

Harmonization with federal tax measures and adjustments to certain measures of a tax nature

The purpose of this information bulletin is to make public the Ministère des Finances' position on the changes to the federal tax system introduced by the Department of Finance Canada on November 21 as part of the *2023 Fall Economic Statement*.

It also introduces additional amendments to the *Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi*, the *Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)* and the *Act constituting Capital régional et coopératif Desjardins*, to update their intervention framework.

Lastly, it adjusts the special duties relating to the transfer of an immovable to reflect the amendments made by the *Act to amend the Act respecting municipal taxation and other legislative provisions*, assented to last December.

To obtain information on 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 secteurdroitfiscalitdelafiscalite@finances.gouv.qc.ca.

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

Harmonization with federal tax measures and adjustments to certain measures of a tax nature

- 1. Position of the Ministère des Finances du Québec regarding the tax measures announced in the Government of Canada's *2023 Fall Economic Statement*..... 3**
- 2. Changes to the constituting acts of tax-advantaged funds 5**
- 3. Correlative adjustments to the amendments relating to the payment of duties on transfers of immovables in several instalments..... 9**

1. Position of the Ministère des Finances du Québec regarding the tax measures announced in the Government of Canada's *2023 Fall Economic Statement*

On November 21, 2023, Canada's Minister of Finance presented the *2023 Fall Economic Statement*. At that time, she tabled supplementary information describing a number of new personal and business income tax measures.¹ On December 20, 2023, legislative proposals were also issued in connection with the changes proposed in the *2023 Fall Economic Statement*.

The Ministère des Finances du Québec wishes to make public its position on these new federal tax measures.

□ Income tax measures

Québec's tax legislation and regulations will be amended to incorporate some of the income tax measures proposed in the *2023 Fall Economic Statement*. However, the amendments to the Québec tax system will be adopted only after the assent of any federal legislation or the adoption of any federal regulation giving effect to the retained measures, taking into account the technical amendments that may be made prior to the assent or adoption. For greater clarity, these amendments will be applicable on the same dates as the federal measures with which they are harmonized.

■ Measures retained

Québec's tax legislation and regulations will be amended² to incorporate, with adaptations on the basis of their general principles, the measures relating to:

1. the exception for dividends received by financial institutions on taxable preferred shares;³
2. concessional loans granted by public authorities;
3. the exemption for international shipping income for Canadian resident companies;⁴

¹ DEPARTMENT OF FINANCE CANADA, *2023 Fall Economic Statement*, "Tax Measures: Supplementary Information", [Online], November 21, 2023 [<https://www.budget.canada.ca/fes-eea/2023/report-rapport/tm-mf-en.html>].

² Some of the measures retained, however, may not require any changes to Québec's tax legislation or regulations.

³ This exception is set out in federal Bill C-59, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*.

⁴ The election provided for in the new paragraph 250(6)d) of the *Income Tax Act* will constitute a "binding election" for the purposes of the Québec tax system. This election will be added to the list of elections in this regard. See MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2006-6*, December 20, 2006, pp. 10-12.

4. the expense deduction denial rule related to non-compliant short-term rentals, subject to the rules set out below;
5. the exemption from taxation for the first \$10 million in capital gains realized on the sale of a business to an employee ownership trust.⁵

■ Rules relating to non-compliant short-term rentals

The federal government is proposing amendments to deny the deduction of expenses made or incurred to earn income from a short-term rental⁶ where the rental is non-compliant, either because it is located in a province or municipality that does not allow the operation of a short-term rental at the location of the short-term rental, or because it does not comply with the registration, licensing or permitting requirements that apply in the province or municipality in which the short-term rental is located. A transitional relieving rule that applies in respect of the 2024 taxation year is also provided.

The Québec tax legislation will be amended to incorporate this measure.

However, for the purposes of the Québec tax legislation, the non-compliance of a short-term rental will only be determined under the registration requirements of the *Tourist Accommodation Act*⁷ and the *Tourist Accommodation Regulation*.⁸ In addition, for the purposes of the Québec tax legislation, a short-term rental will mean a residential property located in Québec that is offered for rent for a period not exceeding 31 days.

