respect of the corporation's employees, for the given year, will be deemed to be equal to the product obtained by multiplying the number of remunerated hours otherwise determined by the ratio of 365 to the number of days in the given year in excess of the number of days in the closing period in the given year.⁴

For example, for a corporation's taxation year beginning on June 1, 2019 and ended on May 31, 2020, the number of remunerated hours determined in respect of the corporation's employees for that given year will be deemed to be equal to the product obtained by multiplying the number of remunerated hours otherwise determined by the ratio of 365 to 288, that is, the number by which 366 exceeds 78.

For greater clarity, this ad hoc adjustment will not apply to the previous year consolidated basis test.

Finally, this ad hoc adjustment to the calculation of a corporation's remunerated hours, for a given taxation year, will also apply, with the necessary adaptations, to the calculation of the remunerated hours of a partnership, for a fiscal year, so as to take into account the number of days of the closing period included in the fiscal year.

2. ADDITION OF TEMPORARY DISCRETIONARY POWERS FOR THE ADMINISTRATION OF TAX INCENTIVE MEASURES

For many years, tax incentive measures have played an important role among the various types of intervention the government has used to assist different sectors of activity. In particular, these fiscal measures can consist of a deduction in the calculation of taxable income, a non-refundable tax credit or a refundable tax credit.

The tax incentive measures, like any other fiscal measure, are under Revenu Québec's responsibility. However, because of the specific objectives of many of these measures, the administration of the non-tax parameters (hereinafter referred to as "sectoral parameters") they contain generally requires the expertise of departments and public agencies other than Revenu Québec.

The role of these departments and agencies is to ensure compliance with the sectoral parameters established by the Ministère des Finances du Québec. For example, the Société de développement des entreprises culturelles (SODEC) is responsible for assessing the eligibility of a corporation's film production for the purposes of the refundable tax credit for Québec film or television production, while Investissement Québec is charged with, among other things, assessing the eligibility of a corporation's e-business activities and the percentage of time devoted to such activities by its employees for the purposes of the tax credits for the development of e-business.

⁴ If the result of the calculation of the excess of the number of days in the given year over the number of days in the closing period in the given year is equal to zero, it will be deemed to be equal to one.

However, as part of the measures put in place to mitigate the effects of the COVID-19 pandemic, some corporations or partnerships have had to temporarily cease their activities or modify them so that they may not be able to meet a sectoral parameter for a fiscal measure. Such a corporation or a corporation that is a member of such a partnership would therefore not be able to benefit from a refundable tax credit or a non-refundable tax credit that it would otherwise have been able to benefit from had it not been for the measures taken as a result of the current health crisis. Likewise, the eligibility of certain individuals for a tax holiday is generally related to the proportion of eligible activities they carry out with their employer. The measures put in place to mitigate the effects of the COVID-19 pandemic could also affect these individuals' eligibility for a tax holiday.

In order to take into account the difficulties for persons or partnerships to meet certain sectoral parameters as a result of the measures put in place to mitigate the effects of the COVID-19 pandemic while ensuring compliance with tax policy, temporary discretionary power will be granted to departments and agencies in assessing the sectoral parameters of the measures for which they are responsible.

More specifically, the *Act respecting the sectoral parameters of certain fiscal measures* will be amended so that a department or agency may, in the course of administering the sectoral parameters of the fiscal measures for which it is responsible, exceptionally issue to a person or partnership a qualification certificate, certificate or other sectoral document, even though that person or partnership does not meet a sectoral parameter that must be met in order to obtain this document, when that person or partnership has demonstrated, to the satisfaction of the department or agency, that its inability to meet that sectoral parameter is directly attributable to the measures put in place to mitigate the effects of the COVID-19 pandemic.

Similarly, the *Taxation Act* will be amended to grant the Minister of Revenue discretionary power to consider, on an exceptional basis, a salary or wages, or a portion of such salary or wages, eligible for a fiscal measure, even if that is not allowed by the provisions specifically applicable to the fiscal measure, to the extent that eligibility depends on the qualification, by Revenu Québec, of an activity as an eligible activity or as a proportion of eligible activities to be carried out by the person to whom the salary or wages are paid and that the impossibility of satisfying either of these requirements is directly attributable to the measures put in place to mitigate the effects of the COVID-19 pandemic.

These amendments will apply, in respect of a person, to a taxation year that ends after March 14, 2020 and, in respect of a partnership, to a fiscal year that ends after March 14, 2020.

