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Finances Québec

INFORMATION BULLETIN

December 21, 2020 2020-15

ANNOUNCEMENT REGARDING THE QUÉBEC SALES TAX FOR ELECTRONIC COMMERCE AND OTHER CHANGES TO THE TAX SYSTEM

The purpose of this information bulletin is to make public the position of the Ministère des Finances on the Government of Canada's November 30, 2020 legislative proposals relating to the application of the goods and services tax and the harmonized sales tax (GST/HST) to electronic commerce supplies.

In addition, this information bulletin announces the extension until March 13, 2021 of the credit on employers contribution to the Health Services Fund in respect of employees on paid leave, as well as certain changes to the incentive deduction for the commercialization of innovations.

Finally, it presents the position of the Ministère des Finances regarding various tax measures announced by the federal government on April 17, 2020 intended to support print media companies.

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.

ANNOUNCEMENT REGARDING THE QUÉBEC SALES TAX FOR ELECTRONIC COMMERCE AND OTHER CHANGES TO THE TAX SYSTEM

1. Federal legislative proposals for the application of GST/HST in relation to electronic commerce supplies

In the Québec Budget Speech of March 27, 2018, the Québec government announced that the Québec sales tax (QST) system would be modified to require suppliers with no physical or significant presence in Québec to register with Revenu Québec under a new specified registration system, for the purposes of collecting and remitting the QST applicable to their taxable supplies of incorporeal movable property and services provided in Québec to specified Québec consumers.

It was also determined that in the case of suppliers that are not Québec residents but are located in Canada, this registration requirement will also apply for the collection and remittance of the QST applicable to taxable supplies of corporeal movable property.

Thus, since January 1, 2019, foreign suppliers of incorporeal movable property and services have been required to register for the QST, collect the tax and remit it to Revenu Québec. The same requirement has applied since September 1, 2019, to Canadian suppliers of property (corporeal and incorporeal) and services located outside Québec.

On November 30, 2020, as part of its Economic Statement, the Canadian government tabled legislative proposals with respect to the application of the goods and services tax and the harmonized sales tax (GST/HST) in relation to electronic commerce supplies.

Some of the proposed amendments relating to supplies of intangible personal property and services provided by electronic means by non-resident suppliers echo measures already adopted by Québec, and these proposals are still being analyzed by the Ministère des Finances du Québec. Harmonization decisions in this regard will be announced at a later date.

However, it is possible to announce today that changes will be made to the QST system in order to incorporate into it, by adapting them based on its general principles and taking into account its particularities and the provincial context in which the QST is applied, federal measures for the application of the GST/HST with respect to electronic commerce supplies that relate to supplies of property made through fulfillment warehouses located in Canada as well as supplies of short-term accommodation made through a digital platform.

Details of the changes that will be made to the QST system will be announced at a later date.

2. NEW EXTENSION OF THE CREDIT ON EMPLOYERS CONTRIBUTION TO THE HEALTH SERVICES FUND IN RESPECT OF EMPLOYEES ON PAID LEAVE

In March 2020, under Canada's *COVID-19 Economic Response Plan*, the Government of Canada announced the establishment of the Canada Emergency Wage Subsidy.[1]

In short, the Canada Emergency Wage Subsidy consists of a base wage subsidy and a top-up wage subsidy determined on the basis of the wages paid by a qualifying entity to its eligible employees, with a combined rate of up to 65% for the qualifying period ending December 19, 2020, allowing a qualifying entity to obtain a maximum amount of $734 per employee per week. It also includes the reimbursement of the employer's contribution payable by the qualifying entity to employment insurance, the Canada Pension Plan, the Québec Pension Plan and the Québec Parental Insurance Plan on the wages paid to its eligible employees for the weeks during which they are on paid leave.

To be deemed a qualifying entity, an employer must be, for example, an individual, a taxable corporation, a non-profit organization, a registered charity or a partnership that satisfies certain conditions in respect of its members. In addition, the employer must have experienced a decrease in income.

The wage subsidy was initially granted for three qualifying periods, the first beginning on March 15, 2020, and the last ending on June 6, 2020. It was subsequently extended such that a qualifying entity may receive the subsidy until December 19, 2020.[2]

On April 30, 2020, the Ministère des Finances du Québec announced the introduction of the credit on employers contribution to the Health Services Fund in respect of employees on paid leave,[3] which complements the Canada Emergency Wage Subsidy.

