INFORMATION BULLETIN

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Adjustments to Various Fiscal Measures and Harmonization with Federal Legislation

This information bulletin provides a detailed description of the changes made to certain fiscal measures. These changes, mostly of a technical nature, are designed to make the tax system more consistent, ensure its integrity and recognize certain special situations.

It also sets out the position of the ministère des Finances concerning certain announcements by the Department of Finance Canada, including those relating to flow-through entities, i.e. income trusts and partnerships listed on a securities exchange, and those relating to retirement income splitting.

For information regarding the matters dealt with in this information bulletin, contact the Secteur du droit fiscal et de la fiscalité at 418 691-2236.

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Finances Québec

Adjustments to Various Fiscal Measures and Harmonization with Federal Legislation

1. MEASURES CONCERNING INDIVIDUALS

1.1 Clarifications concerning the refundable tax credit for home support of an older person

The tax system grants an individual 70 years of age or over a refundable tax credit regarding the eligible expenses paid to obtain recognized home support services (i.e. maintenance or supply services and personal support services).

In general, maintenance or supply services are those provided regarding a dwelling (an apartment in a residence for older persons or a single-family house for instance) or a lot on which the dwelling is located.

Personal support services include services that are provided to an older person and are essential to his maintenance at home, or make it possible, such as non-professional assistance services to enable a person to carry out an activity of daily life or civic support services.

The primary objective of this tax credit is to provide financial assistance to elderly persons to make it easier for them to remain in their home and, as a result, avoid or delay having to take up residence in a facility of the public health and social services network.

As part of the March 23, 2006 Budget Speech, it was announced that many of the parameters of this tax credit would be changed, as of January 1, 2007, to simplify its application, increase access to the tax credit and provide more assistance to older persons who have substantial expenses.

Accordingly, beginning in 2007, the rate of the tax credit will rise from 23% to 25%, the annual cap on eligible expenditures applicable to an older person will be raised from $12 000 to $15 000 and the amounts paid to obtain nursing care will give rise to the tax credit. In addition, the tax credit, which until now was paid by means of the employment-service paycheque mechanism, will be paid by Revenu Québec in the course of processing the tax return and, upon request, in advance.

Changes will be made to certain application details of this tax credit to recognize the expenses that an older person may pay for processing the pay of an employee and to limit the scope of the assistance service to fill forms that is included in the civic support services category.

❑ Recognition of expenses paid for a pay processing service

In general, the expenditures eligible for the tax credit correspond to the amounts paid by an older person in return for the recognized home support services supplied to him.

Currently, where recognized home support services are supplied by an employee of the older person, the expenditure eligible for the tax credit consists of the remuneration paid to such employee and the employer’s contributions attributable to such remuneration.

To reflect the fact that, as of January 1, 2007, older persons who hire an employee will no longer receive a pay processing service free of charge as would have been possible had the tax credit continued to be paid by means of the employment-service paycheque mechanism, a new component will be added to the notion of eligible expenditure relating to services provided by an employee.

More specifically, the tax legislation will be amended to stipulate that, as of taxation year 2007, the eligible expenditure relating to recognized home support services provided by an employee will also include the expenses paid for a pay processing service[1] that relate to the payment of his remuneration.

❑ Clarifications concerning civic support services

Among the home support services recognized for the purposes of this tax credit are civic support services. This category of services includes services that are necessary to deal with the requirements of daily life, such as accompaniment during outings (for medical visits, for instance), budget management and assistance for completing forms.

Since it is not delimited, the example of assistance for completing forms, which has always been given to illustrate the civic support services category since the introduction of the tax credit, can have a scope that goes far beyond services that are essential to home maintenance or that enable it.

This example could apply, among others, to a service providing assistance for completing a tax return even though this service has no connection to the maintenance of a person at home.

Accordingly, to better reflect the objective targeted by the tax credit, the tax legislation will be amended to specify that, as of taxation year 2007, civic support services will not include assistance for completing tax forms.

However, this exclusion will include an exception to recognize the special procedure that older persons must follow to receive advance payment of the refundable tax credit for home support of an older person. This exception will allow inclusion, in the category of civic support services, of assistance for completing the forms relating to advance payment of the refundable tax credit for home support of an older person.

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1 Such a service may include, among other things, the determination of contributions that an employer must pay to the government authorities as well as the preparation of information returns that the employer must file.

1.2 Deduction for the refund of social assistance benefits granted to families

Under the *Act respecting income support, employment assistance and social solidarity*,[2] social assistance benefits paid to a family that includes two spouses are generally paid jointly to them. It follows that each spouse includes, in calculating his income, half of the benefits paid to the family, except for certain amounts among which are those designed to cover the needs of children.

In addition, the spouses have a solidary obligation to refund overpayments of benefits made to the family, apart from certain exceptions where one of the spouses is at fault, in which cases such spouse is solely liable for refunding the full amount of the debt. Accordingly, it can happen that an individual refunds social assistance benefits that were included in calculating his spouse's income.

The tax legislation allows an individual to deduct, in calculating his income for a given year, the amount of social assistance benefits he refunded during the year only to the extent that such benefits were included in the calculation of his income for the year or for a prior year. Consequently, an individual cannot deduct the portion of benefits allocated to his spouse that he refunded.

To improve the fairness of the tax system, the tax legislation will be amended so that an individual may deduct, in calculating his income for a given taxation year, the amount of social assistance benefits refunded in the year pursuant to the application of section 110 of the *Act respecting income support, employment assistance and social solidarity*[3] or a similar provision of a law of a province, provided that such amount was included in calculating the income of another person for the year or for a prior year.[4]

This amendment will apply as of taxation year 2006. It will also apply to any taxation year of an individual for which the Minister of Revenue may, on the date of publication of this information bulletin, determine, or determine again, the tax payable by such individual, for such year, and make an assessment or a new assessment, or establish a supplementary assessment.

1.3 Change to the notion of child for the purposes of the work premium

Since January 1, 2005, the work premium has offered, in the form of a refundable tax credit, an incentive to low- and middle-income workers to enter or re-enter the labour market or to remain in that market.

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2 This act will be replaced, as of January 1, 2007, by the *Individual and Family Assistance Act*.