For greater clarity, for the purposes of the Québec tax legislation, non-compliance of a short-term rental will not be determined under the rules of a municipality or another province that does not permit the operation of a short-term rental at the location of the short-term rental. In addition, non-compliance of a short-term rental will not be determined under the registration, licensing or permitting requirements of a municipality or another province.

□ Measures not retained

Certain measures have not been retained because they do not correspond to the characteristics of the Québec tax system or because the latter is satisfactory or does not contain similar provisions. These measures relate to:

- the Canadian Journalism Labour Tax Credit;

⁵ At the time of publication of *Information Bulletin 2023-4*, on June 27, 2023, the Ministère des Finances du Québec announced its intention to harmonize the Québec tax legislation with the federal tax legislation with respect to the new rules on employee ownership trusts.

⁶ According to the federal legislative proposals of December 20, 2023, a short-term rental means a residential property that is offered for rent for a period of less than 90 consecutive days.

⁷ CQLR, chapter H-1.01. In this regard, section 5 of the *Tourist Accommodation Act* stipulates that, in order to qualify as a tourist accommodation establishment, the application for registration must be accompanied by a document issued by a competent authority establishing that the operation of the tourist accommodation establishment concerned does not contravene the planning by-laws relating to uses made under the *Act respecting land use planning and development* (chapter A-19.1).

⁸ CQLR, chapter H-1.01, r. 1.

- the Clean Hydrogen Investment Tax Credit;
- the Clean Technology and Clean Electricity Investment Tax Credits.

2. Changes to the constituting acts of tax-advantaged funds

For many years, tax-advantaged funds, namely the Fonds de solidarité des travailleurs du Québec (hereinafter referred to as the “Fonds de solidarité F.T.Q.”), Fondation, the Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l’emploi (hereinafter referred to as “Fondation”) and Capital régional et coopératif Desjardins (hereinafter referred to as the “CRCD Fund”), have played an important role in Québec’s investment capital industry.

Each of these funds contributes to Québec’s economic growth by providing Québec businesses with access to unsecured capital that complements traditional financing offered by financial institutions.

The Québec government supports the growth of these tax-advantaged funds by allowing them to raise capital that benefits from a non-refundable tax credit paid to the individuals who become their shareholders.

The capitalization of these funds being facilitated by the granting of a tax benefit, investment requirements were included in their constituting acts⁹ to ensure, notably, that the sums collected are used as a financing tool contributing to the growth of Québec businesses.

As part of the 2023-2024 budget speech,¹⁰ several amendments to the constituting acts of tax-advantaged funds as well as to the tax legislation were announced. These changes were aimed, in particular, at optimizing the economic spin-offs resulting from the interventions of tax-advantaged funds and at ensuring a better match between the investment horizon of the labour-sponsored funds¹¹ and the minimum holding period of the shares entitling them to the non-refundable tax credit relating to a labour-sponsored fund.

Always with a view to updating the intervention framework for these funds, new amendments will be made to their constituting acts in order to:

- enable tax-advantaged funds to contribute more to the government’s efforts to make more housing units available;
- adjust the terms for implementing the new minimum holding period for labour-sponsored funds to simplify application;
- update the rules governing the composition of Fondation’s board of directors to improve governance.

⁹ *Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)* (CQLR, chapter F-3.2.1); *Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l’emploi* (CQLR, chapter F-3.1.2); *Act constituting Capital régional et coopératif Desjardins* (CQLR, chapter C-6.1).

¹⁰ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2023-2024 – Additional Information*, March 21, 2023, pp. A.56-A.65.

¹¹ The term “labour-sponsored funds” refers to the Fonds de solidarité F.T.Q. and Fondation, while the term “tax-advantaged funds” refers to both labour-sponsored funds and the CRCD Fund.

❑ Easing of the rule providing for a 10% ceiling applicable to certain investments in the real estate sector

As part of the 2023-2024 budget speech,¹² the government announced a reclassification of the various categories of investments made by tax-advantaged funds in accordance with the investment requirements set out in their constituting acts. This regrouping, into three new categories, became effective on January 1, 2024 in the case of the CRDC Fund and will take effect on June 1, 2024 in the case of the labour-sponsored funds.