Moreover, in addition to the discretionary power granted to the SODEC by this Information Bulletin, the *Taxation Act* will be amended to grant the Minister of Revenue discretionary power for the application of the refundable tax credit for the production of performances allowing him to extend by not more than one year the period covering the third full year following the first performance before an audience of a show, so that this period may cover at most the third and fourth full years following the first performance before an audience of the show.

This amendment will apply for a period covering the third full year following the first performance before an audience of a show that includes March 15, 2020, or that begins after March 14, 2020.

Finally, the year as of which a tax credit for the cultural sector may be claimed is the year in which an application for an advance ruling or, in the absence of such an application, an application for a certificate in respect of a property, is submitted to the SODEC. However, it is possible that certain corporations may not have been able to submit such an application in a given taxation year because of the measures put in place to mitigate the effects of the COVID-19 pandemic.

Consequently, the *Taxation Act* will be amended to grant the Minister of Revenue discretionary power to deem that an application for an advance ruling or, in the absence of such an application, an application for a certificate in respect of a property, has been submitted to the SODEC, in relation to a refundable tax credit under the responsibility of this agency in a given taxation year where the corporation has demonstrated to the satisfaction of the Minister that its failure to make such an application in the given year is directly attributable to the measures put in place to mitigate the effects of the COVID-19 pandemic and that it submitted its application for an advance ruling or certificate as soon as it was possible to do so.

This amendment will apply to a taxation year that ends after March 14, 2020.

3. EASING OF THE TAX CREDIT FOR CHILDCARE EXPENSES IN RESPECT OF EXPENSES INCURRED TO TAKE DISTANCE COURSES

As a general rule, families who pay childcare expenses may claim a refundable tax credit allowing them to receive a compensation for part of the expenses.

Essentially, the main purpose of the tax credit is to recognize costs borne by parents who require childcare services so that they can work, pursue studies or seek employment.

In general, the amount of this refundable tax credit, which may also be paid in advance, is calculated by applying, to a taxpayer's qualified childcare expenses for a taxation year, the rate corresponding to the taxpayer's family income for the year. The rate decreases gradually, from 75% to 26%, as family income rises. Under a table with 32 family income brackets indexed annually, where an individual's family income does not exceed \$36 570⁵ the rate for converting qualified childcare expenses into a tax credit is 75%. The tax credit rate then decreases, reaching 26% at the 32nd family income bracket, which applies to family income exceeding \$162 975.⁶ Moreover, expenses paid by a taxpayer for the purpose of providing childcare services for the taxpayer's child, in respect of which the tax credit may be claimed, may be subject to the annual limit applicable on the basis of the child's age and condition.

Expenses incurred by a taxpayer for the purpose of providing a child⁷ with babysitting services, day nursery services, or childcare services at a camp can qualify for the refundable tax credit for childcare expenses, subject to certain exclusions, where the expenses were incurred in order to carry out specific activities.

Briefly, these expenses must be incurred to enable the taxpayer or eligible spouse to perform the duties of an office or employment, carry on a business, carry on research, attend a qualified educational institution or actively seek employment.

⁵ This amount is for 2020.

⁶ *Ibid.*

⁷ The child must be, at any time in the year, under 16 years of age or a dependent because of a mental or physical infirmity.

Until now, Revenu Québec's interpretation of the expression "to attend a qualified educational institution" requires, in the absence of a physical presence, a virtual presence at a fixed or interactive time with the professor or the class, thereby excluding correspondence courses by mail or the Internet.⁸

However, technological developments in recent years have led to a significant increase in the availability of distance courses, particularly those offered over the Internet. In addition, for several educational institutions, the current health crisis has increased the use of technologies and accelerated the technological shift, making it necessary for some courses to be taught exclusively at a distance.

Consequently, in order to adapt the refundable tax credit for childcare expenses to distance learning, changes will be made to the tax legislation.

The expression "attend a qualified educational institution" in the definition of "child care expense"⁹ will be amended to provide that childcare expenses must be incurred to enable the individual or the individual's eligible spouse for the year to either attend secondary school or to take a course at a qualified educational institution.

As a result, courses offered by a qualified educational institution may be taken at a distance without the need for physical presence or, in the absence of such physical presence, virtual presence at a fixed or interactive time with the professor or the class. However, presence will remain mandatory for courses offered by a secondary school.

In addition, the definition of "qualified educational institution"¹⁰ will be amended to remove any reference to a secondary school.