3 This provision will be replaced, as of January 1, 2007, by section 89 of the *Individual and Family Assistance Act*.

4 Also provided that the tax, interest or penalties payable by the other person that can reasonably be attributed to such amount have not been remitted under section 94.0.4 of the *Act respecting the Ministère du Revenu*.

The work premium reduces with income and is determined taking family situation into account. It rises with the presence of a child. For instance, for 2006, the maximum amount of the work premium is $512.40 for a single person, $789.88 for a childless couple, $2 196 for a single-parent family and $2 821 for a couple with at least one child.

More specifically, the work premium was designed to integrate the income security system and the tax system. Accordingly, the amount of work income excluded for the purposes of calculating the work premium corresponds to the amount established under the Employment-Assistance Program[5] for adults that do not have a severely limited capacity for employment. Similarly, the reduction thresholds of the work premium are established to be harmonized as much as possible with the income levels from which households fit for work cease to be eligible for the Employment-Assistance Program, i.e. the thresholds for leaving social assistance.

The work premium replaced the Parental Wage Assistance Program (PWA Program) that was a component of Québec's income support system. The PWA Program offered assistance to families with a dependent child where at least one adult who was a member of the household had an income from employment or from carrying on a business.

Briefly, a child is, for the purposes of the work premium, either a person regarding whom the individual or his spouse received, for the year, a child assistance payment or a person who, during the year, is under age 18, ordinarily resides with the individual and is neither the father nor the mother of a child with whom he resides nor an emancipated minor, or an adult child at school. Where custody of a child is shared under a judgment or, failing a judgment, a written agreement, the child is considered to reside ordinarily with the individual only if the percentage of custody time granted to the individual for the year is at least 30%. The requirement of a minimum of 30% of custody time for the recognition of shared custody originates with the PWA Program.

For the purposes of the *Individual and Family Assistance Act*, which will replace, as of January 1, 2007, the *Act respecting income support, employment assistance and social solidarity*, shared custody of a child will be recognized where annual custody time of the child is at least 40%. This requirement will apply as of April 1 or July 1, 2007, depending on the social assistance program in question.

Consequently, to improve integration between the income security system and the tax system, the tax legislation will be amended to specify that, for the purposes of determining the work premium to which an individual may be entitled for a given taxation year, where custody of a child is shared under a judgment or, failing a judgment, a written agreement, such child shall be considered to reside ordinarily with the individual only if the percentage of custody time granted to the latter is, for taxation year 2007, at least 35% and, as of taxation year 2008, at least 40%.

5 This program is established under the *Act respecting income support, employment assistance and social solidarity*.

1.4 Adjustment to the deduction for the residence of religious

An individual who is a member of the clergy or of a religious order or a regular minister of a religious denomination may deduct, in calculating the income from his office or from his employment for a given year, an amount equal to all the amounts included in calculating his income for the year in relation to the residence he occupies because of his office or employment.[6]

Where an individual who holds such status is not lodged by his employer or where the latter does not pay him a reasonable allowance in relation to the residence he occupies, such individual may deduct, in calculating the income from his office or from his employment, an amount regarding either the rent and the expenses in respect of utilities that he pays for his principal place of residence, or the fair rental value of such residence that belongs to him or belongs to his spouse, including the value of utilities. However, the amount that may be deducted on such account for a year is generally limited to $10 000 or an amount representing one third of the individual's remuneration from his office or from his employment for the year, whichever is greater.

This deduction, whose purpose is to recognize that the residence of the individual is often used as an office or meeting place for members of his congregation or of his parish, is allowed only to the extent that the duties of the individual consist either in ministering a diocese, a parish or a congregation or to have charge of it, or in engaging exclusively in full-time administrative service because of his appointment by a religious order or a religious denomination.

According to the existing tax legislation, only a residence that an employer takes charge of is subject to the requirement that it be occupied by the individual because of the duties he carries out for him to be able to claim the deduction.

Traditionally, the lack of such a requirement in the case where an individual bears the costs of his dwelling was of little importance because, in fact, his residence served, because of his status and the duties he carried out, as an office or meeting place for the members of his congregation or his parish.

However, these days, it frequently happens that individuals, whose status and duties give rise to the deduction, hold less traditional offices or employment that do not require or imply the use or utilization of their residence as an office or meeting place for the members of a congregration or a parish. In such cases, while the holder of such office or such employment may have the required status and carry out the duties covered by the deduction, there is no justification for his benefiting from tax relief regarding his residence.

6 Under the tax legislation, an individual must include, in calculating his income, the value of the benefits he receives or enjoys because of his office or employment (the value of a dwelling supplied free of charge, for instance) as well as the allowances he receives for personal or subsistence expenses or for any other purpose.

To improve the integrity of the tax system, the tax legislation will be amended to stipulate that an individual who satisfies the status and duties criteria may deduct, in calculating his income, an amount regarding his residence – on account of rent, rental value or expenses relating to utilities – only if he is required to make use of or utilize such residence in the course of his office or his employment.

This amendment will apply as of taxation year 2007.

2. MEASURES PERTAINING TO BUSINESSES

2.1 Elimination of separate Québec elections

Some provisions of the tax legislation stipulate that a taxpayer may elect a given tax treatment, for instance to increase the tax cost of an asset, establish the status of a taxpayer, or determine the time when an event is deemed to occur.

Most of these situations involve the taxpayer making an election as to whether or not to avail himself of this possibility. However, Québec's tax legislation and the federal tax legislation are separate in this regard. Separate elections must be made, if necessary, with each of the two levels of government.

The existence of a Québec election separate from the corresponding federal election can give rise to provincial tax avoidance transactions that clearly go against fiscal policy. This situation is unacceptable. The purpose of these various elections is not to enable avoiding payment of a tax, but rather to allow taxpayers a degree of flexibility regarding the tax treatment applicable to them.

In the past, certain specific restrictions were made to prevent this type of abuse.[7] However, it appears that these ad hoc adjustments have not been enough to curb the current trend in this matter.

❑ Application of the general anti-avoidance rule

Consequently, the ministère des Finances will ask Revenu Québec to accentuate its audits designed to identify taxpayers who made an election whose immediate or future result is to avoid payment of a provincial tax and to apply, regarding such elections, the general anti-avoidance rule contained in Québec's tax legislation.