One of these new categories of eligible investments, Category 3 (“Other investments for the benefit of Québec”), notably covers investments in the real estate sector in new or substantially renovated income-producing immovables located in Québec and generating certain societal benefits for Québec.

However, the constituting acts of the tax-advantaged funds stipulate that investments classified in category 3 may represent no more than 10% of the average value of the net assets of the tax-advantaged fund concerned, as determined for the previous fiscal year. In certain circumstances, this ceiling could prevent tax-advantaged funds from fully participating in the additional effort required to build more housing units over the next few years.

To promote housing starts by tax-advantaged funds, their constituting acts will be amended to exclude from the application of the 10% investment ceiling, real estate investments in the form of housing units when these are carried out by tax-advantaged funds as part of an agreement¹³ concluded with the Québec government or one of its agents, which notably includes the Société d’habitation du Québec.

■ Application date

The constituting act of the CRDC Fund will be amended to give effect to this change as of January 1, 2024, while the constituting acts of the labour-sponsored funds will be amended as of June 1, 2024.

❑ Adjustment to the application of the minimum holding period for shares in a labour-sponsored fund

The constituting acts of labour-sponsored funds currently provide that shareholders may, under certain conditions, require the redemption of their shares after a holding period of 730 days (two years). They also stipulate that shareholders may not have their shares redeemed or purchased by agreement before reaching the age of 65 or, if they have not reached that age, before they have availed themselves of their right to early retirement or retirement.

¹² MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2023-2024 – Additional Information*, March 21, 2023, pp. A.63-A.64.

¹³ For example, on June 29, 2022, the Québec government signed an agreement with tax-advantaged funds to make 3 000 new social and affordable housing units available in the short and medium term.

This approach makes it possible to reconcile the objectives of labour-sponsored funds with respect to the supply of patient capital to Québec businesses with the objectives of individual investors with respect to retirement savings.

To ensure that the non-refundable tax credit for labour-sponsored funds contributes more to the achievement of these objectives, the government announced, in the 2023-2024 budget speech,¹⁴ that amendments would be made to the constituting acts of labour-sponsored funds to gradually extend the minimum holding period from two years to five years.

This meant that the minimum holding period for shares in a labour-sponsored fund was to be increased to three years for shares acquired as of June 1, 2024, to four years for shares acquired as of June 1, 2025, and to five years for shares acquired as of June 1, 2026.

However, given that labour-sponsored funds are frequently acquired by individuals who are already shareholders, through bi-monthly payroll deductions, it is difficult for these funds to apply the new minimum holding period requirement on an administrative basis.

To simplify the application of this new requirement, the constituting acts of the labour-sponsored funds will therefore be amended so that the calculation of the minimum holding period for shares in a fund is based on the date of redemption or purchase by agreement of these shares by the labour-sponsored fund, rather than on the date of their acquisition by the shareholder.

Accordingly, the minimum holding period will be:

- two years if the redemption or purchase by agreement of the shares of labour-sponsored funds takes place before June 1, 2027;
- three years if the redemption or purchase by agreement of the shares of labour-sponsored funds takes place between June 1, 2027 and May 31, 2029;
- four years if the redemption or purchase by agreement of the shares of labour-sponsored funds takes place between June 1, 2029 and May 31, 2031;
- five years if the redemption or purchase by agreement of the shares of labour-sponsored funds takes place after May 31, 2031.

■ **Application date**

The constituting acts of labour-sponsored funds will be amended to give effect to this change as of June 1, 2024.

¹⁴ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2023-2024 – Additional Information*, March 21, 2023, pp. A.63-A.64.

❑ Updating the rules governing the composition of Fondation’s board of directors

The constituting act of Fondation provides that its affairs are managed by a board of directors consisting of the following members:¹⁵

1. five persons appointed by the executive committee of the Confédération des syndicats nationaux (hereinafter referred to as “CSN”);
2. two persons appointed by the board of directors of the Fédération des caisses Desjardins du Québec (hereinafter referred to as “Desjardins”);
3. four persons elected by the general meeting of holders of class “A” and class “B” shares (hereinafter referred to as the “shareholders’ meeting”);
4. three persons appointed by the members referred to in paragraph 1, 2 or 3 above;
5. the chief executive officer of the fund, for the duration of his term of office.