For greater clarity, no amendments are made to the minimum requirements for the program.¹¹

This amendment will apply to childcare expenses incurred after December 31, 2019.

⁸ REVENU QUÉBEC, *Interpretation Letter 17-039205*, "Refundable Tax Credit for Childcare Expenses – Attend a Qualified Educational Institution", November 28, 2017 (in French only); REVENU QUÉBEC, *Interpretation Letter 13-016689*, "Tax credit for childcare expenses – Scope of the expression 'attend a qualified institution'", February 7, 2014 (in French only).

⁹ *Taxation Act*, s. 1029.8.67 "child care expense" b) (iv).

¹⁰ *Taxation Act*, s. 1029.8.67 "qualified educational institution".

¹¹ See note **Erreur ! Signet non défini.**

4. EASING OF THE DISABILITY SUPPORTS DEDUCTION IN RESPECT OF PAID EXPENSES TO TAKE DISTANCE COURSES

A person with a disability can deduct, in determining income for a year, eligible expenses paid in the year, unless they were reimbursed through a tax-free payment, for certain designated disability supports that enable the person to perform the duties of an office or employment, carry on a business, carry out research or similar work for which the person received a grant, or to attend a designated educational institution¹² or a secondary school.

Designated disability supports include devices that enable a person who is deaf or mute to make and receive telephone calls, devices designed to enable a person who is blind to operate a computer or read print, and sign language interpretation, real-time captioning or note-taking services.

The maximum amount that can be deducted for a year is generally equal to the disabled person's allowable income for the year, which consists primarily of employment income and scholarships or bursaries received by the person.

However, where a disabled person attends, during a year, a designated educational institution or a secondary school and the eligible expenses they paid exceed their eligible income for the year, such person may deduct an additional amount, up to their other income, equal to the excess eligible expenses, \$15 000 or the product obtained by multiplying \$375 by the number of weeks in the year they attended school, whichever is least.

Generally, the interpretation of the expression "to attend a qualified educational institution" requires a physical presence or, in the absence of such physical presence, a virtual presence at a fixed or interactive time with the professor or the class, thereby excluding correspondence courses by mail or the Internet.¹³

However, technological developments in recent years have led to a significant increase in the availability of distance courses, particularly those offered over the Internet. In addition, for several educational institutions, the current health crisis has increased the use of technologies and accelerated the technological shift, making it necessary for some courses to be taught exclusively at a distance.

Consequently, in order to adapt the disability supports deduction to distance learning, changes will be made to the tax legislation.

Specifically, the disability supports deduction will be modified to allow a person with a disability to either attend a secondary school or to take a course at a designated educational institution.

As a result, courses offered by an educational institution covered by this disposition may be taken at a distance without the need for a physical presence or, in the absence of such physical presence, virtual presence at a fixed or interactive time with the professor or the class. However, attendance of a secondary school will remain mandatory.

This amendment will apply to expenses incurred after December 31, 2019.

¹² *Taxation Act*, s. 358.0.2.

¹³ See note 8.

5. NEW CERTIFICATES AND PRESCRIPTIONS OF SPECIALIZED NURSE PRACTITIONERS FOR THE APPLICATION OF CERTAIN TAX CREDITS

On March 17, 2020, Bill 43, entitled "An Act to amend the *Nurses Act* and other provisions in order to facilitate access to health services" (hereinafter referred to as "Bill 43"), was assented to.¹⁴

Bill 43 amends the *Nurses Act*¹⁵ to add to the activities that may be engaged in by specialized nurse practitioners¹⁶ (hereinafter referred to as "SNPs"), by allowing them to, among other things and according to their class of specialization, diagnose illnesses, determine medical treatments and provide pregnancy care.

SNPs are nurses who have acquired additional training and experience in an area of specialization.

The *Taxation Act* currently provides that certain certificates relating to a patient's condition may be completed by SNPs, in the same way as by physicians, for the application of certain Québec tax measures, namely the tax credit for severe and prolonged impairments in mental and physical functions and the refundable tax credit for informal caregivers, which was replaced by the refundable tax credit for caregivers in the 2020-2021 budget, as well as under the Registered Disability Savings Plan.

As a result of the legislative amendments introduced by Bill 43, Québec's tax legislation will be amended to provide that SNPs, like physicians, may issue a certificate for the application of the following tax credits:

- the non-refundable tax credit for travel and lodging expenses relating to medical care not available in Québec within 200 kilometres of the locality where the particular person lives;¹⁷
- the non-refundable tax credit for moving expenses relating to medical care not available, in Québec, within 200 kilometres of the locality where the former residence of the individual is situated in Québec;¹⁸
- the refundable tax credit for home support for seniors,¹⁹ with respect to the written certificate of the status of a dependent person²⁰ for the purposes of this credit.