❑ Legislative amendments

Moreover, the existing context where provisions are diverted from their worthwhile objective to avoid a provincial tax requires that the flexibility of treatment formerly allowed be reduced.

Accordingly, to avoid any future ambiguity, the tax legislation will be amended to stipulate that if a valid election is made for federal income tax purposes, the same election will be deemed made for Québec income tax purposes.

7 In particular, the tightening of the rules relating to the transfer of property with no immediate tax impact (Information Bulletin 96-9 of December 19, 1996 and March 25, 1997 Budget Speech), the changes to the capital gains reserve (Information Bulletin 97-5 of October 16, 1997) and the implementation of rules to counter provincial tax avoidance by means of a trust (March 31, 1998 Budget Speech).

As a corollary, if no valid election is made for federal income tax purposes, no election will be possible for Québec income tax purposes.

For greater clarity, the application of these new rules will not be conditional on the intention to avoid payment of provincial taxes.

❑ Targeted elections

These changes will apply regarding most situations where an election is possible under federal and Québec tax legislation.

To illustrate, these changes will apply to the possibility that exists to increase the tax cost of certain assets in the course of acquiring control of a corporation or in the course of the winding-up of a subsidiary by a parent corporation, or to the possibility for a corporation that receives a dividend part of which is a taxable dividend to designate any part of the taxable dividend as being a separate taxable dividend.

Moreover, these changes will not result in replacing the specific changes previously announced concerning the existence of separate elections in Québec's tax legislation.

Accordingly, for example, the exception applicable to taxpayers almost all of whose business is carried out in Québec and who are parties to a rollover will be maintained.[8] For greater clarity, this exception will not be transposed to these changes. However, in the particular case of the exceptions relating to the notion of allowable difference[9] applicable to certain transfers of property, these will be withdrawn.

More specifically, the sections targeted by the Taxation Act are as follows:

> 6.2, 7.0.3, 7.0.5, 21.4.2, 21.40, 47.7, 49.2.3, 85.5, 85.6, 93.3.1, 96, 110.1, 157.10, 184, 190, 194, 199, 215, 238.3.1, 248, 250.1, 261.2, 279, 280.3, 284, 286.1, 308.6, 312.3, 313.0.1, 333.1, 336.1, 418.26, 453, 462.6.1, 462.16, 470, 471, 475, 477, 478, 479, 485.21, 487.0.3, 496, 500, 517.4.5, 560, 569, 589, 589.2, 601, 660.1, 688.0.0.1, 688.0.0.2, 688.0.1, 688.1.1, 692.8, 716, 726.7, 726.7.1, 726.7.2, 736, 752.0.10.12, 752.0.10.13, 771.2.1.3, 785.2, 785.2.2, 785.2.3, 785.2.4, 803.1, 844.4, 851.20, 851.28, 851.33, 853, 865, 985.3, 1054, 1120.0.1 et 1121.7.

For greater clarity, the fact that an election is not indicated in this list does not mean that such election may be used to avoid payment of provincial taxes. Accordingly, if such a separate election is used for that purpose, the general anti-avoidance rule contained in Québec's tax legislation may be invoked. In addition, other elections will be added to this list as required.

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8 This exception was introduced with the tightening of rules relating to the transfer of property with no immediate tax impact, more specifically as part of the March 25, 1997 Budget Speech.

9 This refers to streamlining measures announced in Information Bulletin 2000-10 of December 21, 2000 that allow separate elections in certain very specific situations, i.e. where the difference in the proportion of business done in Québec between the parties to the transaction does not exceed 10%, and up to 25% in certain cases.

❑ Application of Québec limits

In the case where an election is deemed made for Québec tax purposes, because of the existence of an election for federal tax purposes, the amount applicable for Québec tax will, in general, be the amount applicable for federal tax.

Despite the presumption of general application indicated above, the differences between federal and Québec tax data of the various parameters will be taken into account to ensure that an undesirable result is not obtained. To illustrate, the Québec tax cost of an asset will be used as a lower limit while Québec earned income will be used as an upper limit.

❑ Additional administrative requirement

Taxpayers that make an election for federal tax purposes will have to enclose a copy of such election with their Québec tax return.

A taxpayer who fails to comply with this additional administrative requirement will be liable for a penalty of $25 for each day such omission lasts, up to $2 500.

❑ Application dates

Generally speaking, these changes will apply regarding elections filed as of the date of publication of this information bulletin.

In other words, it will no longer be possible, from the date of publication of this information bulletin, to make a separate election if no election is made for federal tax purposes. Similarly, if such an election is filed at the federal level as of that date, the corresponding Québec election will be covered by the new rules, i.e. that the same election is deemed made subject to the Québec limits.

In the particular case of the withdrawal of the exceptions relating to the notion of allowable difference applicable to certain transfers of property, this change will apply regarding transfers made after the date of publication of this information bulletin.

2.2 Adjustment concerning the eligibility for various tax benefits through partnerships

The tax legislation stipulates various tax benefits a taxpayer may claim through a partnership, in particular regarding scientific research and experimental development (R&D).

❑ Case of R&D

Briefly, refundable tax credits for R&D apply to R&D expenditures that a person or partnership incurs regarding R&D work that it does or that it confers to a subcontractor, as the case may be. Moreover, the tax credit for an R&D consortium applies to the contribution paid by a taxpayer regarding an eligible research consortium.

Where, during a fiscal year, a partnership carries out or has carried out on its behalf R&D work, the tax credit may be claimed by each taxpayer that is a member of such partnership at the end of the fiscal year.

However, the tax legislation does not allow a taxpayer that is a member of a partnership (first partnership) to claim a tax credit for R&D regarding an R&D expenditure incurred or a contribution paid in respect of an eligible research consortium, as the case may be, by a partnership of which the first partnership is a member.

Because of commercial imperatives, for instance, it can happen that a taxpayer may prefer to organize his affairs by overlaying partnerships rather than by operating through many corporations or many divisions. However, for this reason alone, the taxpayer runs the risk of losing the benefit of a tax credit for R&D.