The constituting act of Fondation also stipulates that a majority of the members of Fondation’s board of directors, including three appointed by the executive committee of the CSN, must qualify as “independent persons”. Briefly, persons qualify as independent persons if, in the opinion of the board of directors, they have no direct or indirect relation or interest that might compromise their judgment as regards the interests of the Fund.¹⁶

To update Fondation’s governance, changes will be made to the rules governing the composition of its board of directors.

Accordingly, the constituting act of Fondation will be amended so that the two members previously appointed by Desjardins will now be appointed as follows:

- one additional member will be appointed by the executive committee of the CSN, bringing the number of members appointed by the CSN to six; and
- one additional member will be elected by the shareholders’ meeting, bringing the number of members elected by this meeting to five.

The constituting act of Fondation will also be amended so that the three above-mentioned members previously elected by the members referred to in paragraph 1, 2 or 3 will now be elected by the shareholders’ meeting, bringing the number of members elected by this meeting to eight.

Lastly, the constituting act will be amended to provide that:

- four of the directors appointed by the executive committee of the CSN must qualify as independent persons;
- four of the directors elected by the shareholders’ meeting must qualify as independent persons whose candidacy is recommended by the governance and ethics committee.

¹⁵ *Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l’emploi*, s. 4.

¹⁶ *Ibid.*, s. 4.2.

■ Application date

The constituting act of Fondation will be amended to provide that the fund may implement these changes as of the date of publication of this Information Bulletin. Fondation will have until June 1, 2026 to comply with these changes and adjust the composition of its board of directors accordingly.

3. Correlative adjustments to the amendments relating to the payment of duties on transfers of immovables in several instalments

Under the *Act respecting duties on transfers of immovables* (ADTI), every municipality must collect duties on the transfer of any immovable situated within its territory.

The transferee of an immovable declares this transfer by filing an application for registration in the land register of the deed evidencing the transfer. However, as a general rule, if this deed is not registered in the land register on or before the ninetieth day after the date of the transfer, or if a transferee is required to pay transfer duties in one of the circumstances referred to in the ADTI,¹⁷ the transferee is required to submit a notice of disclosure of the transfer or a notice of disclosure, as the case may be, to the municipality in whose territory the immovable is situated. This notice must be sent on or before the ninetieth day thereafter, that is, at the time of transfer of the immovable or at the time the transferee becomes subject to the transfer duties, as the case may be.

Where a transferee fails to file the notice of disclosure of the transfer or the notice of disclosure, as the case may be, within the time limit stipulated in the ADTI, when required to do so, the tax legislation provides for special duties equal to 150% of the amount of transfer duties that would otherwise be payable in respect of the transfer of an immovable.

However, where the transferee fails to file the notice of disclosure of the transfer or the notice of disclosure, as the case may be, within the time limit stipulated in the ADTI and, after the expiry of the time limit, pays to the municipality the transfer duties due in respect of the transfer of an immovable before the Minister of Revenue sends a notice of assessment, the amount that the transferee must pay as special duties is deemed to be equal to the third of the special duties otherwise determined.

¹⁷ Section 4.1 of the ADTI lists the situations in which a transferee who has previously benefited from an exemption is nevertheless liable to pay transfer duties on the transfer of an immovable.

On December 8, 2023, Bill 39 was assented to.¹⁸ This bill notably introduces amendments to the ADTI to allow municipalities to prescribe, by by-law, the terms according to which transfer duties may be paid in several instalments.

Correlatively, the tax legislation will be amended so that, where a transferee is entitled to payment in several instalments, the special duties will be deemed to be equal to the third of the special duties otherwise determined, if the transferee has paid the first instalment to the municipality of the transfer duties in respect of the transfer of an immovable before the Minister of Revenue has sent a notice of assessment.

This amendment will apply to the transfer of an immovable made after December 7, 2023.

¹⁸ Bill 39, *An Act to amend the Act respecting municipal taxation and other legislative provisions*, assented to 8 December 2023, c. 33, ss. 37 to 40.