¹⁴ S.Q. 2020, c. 6.

¹⁵ CQLR, chapter I-8.

¹⁶ Bill 43 amends the definition of a SNP as follows: "a nurse who holds a specialist's certificate in any of the classes of specialization governed by a regulation enacted under subparagraph *f* of the first paragraph of section 14."

¹⁷ *Taxation Act*, s. 752.0.13.1.

¹⁸ *Taxation Act*, s. 752.0.13.1.1.

¹⁹ *Taxation Act*, s. 1029.8.61.1.

²⁰ The current form is TPZ-1029.MD.A-V.

Similarly, for the purposes of the tax credit for medical expenses or care and the tax credit for severe and prolonged impairments in mental or physical functions, therapeutic care that is essential to the maintenance of one of the individual's vital functions,²¹ which must be prescribed by a physician in order for the tax credits to be obtained, may also be prescribed by a SNP.

The amendments set out above will come into force on the same date as that of the regulation to be adopted by the Ordre des infirmières et des infirmiers du Québec in accordance with the power conferred on it for this purpose and aimed, among other things, at determining the terms and conditions under which the professional activities of SNPs, including the new activities provided for in Bill 43, may be carried out.

6. FEDERAL TAX LEGISLATION AND REGULATION

6.1 *COVID-19 Emergency Response Act*

On March 25, 2020, Bill C-13, entitled "COVID-19 Emergency Response Act", was assented to.²²

The amendments to the federal tax legislation introduced by the *COVID-19 Emergency Response Act* concern, firstly, the reduction of the required minimum withdrawal from registered retirement income funds (RRIF) by 25%. In this regard, on March 19, 2020, the Ministère des Finances du Québec announced, by way of a press release, its intention to follow the lead of the federal government regarding the measure to reduce the amount of the mandatory RRIF withdrawal by 25% in 2020.²³

Accordingly, Québec tax legislation will be amended to incorporate, with adaptations on the basis of its general principles, the federal measure relating to the 25% reduction in the minimum amount to be withdrawn from a RRIF.²⁴ This measure will be applicable for 2020, that is, the same year as for the federal tax system.

In addition, the *COVID-19 Emergency Response Act* also amends federal tax legislation to allow for the following measures: a one-time additional payment under the goods and services tax credit, temporary additional amounts under the Canada Child Benefit, and a temporary three-month wage subsidy to eligible employers.

These measures were not retained because they are out of step with the characteristics of the Québec tax system, or because the Québec tax system is satisfactory or has no analogous provisions.

²¹ *Taxation Act*, s. 752.0.17.

²² S.C. 2020, c. 5.

²³ MINISTÈRE DES FINANCES DU QUÉBEC, "The Québec government will harmonize its measures with two federal government assistance measures announced yesterday", March 19, 2020.

²⁴ Moreover, although it does not entail any change in Québec tax regulations, the federal regulatory measure relating to the minimum amount for a member's account under a money purchase provision of a registered pension plan for 2020, corresponding to 75% of the amount that would be the minimum amount for the year, will also be retained for the purposes of the Québec tax system. This measure is set out in section 7 of the *COVID-19 Emergency Response Act*.

6.2 ***A second act respecting certain measures in response to COVID-19***

On April 11, 2020, Bill C-14, entitled "A second act respecting certain measures in response to COVID-19", was assented to²⁵ (hereinafter referred to as "Act No. 2").

Briefly, Act No. 2 introduces the Canada Emergency Wage Subsidy into federal tax legislation and related consequential amendments. Given the specific objective of the amendments made to the federal tax legislation by Act No. 2, the Québec tax legislation will not be harmonized with the tax measures of this Act.²⁶

²⁵ S.C. 2020, c. 6.

²⁶ On April 30, 2020, the Ministère des Finances du Québec announced the introduction of the credit on employers contribution to the Health Services Fund (see *Information Bulletin 2020-7* of April 30, 2020 and *Information Bulletin 2020-8* of May 29, 2020). In order to benefit from the credit on employers contribution to the Health Services Fund, an employer must, among other things, be a qualifying entity for the purposes of the Canada Emergency Wage Subsidy. For greater clarity, this announcement has no impact on this condition of the credit on employers contribution to the Health Services Fund.