Consequently, the tax legislation will be amended to allow the attribution of a tax credit for R&D to a taxpayer that is a member of the first partnership regarding an eligible expenditure incurred or a contribution paid in respect of an eligible research consortium, as the case may be, by a partnership of which the first partnership is a member.

For greater clarity, the taxpayer may also claim a tax credit for R&D in the case where more than one partnership comes between the taxpayer and the partnership that incurs the eligible expenditures or that pays the contribution regarding a research consortium, as the case may be.

❑ Other tax benefits

The same observations as those made regarding tax benefits relating to R&D can be made regarding other tax benefits stipulated in Québec’s tax legislation and which a taxpayer may claim where he is directly a member of a partnership that has satisfied the conditions giving rise to such a benefit.

Consequently, to standardize the tax treatment applicable in situations involving overlaid partnerships, a similar adjustment will be made regarding each of the other tax benefits stipulated in the *Taxation Act* and of which a taxpayer who is a member of a partnership may avail himself.

❑ Anti-avoidance rule

For the purposes of determining the amount of the tax benefits for R&D or the amount of one of the other tax benefits, regarding a taxpayer who is a member of a partnership that is part of a structure consisting of overlaid partnerships, if, in the view of the Minister of Revenue, the use of such a structure is part or an operation or a transaction, or a series of operations or transactions, one of the purposes of which is to obtain, for the taxpayer, a tax benefit or an increase in a tax benefit, that, in the absence of such structure, could not be obtained, the amount of such benefit will be determined as if only the partnership of which the taxpayer is directly a member existed.

❑ Application date

The application of these amendments will be declaratory, except for taxation years prescribed on the day of publication of this information bulletin. Accordingly, they will also apply regarding a taxation year for which a notice of objection or of appeal or a waiver of prescription has been duly served on the Minister of Revenue before such day.

However, concerning a taxation year that is not prescribed on the day of publication of this information bulletin and for which an application for adjustment should prove necessary, a taxpayer must have formulated an application in this regard by the prescription date applicable to such taxation year or that corresponding to the 90th day following the date the law giving effect to this amendment is assented to, whichever is later.

2.3 Recognition of new eligible public research centres

A taxpayer may obtain a refundable tax credit for university R&D of 35% in relation to scientific research and experimental development (R&D) activities where such activities are carried out by an eligible public research centre, under a contract the taxpayer concludes with such centre.

In this regard, it is the responsibility of the ministère des Finances to recognize a research centre as an eligible public research centre.

More specifically, to be recognized as an eligible public research centre for the purposes of the tax credit for university R&D, a research centre must demonstrate its capacity, in terms of human, material and financial resources, to carry out R&D work on behalf of businesses. Accordingly, the employees must have the qualifications needed to carry out the R&D work sub-contracted to the research centre and the research centre must have premises and equipment that enable it to carry out such work in its field of expertise.

In addition, the research centre must obtain most of its financing from public funds.

Two new research centres will be recognized for the purposes of the tax credit for university R&D, namely the Centre des technologies de fabrication en aérospatiale (CTFA) and the Centre d'expérimentation et de transfert technologique en acériculture du Bas-Saint-Laurent (CETTA).

In the case of the CTFA, such recognition will apply regarding R&D carried out after December 31, 2005, under an eligible research contract concluded after that date and, in the case of the CETTA, regarding R&D carried out after May 31, 2006, under an eligible research contract concluded after that date.

Moreover, all the research centres that the ministère des Finances has recognized as eligible public research centres for the purposes of the tax credit for university R&D, must now annually confirm with the ministère des Finances that they satisfy the eligibility criteria listed above. This annual return relates to a calendar year and must be filed no later than the last day of February following such calendar year.

Lastly, an eligible public research centre must advise the ministère des Finances as soon as a change occurs, regarding human, material or financial resources, that could compromise its capacity to carry out R&D work on behalf of companies or to satisfy the requirement relating to the source of its financing.

2.4 Adjustment to the SME Growth Stock plan for seasonal businesses

The SME Growth Stock plan (Accro-PME) was introduced in the April 21, 2005 Budget Speech. The new plan broadly reproduces the same framework as the stock savings plan (SSP) that was eliminated at the same time.

Briefly, this plan providing assistance for the capitalization of corporations was introduced to foster a financing structure allowing Québec companies to maintain their economic activities in Québec or increase such activities. The purpose of the plan is to ensure an injection of capital in a market segment generally less targeted by investors.

In this regard, a corporation that wishes to issue shares under the Accro-PME plan must, in particular, have had at least five full-time employees, who are not insiders, throughout the period of twelve months preceding the date of the receipt of the final prospectus or filing exemption. Such corporation must also have carried on a business throughout such twelve-month period.

These requirements, concerning five employees and the carrying-on of a business throughout the twelve-month period preceding the date of the receipt of the final prospectus or filing exemption, are designed to target corporations with a minimum commercial track record showing a degree of stability and giving an indication that the commercial activity is ongoing.

As currently formulated, these requirements make no allowance for the particular situation of seasonal businesses that are carried on intensively over a period of less than twelve months annually.

Given that such businesess are present in various regions of Québec, that they contribute to Québec's economic development in terms of job creation and investment, and that they satisfy the objectives of the Accro-PME plan since they are part of a market segment generally less targeted by investors, the Accro-PME plan will be streamlined so that corporations that carry on seasonal businesses can be eligible for this capitalization assistance plan from now on.

More specifically, the tax legislation will be amended so that a corporation that carries on a seasonal business may be eligible for the Accro-PME plan from now on even though it did not employed at least five full-time employees, who are not insiders, throughout the twelve-month period preceding the date of the receipt of the final prospectus or of the filing exemption, or did not satisfy the requirement that it carry on a business throughout such period.

In this case, Revenu Québec may apply these requirements on the basis of a shorter period. Accordingly, as part of the application for an advance ruling of the Accro-PME plan, the corporation will have to show that it had at least five full-time employees, who are not insiders, throughout a period of seasonal activity and that it carried on a business throughout such period preceding the date of the receipt of the final prospectus or filing exemption.

In this regard, the corporation will be required to demonstrate, to the satisfaction of Revenu Québec, that it carries on a seasonal business and that the continuous duration during which its seasonal business is carried on is comparable with that of other businesses operating in the same activity sector.