1 Department of Finance Canada, *Canada Emergency Wage Subsidy (CEWS)*, [online], [https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy.html]. See also the *Second Act respecting certain measures in response to COVID-19* (S.C. 2020, c. 6), assented to on April 11, 2020.

2 Department of Finance Canada, *Government extends the Canada Emergency Wage Subsidy*, May 15, 2020, [online], [https://www.canada.ca/en/department-finance/news/2020/05/government-extends-the-canada-emergency-wage-subsidy.html]; *Ibid., Supporting Canadian Workers and Businesses with a redesigned Canada Emergency Wage Subsidy*, July 17, 2020, [online], [https://www.canada.ca/en/department-finance/news/2020/07/supporting-canadian-workers-and-businesses-with-a-redesigned-canada-emergency-wage-subsidy.html]; *Ibid., Government announces new, targeted support to help businesses through pandemic*, October 9, 2020, [online], [https://www.canada.ca/en/department-finance/news/2020/10/government-announces-new-targeted-support-to-help-businesses-through-pandemic.html]. See also the *Act respecting further COVID-19 measures* (S.C. 2020, c. 11), assented to on July 27, 2020, and the *Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)*, (S.C. 2020, c. 13), assented to on November 19, 2020.

3 Ministère des Finances du Québec, *Information Bulletin 2020-7*, April 30, 2020.

Employers that have an establishment in Québec and that can benefit from the Canada Emergency Wage Subsidy for a qualifying period can also claim the credit on employers contribution to the Health Services Fund for the same period. The credit for contributions to the Health Services Fund that such an employer can claim corresponds to the amount of the contribution to the Health Services Fund that the employer pays in respect of the wages paid to a specified employee for a week included in the qualifying period when the employee is on paid leave.

The credit on employers contribution to the Health Services Fund is granted for the same qualifying periods as the Canada Emergency Wage Subsidy, the first period beginning on March 15, 2020, and the last ending on December 19, 2020.[4]

On November 30, 2020, Canada's Deputy Premier and Minister of Finance presented the *Fall Economic Statement 2020*.[5] On this occasion, the terms of the Canada Emergency Wage Subsidy were made public for three new periods: December 20, 2020, to January 16, 2021; January 17, 2021, to February 13, 2021; and February 14, 2021, to March 13, 2021.

In short, the federal government is proposing to increase the maximum combined wage subsidy rate to 75% for these periods and to maintain the reimbursement of employer contributions to employment insurance, the Canada Pension Plan, the Québec Pension Plan, and the Québec Parental Insurance Plan for employees on paid leave.

The credit on employers contribution to the Health Services Fund will also be extended until March 13, 2021, so that employers may claim the credit on employers contribution to the Health Services Fund in respect of employees on paid leave for the same qualifying periods as those in respect of which they can receive the Canada Emergency Wage Subsidy, and so that the credit on employers contribution to the Health Services Fund continues to complement the reimbursement of employers contribution granted under the Canada Emergency Wage Subsidy.

As a result, three new periods will be added to the qualifying periods for the credit on employers contribution to the Health Services Fund:

- the period beginning December 20, 2020, and ending January 16, 2021;
- the period beginning January 17, 2021, and ending February 13, 2021;
- the period beginning February 14, 2021, and ending March 13, 2021.

4 Ministère des Finances du Québec, *Information Bulletin 2020-8*, May 29, 2020, p. 3-4; *Ibid.*, *Information Bulletin 2020-11*, August 17, 2020, p. 3-5; *Ibid.*, *Information Bulletin 2020-13*, November 12, 2020, p. 3-4.

5 Department of Finance Canada, *Fall Economic Statement 2020: Supporting Canadians and Fighting COVID-19*, November 30, 2020, [online] [https://www.budget.gc.ca/fes-eea/2020/report-rapport/toc-tdm-en.html].

3. CHANGES TO THE INCENTIVE DEDUCTION FOR THE COMMERCIALIZATION OF INNOVATIONS IN QUÉBEC

To encourage the competitiveness of Québec businesses while fostering the retention and valorization of intellectual property developed in Québec, the incentive deduction for the commercialization of innovations in Québec (IDCI) was introduced in the budget released on March 10, 2020.[6]

In short, the IDCI, which takes the form of a deduction in calculating the taxable income of a qualifying innovative corporation for a taxation year beginning after December 31, 2020, enables such a corporation that commercializes a qualified intellectual property asset developed in Québec to benefit from an effective tax rate of 2% on the qualified portion of its taxable income attributable to that qualified intellectual property asset.

For the purposes of this measure, the expression "qualified innovative corporation" means a corporation that has an establishment in Québec, carries on a business in Québec and from which it derives income from the commercialization of a qualified intellectual property asset to which it holds the rights.

The expression "qualified intellectual property asset" means a legally protected incorporeal property that is either an invention protected by a patent, by a certificate of supplementary protection or by plant breeder's rights, or a software protected by copyright. In addition, the property must result from scientific research and experimental development (R&D) activities carried out in whole or in part in Québec.

The amount of the deduction is obtained by applying the following formula:[7]

$$IDCI = \{[A \times (B / C)] - D\} \times (E / F) \times G$$

The formula can be broken down into three elements that are used to determine, respectively, the qualified profits from a qualified intellectual property asset, the Québec nexus ratio and the rate of the tax benefit.

The first component of the formula for calculating the IDCI—the portion $\{[A \times (B / C)] - D\}$—constitutes the qualified profits from the commercialization of a qualified intellectual property asset, which profits represent an approximation of the value added attributable to that asset.

In this regard, the letter A corresponds to the net income for tax purposes of the qualified innovative corporation, while the portion (B / C) corresponds to its gross income from the commercialization of a qualified intellectual property asset over its total gross income. The element corresponding to the letter D is designed to subtract, from the qualified profits, an estimate of the routine return incorporated in the income that is not attributable to a qualified intellectual property asset. Where the gross income from the commercialization of a qualified intellectual property asset consists of a royalty or an amount obtained as damages from judicial remedies, the letter D is deemed to be zero in respect of that income.

6 Ministère des Finances du Québec, *Budget 2020-2021 – Additional Information*, March 10, 2020, p. A.20-A.26.

7 *Ibid.*, p. A.22-A.23, for a detailed description of each letter in the formula.

The second component of the formula for calculating the IDCI—the portion (E / F)—takes into account the extent of the R&D activities carried out in Québec by the qualified innovative corporation. The nexus ratio is calculated on a cumulative basis, according to a moving average including the particular taxation year and the preceding six years.

For the purposes of calculating the nexus ratio,[8] the qualified amount of the R&D expenditures related to Québec—the letter E—corresponds, for a taxation year, to the aggregate of the following amounts:[9]

— the wages that the qualified innovative corporation paid to its employees of an establishment located in Québec in respect of R&D work that it carried out;

— the portion of the consideration that it paid under a contract, in respect of R&D work carried out on its behalf, to a subcontractor with which it is not dealing at arm's length, that can reasonably be attributed to the wages paid to employees of an establishment of the subcontractor located in Québec;

— the amount representing 80% of the portion of the amount of an expenditure, which would otherwise be eligible for the refundable tax credit commonly known as "R&D university,"[10] that it paid under a contract with an eligible university entity, an eligible public research centre or an eligible research consortium to which it is not related that can reasonably be attributed to R&D expenditures made in Québec;

— one half of the portion of the consideration that it paid under a contract, in respect of R&D work carried out on its behalf, to a subcontractor with which it is dealing at arm's length that can reasonably be attributed to work carried out by the employees of an establishment of the subcontractor located in Québec;

— the product obtained by multiplying one half of the portion of the consideration that it paid under a contract, in respect of R&D work carried out on its behalf outside Québec, to a subcontractor with which it is dealing at arm's length by the proportion of the qualified innovative corporation's business carried on in Québec for the year.

As for the overall amount of R&D expenditures—the letter F—it corresponds, for a taxation year, to the aggregate of the following amounts:

— the wages that the qualified innovative corporation paid to its employees in respect of R&D work that it carried out;

— the portion of the consideration that it paid under a contract, in respect of R&D work carried out on its behalf, to a subcontractor with which it is not dealing at arm's length that can reasonably be attributed to the wages paid to employees of the subcontractor;

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8 The rules applicable to the calculation of the refundable R&D tax credits apply to the various elements of the calculation of the nexus ratio, with the necessary adaptations.

9 The qualified amount of the R&D expenditures related to Québec, for a particular taxation year, cannot exceed the overall amount of R&D expenditures for that year.

10 *Taxation Act*, s. 1029.8.6.

— the product obtained by multiplying one half of the portion of the consideration that it paid under a contract, in respect of R&D work carried out on its behalf outside Québec, to a subcontractor with which it is dealing at arm's length by the proportion of the qualified innovative corporation's business carried on in Québec for the year.

The third component of the IDCI calculation formula—element G—incorporates a factor making it possible to attain the effective taxation rate of 2% applicable to the qualified income derived from the commercialization of a qualified intellectual property asset. For 2021, this factor is 82.61%.