For greater clarity, apart from this amendment, all the rules applicable to the Accro-PME plan will remain unchanged.

This amendment will apply as of the day of publication of this information bulletin.

2.5 Eligibility of certain corporations not at arm's length with a broadcaster for the tax credits for film and television production

The refundable tax credit for Québec film and television production was introduced on December 19, 1990. Initially, access to this tax credit was limited to independent producers, i.e. corporations at arm's length with a broadcaster (corporation that holds a broadcasting license issued by the CRTC).

In June 1998, eligibility for this tax credit and the tax credit for film production services was granted to broadcasters and their production subsidiaries ("broadcasters") for a period of five years. This opening ended March 31, 2003.

Moreover, since June 30, 2004, a corporation that is not at arm's length with a broadcaster may be eligible for the tax credits for Québec film and television production if more than 75% of its annual production is made for distributors and broadcasters other than the broadcaster with which it is not at arm's length. If a corporation that is not at arm's length with a broadcaster satisfies this test, it may receive the tax credits for film and television production, but only for productions it makes for corporations other than the broadcaster with which it is not at arm's length.

Accordingly, the introduced double criterion (eligibility on the basis of a minimum volume of independent production and limited solely to productions made for a broadcaster at arm’s length) is designed to ensure compliance with the fiscal policy regarding the ineligibility of broadcasters and their production subsidiaries, while allowing an independent producer that is not at arm’s length with a broadcaster to receive a tax credit only when it acts like such an independent producers, i.e. when it does not deal with the broadcaster with which it is not at arm’s length.

However, the requirement to maintain a minimum volume of independent production of 75% annually may be unfair since it makes no allowance for an exceptional drop in production volume with third parties for a given year.

Accordingly, spreading the test over a longer period would make it possible to better take into account the annual fluctuation in the volume of independent production made by a corporation, provided that a minimum threshold of production is maintained. Moreover, by reducing this minimum production threshold it would be possible to avoid depriving a corporation not at arm's length with a broadcaster, for one or more years, of tax assistance regarding only its independent production because of a substantial but nonetheless exceptional decline in its volume of independent production made during a given prior year.

In this context, the tax legislation will be amended to stipulate that a corporation that is not at arm's length with a broadcaster and more than 50% of whose production costs incurred in the three taxation years preceding the one regarding which a certificate is filed with SODEC were incurred in relation to productions broadcast by a corporation other than the broadcaster with which it is not at arm’s length, is an eligible corporation for the purpose of the tax credits for film and television production for such year. For greater clarity, only taxation years during which productions were made will be considered for the purposes of calculating the minimum threshold.

This change will apply regarding a taxation year ended after the date of publication of this information bulletin.

2.6 Changes to the refundable tax credits granted in certain regions

In recent years, three refundable tax credits were put in place to encourage job creation in Québec's resource regions, namely the refundable tax credit for Gaspésie and certain maritime regions of Québec, the refundable tax credit for the Vallée de l'aluminium and the refundable tax credit for processing activities in resource regions.

Generally speaking, these tax credits are granted with respect to the increase in payroll attributable to eligible employees of an eligible corporation operating in a covered region, until December 31, 2009.

More specifically, to determine its refundable tax credit, an eligible corporation must compare the payroll of a given calendar year with that of its reference calendar year. This reference calendar year corresponds to the calendar year preceding the one during which the corporation began to carry on its certified business.

According to the existing terms and conditions, territorial exclusivity is allowed regarding specific activities carried out in certain resource regions of Québec. For example, an activity covered by the refundable tax credit for Gaspésie and certain maritime regions of Québec, such as the manufacturing of wind-power generators, may not be recognized as the activity of a certified business for the purposes of the refundable tax credit for processing activities in resource regions.

To confirm the territorial exclusivity granted to certain maritime regions regarding the manufacturing of wind-power generators, a clarification was made to the notion of certified business, on November 12, 2004, for the purposes of the refundable tax credit for Gaspésie and certain maritime regions of Québec.[10]

Moreover, to maintain the integrity of the tax credits, special rules are stipulated in cases of business continuation. According to the current rules, in the calendar year in which a business acquisition[11] involving non-associated corporations occurs, no increase in payroll is allowed the eligible corporation in respect of the acquired business.

An initial change will be made to the refundable tax credit for Gaspésie and certain maritime regions of Québec to defer the coming into force of the clarification of November 12, 2004.

In addition, changes will be made to the business continuation rules, for the purposes of the refundable tax credit for Gaspésie and certain maritime regions of Québec and the refundable tax credit for processing activities in the resource regions, to make allowance for the seasonality of operations of certain businesses.

❑ Refundable tax credit for Gaspésie and certain maritime regions of Québec

Briefly, the refundable tax credit for Gaspésie and certain maritime regions of Québec is allowed with respect to the increase in payroll attributable to eligible employees of an eligible corporation operating in the administrative regions of Gaspésie–Îles-de-la-Madeleine, Côte-Nord, Bas-Saint-Laurent[12] and the Matane RCM, until December 31, 2009.

To be eligible, a corporation must carry on a certified business, i.e. a business regarding which an eligibility certificate is issued by Investissement Québec and whose activities are carried out in the development of marine or wind-power resources sectors.

To determine its refundable tax credit, an eligible corporation must compare the payroll of a given calendar year with that of its reference calendar year. This reference calendar year corresponds to the calendar year preceding the one during which the corporation began to carry on its certified business.

- ### Territorial exclusivity

As mentioned above, a clarification was made on November 12, 2004 to confirm the territorial exclusivity granted to the Gaspésie–Îles-de-la-Madeleine region and the Matane RCM regarding the manufacturing of wind-power generators and their main components, in particular the tower, wind rotor and nacelle, as of calendar year 2005.

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10 Information Bulletin 2004-9.

11 In the interests of readability, reference is made only to the notion of business although parts of businesses and transfer of activity in the course of outsourcing contracts are also covered.

12 The Bas-Saint-Laurent region is an eligible region regarding activities carried out in the marine biotechnology and mariculture sector.

The coming into force of this clarification will be deferred to calendar year 2006. Consequently, the clarification to the refundable tax credit for processing activities in the resource regions to enable a corporation to have the manufacturing of wind-power generator components recognized as an activity of a certified business, for calendar years 2001 to 2004 inclusive, will apply for an additional calendar year, namely calendar year 2005.

- **Business continuation rules**

Business continuation rules are designed to maintain the integrity of the tax credit and to prevent an eligible corporation from receiving tax assistance when the increase in its payroll results from the acquisition of a business carried on by another person.

Briefly, in the calendar year in which a business acquisition involving non-associated corporations occurs, no increase in payroll is allowed the eligible corporation in respect of the acquired business. The adjustments made in that case consider, first, that the eligible corporation that acquires a business is generally not in a position to obtain the information on the payroll attributable to the employees of such business and, second, that the acquired business is carried on on an annual basis.

The application of these rules may lead to an unintended result where the activities of the acquired business are carried out on a seasonal basis, since the payroll attributable to the employees of the acquired business is then determined on an annual basis, regarding both the year of acquisition and the reference calendar year.

Accordingly, a change will be made to the business continuation rules involving non-associated corporations to take the seasonality of operations of some businesses into account. In the calendar year in which the acquisition of a business carried on on a seasonal basis occurs, the eligible corporation must determine the payroll attributable to the eligible employees of the business thus acquired by considering the number of days during which the seller corporation paid wages to such employees regarding the latter’s reference calendar year. Consequently, the payroll attributable to such eligible employees, regarding the reference calendar year of the eligible corporation, will be determined on a seasonal basis.

As a corollary, the seller corporation will have to adjust its payroll, regarding its reference calendar year, by taking into account the number of days during which it effectively pays wages to its eligible employees.

These amendments will apply as of calendar year 2006.

❑ Refundable tax credit for processing activities in the resource regions

Briefly, the refundable tax credit for processing activities in the resource regions is granted regarding the increase in payroll attributable to eligible employees of an eligible corporation operating in a resource region of Québec, until December 31, 2009.

To be eligible, a corporation must carry on a certified business, i.e. a business regarding which an eligibility certificate is issued by Investissement Québec and whose activities concern in particular the secondary or tertiary processing of wood, metals or non-metallic minerals.

According to the existing terms and conditions, territorial exclusivity is granted regarding specific activities carried out in the maritime regions and in the Vallée de l'aluminium. For example, an activity covered by the refundable tax credit for Gaspésie and certain maritime regions of Québec, such as the manufacturing of wind-power generators, may not be recognized as the activity of a certified business for the purposes of the refundable tax credit for processing activities in resource regions.

As a corollary to the clarification made to the refundable tax credit for Gaspésie and certain maritime regions of Québec, a corporation carrying on a business whose activities consist in manufacturing any of the main components of a wind-power generator, and for which an application to obtain an eligibility certificate was filed with Investissement Québec before November 12, 2004 may claim the refundable tax credit for processing activities in the resource regions, regarding an additional calendar year, namely 2005, if it otherwise satisfies the other applicable conditions.

In addition, like the changes made to the refundable tax credit for Gaspésie and certain maritime regions of Québec, the changes relating to business continuation rules will also be applied according to the same terms and conditions and the same application date as those indicated in the case of the refundable tax credit for Gaspésie and certain maritime regions of Québec.

2.7 Technical adjustment to refundable tax credits that have been eliminated

Some refundable tax credits stipulated by Québec's tax system are granted with respect to the increase in payroll attributable to eligible employees of an eligible corporation operating in an eligible region or a designated site covered by these tax credits.

With the exception of refundable tax credits granted in certain regions,[13] all the refundable tax credits based on the increase in payroll were eliminated in the June 12, 2003 Budget Speech, in particular the refundable tax credit for e-business activities carried out in certain designated sites and the refundable tax credit for innovation centres.

However, briefly, a corporation that was eligible on June 12, 2003 or, if it otherwise satisfied the other conditions, a corporation that filed an application to obtain a certificate prior to that date, may receive either of these tax credits according to the terms and conditions already stipulated, subject to certain rules relating to acquisitions of control.

13 The refundable tax credit for the Vallée de l'aluminium, the refundable tax credit for Gaspésie and certain maritime regions of Québec and the refundable tax credit for processing activities in the resource regions.

To determine its refundable tax credit, an eligible corporation must compare the payroll of a given calendar year with that of its reference calendar year. This reference calendar year generally corresponds to the calendar year preceding the one during which the corporation began to carry on its certified business.

To maintain the integrity of the tax credits, special rules are stipulated in cases of business continuation. According to the current rules, in the calendar year in which a business acquisition involving non-associated corporations occurs, no increase in payroll is allowed the eligible corporation in respect of the acquired business. It is then considered that the eligible corporation that acquires a business is generally not in a position to obtain the information on the payroll attributable to the employees of such business.

Moreover, for the purposes of the refundable tax credits granted in certain regions, the business continuation rules have been streamlined to allow the transfer of the attributes of a seller corporation to a buyer corporation where the two corporations are associated at the time of the transfer. Accordingly, in the calendar year of such transfer, the payroll incurred by the seller corporation, regarding such calendar year and the reference calendar year and relating to the transferred business, is attributed to the buyer corporation.

To ensure uniform treatment of the refundable tax credits based on the increase in payroll that corporations may still receive, a change will be made to the application details of the refundable tax credit for e-business activities carried out in certain designated sites and to the refundable tax credit for innovation centres. The business continuation rules, for the purposes of these two tax credits, will be harmonized with the business continuation rules stipulated for the purposes of the refundable tax credits granted in certain regions, with the exception of the changes made in this information bulletin and relating to the seasonality of operations of certain businesses.

This change will apply as of calendar year 2006.

2.8 Montréal Foreign Trade Zone at Mirabel

In the March 9, 1999 Budget Speech, an action plan was introduced to help attract companies to contribute to the development of Mirabel and strengthen the role of Greater Montréal as a hub of international trade.

In this regard, various tax benefits were implemented to assist corporations that located in the Montréal Foreign Trade Zone at Mirabel (Mirabel Zone) to operate in the fields of international logistics, aircraft repair and maintenance, further professional training in aviation as well as in light processing.

Subsequently, another tax assistance measure was added, namely a refundable tax credit equal to 25% of construction, renovation or conversion expenses incurred by an eligible corporation regarding a strategic building located within the Mirabel Zone.[14]

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14 Information Bulletin 2000-4, June 29, 2000.