In order to make the IDCI more attractive, two changes will be made. The definition of the expression "qualified intellectual property asset" will be amended to remove the requirement that it results from R&D activities carried out in whole or in part in Québec. The Québec nexus ratio will be amended, in its third element to be taken into account for the calculation of the letter F, namely "the product obtained by multiplying one half of the portion of the consideration that it [the corporation] paid under a contract, in respect of R&D work carried out on its behalf outside Québec, to a subcontractor with which it is dealing at arm's length by the proportion of the qualified innovative corporation's business carried on in Québec for the year," to eliminate the multiplication by the proportion of the qualified innovative corporation's business carried on in Québec for the year.

These amendments will apply in respect of a taxation year of a corporation beginning after December 31, 2020.

4. Changes to tax measures to support print media companies

Over the past few years, the Québec government has implemented various assistance measures for print media companies. Among other things, the Québec Economic Plan of March 27, 2018 announced the refundable tax credit to support the digital transformation of print media companies.[11] In addition, on October 2, 2019, the Ministère des Finances announced the introduction of the refundable tax credit to support print media companies.[12]

The Government of Canada also proposed measures to support Canadian journalism. As part of the 2019 budget, it granted an income tax exemption and qualified donee status to registered journalism organizations and introduced a tax credit for digital news subscriptions and a tax credit for Canadian journalism labour.[13]

In this regard, the Ministère des Finances du Québec has announced that Québec's tax legislation and regulations will be amended to incorporate federal tax measures relating to the income tax exemption and qualified donee status of a registered journalism organization.[14]

11 Ministère des Finances du Québec, *The Québec Economic Plan – Additional Information 2018–2019*, March 27, *2018*, p. A.77-A.85.

12 Ministère des Finances du Québec, *Information Bulletin 2019-9*, October 2, 2019, p. 3-9.

13 Department of Finance Canada, *Budget 2019 – Investing in the Middle Class*, March 19, 2019, p. 373-376.

14 Ministère des Finances du Québec, *Information Bulletin 2019-11*, December 16, 2019, p. 19-20.

In addition, on April 17, 2020, the Department of Finance Canada issued a news release announcing draft legislative proposals that would make adjustments to the tax measures implemented to support Canadian journalism to ensure that these measures achieve their initial objectives.[15]

It is therefore appropriate for this information bulletin to set out the position of the Ministère des Finances du Québec with respect to the amendments proposed by the Department of Finance Canada to federal tax legislation relating to measures to support Canadian journalism.

In addition, changes are announced to the definition of "excluded corporation," for the purposes of the refundable tax credit to support the digital transformation of print media companies, and to the definitions of "excluded corporation," "excluded subsidiary" and "eligible partnership," for the application of the refundable tax credit to support print media companies. This harmonizes certain conditions—with respect to the entities covered by these tax measures—with those of the federal tax credit for Canadian journalism labour.

4.1 Harmonization with the Department of Finance Canada's April 17, 2020, news release on support for Canadian journalism

The legislative proposals released by the Department of Finance Canada on April 17, 2020, are intended to make adjustments to certain applicable definitions to determine whether a journalism organization can be recognized as a registered journalism organization and thus benefit from the income tax exemption and qualified donee status. They also propose changes to federal tax legislation in relation to other tax measures introduced to support Canadian journalism, namely the digital news subscription tax credit and the Canadian journalism labour tax credit.

In summary, a journalism organization may apply to the Minister of National Revenue for registration if it first meets the conditions to qualify as a qualified Canadian journalism organization and then meets the additional conditions to be recognized as a qualifying journalism organization.

The proposed amendments to the federal tax legislation include the following:

— remove from the definition of "qualified Canadian journalism organization" the requirement that a journalism organization be "primarily" engaged in the production of original news content and add this requirement to the definition of "qualifying journalism organization";

— remove the requirement that an organization not be significantly engaged in the production of content to promote goods or services to qualify as a qualified Canadian journalism organization;

— put in place an explicit mechanism for the Minister of National Revenue to revoke the designation of a qualified Canadian journalism organization when it no longer meets the eligibility criteria.[16]

15 Department of Finance Canada, *Government of Canada Clarifies Support for Canadian Journalism*, April 17, 2020, [Online], [https://www.canada.ca/en/department-finance/news/2020/04/government-of-canada-clarifies-support-for-canadian-journalism.html].