All these measures were eliminated in the June 12, 2003 Budget Speech as part of the revision of the amount of tax assistance of all the preferential measures regarding companies. However, transition rules allowed corporations that were so entitled to continue to benefit from these fiscal measures until the end of the initially stipulated time period.

❑ Change to the recapture criteria of the refundable tax credit for the construction, renovation or conversion of strategic buildings in the Mirabel Zone

Briefly, before the refundable tax credit for the construction, renovation or conversion of strategic buildings in the Mirabel Zone was eliminated, any corporation that owned a strategic building, carried on a business in Québec and had an establishment there was eligible for this tax credit.

In this regard, the expression “strategic building” means a building that satisfies the following requirements:

— it is located on the territory of the Mirabel Zone;

— no portion of the building is used or intended to be used for residential purposes;

— the corporation holds an eligibility certificate regarding such building issued annually by Investissement Québec.

Such annual eligibility certificate enables Investissement Québec to confirm that at least 75% of the total space of the strategic building houses, or is intended to house, one or more corporations that hold an eligibility certificate in relation to the carrying on of an eligible business for the purposes of the tax benefits relating to the Mirabel Zone. The corporation must obtain such eligibility certificate certifying compliance with this condition for each of the nine years following the end of the construction, renovation or conversion work on the building, as the case may be.

Moreover, the existing tax legislation stipulates that the corporation may not dispose of the strategic building during such period of nine years.

Failure to comply with either of these two conditions during such period of nine years, i.e. the condition concerning the use of the strategic building and the condition concerning ownership of the building, entails the recapture of all or part of the tax credit, depending on when during the period of nine years such failure occurs.

In some situations, a corporation that received this tax credit cannot maintain ownership of the strategic building, which continues to be used by such corporation in relation to the carrying on of an eligible business for the purposes of the tax benefits relating to the Mirabel Zone.

In this context, a change will be made to the conditions of use and of ownership of a strategic building in situations where a corporation is the owner of a strategic building that it uses or intends to use at 75% at least of its total space in relation to a business that it carries on in the Mirabel Zone.

More specifically, the tax legislation will be amended so that a corporation that received the refundable tax credit for the construction, renovation or conversion of strategic buildings in the Mirabel Zone is not subject to the recapture of this tax credit where, at any time during the period of nine years following the end of the construction, renovation or conversion work on the building, as the case may be, it disposes of the strategic building that it alone uses at such time, or that it intends to use alone, at 75% at least of the total space of such building in relation to a business that it carries on and that is eligible for the purposes of the tax benefits relating to the Mirabel Zone.

In addition, as of the time of such disposition, the strategic building must continue to be used or intended to be used uninterruptedly for the remainder of such period of nine years at 75% at least of the total space of the building in relation to the business that is carried on by the corporation and that is eligible for the purposes of the tax benefits relating to the Mirabel Zone.

In this context, the conditions for issuing the eligibility certificate of the strategic building by Investissement Québec will be changed to reflect this change in this particular situation. In this regard, it will be incumbent on the corporation that disposed of the strategic building and that continues to use it as described above to obtain from Investissement Québec the annual eligibility certificate in relation to the strategic building.

Accordingly, the corporation's failure to obtain such eligibility certificate will entail the recapture of this tax credit from such corporation according to the same parameters as those currently stipulated in the tax legislation, subject to the change mentioned above.

These changes will apply to dispositions of strategic buildings that occur after the day of publication of this information bulletin.

2.9 Adjustment to the limit relating to the deductibility of investment expenses

Under existing tax provisions, an individual may deduct in calculating his income for a taxation year, under certain conditions, the expenses he incurred during the taxation year in order to earn business or property income.

However, since the expenses incurred to earn property income are expenses attributable to the realization of passive income, and considering that it is desirable, from a fiscal policy standpoint, to achieve a degree of symmetry between the flow of income from the investments held and the expenditures incurred to earn such income, a measure limiting the deductibility of investment expenses was announced in the March 30, 2004 Budget Speech, completing the general provisions on the deductibility of expenses.

Accordingly, for a taxation year, the deductibility of investment expenses incurred by an individual[15] is now limited to the income from such investments realized during the taxation year.[16]

Briefly, except for losses resulting from the rental of an asset, the investment expenses considered in calculating the limit on the deductibility of investment expenses include the items otherwise included in the calculation of the cumulative net investment loss (CNIL). For example and as specified in Information Bulletin 2005-3 of March 11, 2005, the deductions for resources, which include briefly exploration and development expenses incurred in Canada or abroad, constitute, in a proportion of 50%, investment expenses for the purposes of the limit on the deductibility of investment expenses.

However, exploration expenses incurred in Québec that are covered by a waiver in favour of an investor under the flow-through share plan are not considered investment expenses for the purposes of the limit on the deductibility of investment expenses when they give rise to an additional deduction in respect of resources. Such is the case, for instance, with surface mining exploration expenses that give rise to additional deductions totalling 50%. This preferential tax treatment is designed to foster exploration in Québec.

While most exploration expenses incurred in Québec are thus excluded from the application of the limit on the deductibility of investment expenses, some expenses incurred in Québec, such as expenses relating to renewable energy and energy conservation in Canada, constitute investment expenses for the purposes of this measure since they do not give rise to the additional deduction in respect of resources, even though the expenses are in respect of resources.

Accordingly, to standardize the treatment of deductions in respect of resources, in the case of expenses incurred in Québec, a change will be made to the notion of investment expenses for the purposes of the limit on the deductibility of investment expenses.

Accordingly, all exploration and development expenses incurred in Québec, including expenses relating to renewable energy and energy conservation, covered by a waiver in favour of an investor under the flow-through share plan, will not constitute investment expenses for the purposes of the limit on the deductibility of investment expenses.

This change will apply regarding either a flow-through share issued further to an investment made after March 11, 2005 or an application for preliminary prospectus receipt or filing exemption, as the case may be, made after such date, or a flow-through share acquired from the proceeds of a public offering of securities that are interests in a partnership issued further to an investment made after March 11, 2005 or an application for preliminary prospectus receipt or an application for filing exemption, as the case may be, made after such date.