16 These measures are set out in sections 3, 8 and 10 of the legislative proposals.

The Ministère des Finances du Québec has indicated its intention to harmonize Québec tax legislation and regulations with the provisions of federal tax legislation and regulations relating to the income tax exemption and qualified donee status of a registered journalism organization. Accordingly, Québec tax legislation will also be amended to incorporate, with adaptations based on its general principles, the proposed amendments to the federal tax legislation relating to the qualification of an organization as a qualified Canadian journalism organization or a qualifying journalism organization.[17]

The amendments to the Québec taxation system will be adopted only following the assent to any federal statute implementing the changes to the federal tax legislation, taking into account technical amendments that may be made before assent. The amendments to Quebec tax legislation will be applicable on the same date as the one retained for the application of the federal provisions with which they are being harmonized.

Lastly, changes to federal tax legislation in connection with the tax credit for digital news subscriptions and the Canadian journalism labour tax credit will not be retained since Québec tax legislation does not include corresponding provisions.[18]

4.2 Amendments relating to the exclusion of certain entities for the purposes of tax credits for print media companies

To benefit from the refundable tax credit to support print media companies or the refundable tax credit to support the digital transformation of print media companies, conditions must be satisfied by the corporation that wishes to obtain the tax benefit or by the partnership through which a corporation may obtain the tax benefit.

The tax legislation provides for exclusions that result in certain corporations or partnerships not being considered eligible for the application of the tax measures. Changes will be made to the tax legislation relating to these exclusions.

❑ Registered journalism organization

For the purposes of tax credits for print media companies, an excluded corporation, for a taxation year, is a corporation that is exempt from tax for such taxation year.

A registered journalism organization is exempt from income tax. As a result, it is an excluded corporation for the purpose of tax credits for print media companies.

On the other hand, a registered journalism organization, while tax-exempt, can benefit from the federal Canadian journalism labour tax credit.

In order for the refundable tax credit to support print media companies and the refundable tax credit to support the digital transformation of print media companies to achieve their objective of contributing to safeguarding the print media and for this tax assistance to also be granted to corporations that, were it not for their qualification as a registered journalism organization, would meet all the eligibility conditions for this tax assistance, the definition of the expression “excluded corporation” in each of these tax credits will be amended.

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17 Some of the measures selected may not require any changes to Québec tax legislation.

18 These measures are set out in sections 1, 2, 4 to 7 and 9 of the legislative proposals.

Accordingly, the tax legislation will be amended so that, for the purposes of the refundable tax credit to support print media companies and the refundable tax credit to support the digital transformation of print media companies, a corporation that is exempt from tax for a taxation year is an excluded corporation for such year, unless it is exempt from tax because of its qualification as a registered journalism organization.

This amendment will apply to a taxation year that begins after December 31, 2019.

❑ Broadcasting undertaking

As part of the legislative proposals released on April 17, 2020, the Department of Finance Canada proposes to replace the exclusion for organizations that carry on a "broadcasting undertaking," as defined in subsection 2(1) of the *Broadcasting Act*,[19] with the exclusion of not holding a licence, as defined in that subsection, for the purposes of the federal Canadian journalism labour tax credit.

The purpose of this amendment is to ensure that a print news organization that engages in unlicensed broadcasting activities, such as podcasts, is not excluded from eligibility for the federal tax credit.

A similar amendment will be made to the definition of "excluded corporation"[20] for the purposes of the refundable tax credit to support print media companies. As a result, the exclusion in respect of a corporation that carries on a broadcasting undertaking within the meaning of subsection 2(1) of the *Broadcasting Act* will be replaced with the exclusion of a corporation that holds a licence within the meaning of subsection 2(1) of the *Broadcasting Act*.

As well, the definition of "excluded subsidiary,"[21] for the purposes of the refundable tax credit to support print media companies, will be amended to replace the exclusion relating to a corporation that carries on a broadcasting undertaking within the meaning of subsection 2(1) of the *Broadcasting Act* with the exclusion of a corporation that holds a licence within the meaning of subsection 2(1) of the *Broadcasting Act*.

Lastly, the definition of "eligible partnership,"[22] for the purposes of the refundable tax credit to support print media companies, will be amended to replace the condition that the partnership not carry on a broadcasting undertaking within the meaning of subsection 2(1) of the *Broadcasting Act* with the condition that the partnership not hold a licence within the meaning of subsection 2(1) of the *Broadcasting Act*.

These changes will apply retroactively as of the introduction of the tax credit, i.e. as of January 1, 2019.

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[19] S.C. 1991, c. 11.

[20] See note 12, p. 3-4.

[21] See note 14, p. 10-11.

[22] See note 12, p. 4.