15 For the purposes of this measure, an individual also means a personal trust.

16 However, investment expenses that cannot be deducted in such taxation year may be carried over against investment income earned in one of the three preceding taxation years or in any subsequent taxation year, provided the investment income earned in any of these years exceeds the expenses then deducted.

2.10 Change to the rules for calculating interest in relation to the refund of an overpayment

The Taxation Act stipulates the circumstances in which an overpayment by a taxpayer who files a tax return for a taxation year may be refunded to such taxpayer, as well as the rules for calculating interest in relation to such refund.

Briefly, interest is paid to a taxpayer on such an overpayment as of the later of certain dates, for instance the 46th day following the day when Revenu Québec receives a written request from the taxpayer to amend the tax return he filed for the taxation year.

However, none of the existing rules for calculating interest in relation to a refund of an overpayment deals with the situation where the refund results from information sent to Revenu Québec by the federal government or by the government of another jurisdiction.

In this context, the Taxation Act will be amended so that, when amendments are made to the tax return filed by a taxpayer for a taxation year further to information sent directly to Revenu Québec by the federal government or by the government of another jurisdiction, and Revenu Québec reimburses an overpayment by the taxpayer for such taxation year because of those amendments, interest on such overpayment by the taxpayer will be calculated as of the later of the dates stipulated by the Taxation Act or the 46th day following the day on which Revenu Québec receives such information.

Moreover, such information may also be sent directly to Revenu Québec by the taxpayer. The documents sent to Revenu Québec by the taxpayer must then correspond to the original documents received by the taxpayer from the federal government or the government of another jurisdiction.

This change will apply regarding refunds arising from information sent to Revenu Québec by the federal government, the government of another jurisdiction or the taxpayer after the publication date of this information bulletin.

2.11 Investments by tax-advantaged funds in FIER Partners, L.P.

The Fonds de solidarité des travailleurs du Québec (F.T.Q.), Fondaction – the Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi – and Capital régional et coopératif Desjardins are authorized to raise capital that enjoys a tax advantage. In return, investment requirements have been included in their incorporating act.

Each of the incorporating acts of these tax-advantaged funds stipulates that, for each fiscal year, the eligible investments of the fund must represent, on average, at least 60% of the average net assets of the fund for the preceding fiscal year.[17]

For the purposes of this requirement, hereunder called the "60% requirement", the eligible investments of a tax-advantaged fund include any investment – entailing no security or hypothec – that the fund made or is deemed to have made in FIER Partners, L.P. after March 21, 2005.

In this regard, the investments[18] that a tax-advantaged fund agreed to make in FIER Partners, L.P. after March 21, 2005 and for which amounts have been committed but not yet disbursed[19] are deemed to have been so made after that date.

Since the formation of FIER Partners, L.P., the activities of this limited partnership have always been concentrated on two components, namely support for the creation of sector development funds and participation in financing developmental economic development projects. The field of activities of FIER Partners, L.P. was extended in the fall of 2006 to a third component that consists in supporting the creation of funds that invest in seeding-stage companies, such component hereunder called "seeding component". This component was implemented to facilitate raising funds from the private sector in partnership with FIER Partners, L.P. to meet the financing needs of seeding-stage companies.

Given that the initial capitalization of FIER Partners, L.P. is provided, in part, by tax-advantaged funds and to recognize the additional risk implied, for these funds, by the addition of the seeding component to the activities of the limited partnership, an amendment will be made to the *Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)*, to the *Act to establish Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi* and to the *Act constituting Capital régional et coopératif Desjardins*.

More specifically, each of the acts constituting these tax-advantaged funds will be amended to stipulate that the portion of the investments[20] made or deemed made by the tax-advantaged fund in FIER Partners, L.P. that is, taking into account the fund's participation in this limited partnership, allocated to the seeding component after September 21, 2006, will be increased by 50% for the purposes of the 60% requirement applied to a fiscal year of the fund ending before January 1, 2012.

For greater clarity, Capital régional et coopératif Desjardins may also take this increase into account for the purposes of the regional component of the 60% requirement that is imposed on it.

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17 This requirement contains, in the case of Capital régional et coopératif Desjardins, a regional component. More specifically, this requirement stipulates that, for each fiscal year, the eligible investments of Capital régional et coopératif Desjardins must represent, on average, at least 60% of its average net assets for the preceding year, and a portion representing at least 35% of such percentage must be made in eligible cooperatives or in entities located in the resource regions of Québec (Abitibi-Témiscamingue, Bas-Saint-Laurent, Côte-Nord, Gaspésie–Îles-de-la-Madeleine, Mauricie, Nord-du-Québec and Saguenay–Lac-Saint-Jean).

18 Entailing no security or hypothec.

19 These investments are not restricted by the authorized limit of 12% that applies to non-disbursed investments.

20 *Supra*, note 18.

3. MEASURES CONCERNING CONSUMPTION TAXES

3.1 Reduction of the specific tax on gasoline in border regions with New Brunswick

The fuel tax system stipulates that the regular rate of the specific tax on gasoline of 15.2 cents per litre is reduced in certain regions of Québec bordering on another province of Canada or on an American state. This reduction is intended to maintain the competitive position of Québec gas retailers whose establishments are located in these so-called border regions,[21] in relation to their competitors in jurisdictions bordering on Québec.

The reduction reflects the tax rate applicable in the neighbouring provinces or states. In 2003, it became apparent that the situation in this regard in New Brunswick no longer justified such a reduction in regions bordering on this province and the reduction was eliminated on November 1, 2003. However, on October 4, 2006, the government of New Brunswick reduced the rate of its specific tax on gasoline by 3.8 cents per litre.

In this context, the regular rate of the specific tax on gasoline in border regions with New Brunswick will be reduced as of the day following the day of publication of this information bulletin.

The following table shows the amounts of the reduction of the specific tax on gasoline that will be allowed in border regions with this province as well as the new rate of this tax that will apply there.

SPECIFIC TAX ON GASOLINE IN BORDER REGIONS WITH NEW BRUNSWICK

Distance from the border	Reduction amount	Applicable rate
0 to less than 5 km	4 ¢/l	11.2 ¢/l
5 to less than 10 km	3 ¢/l	12.2 ¢/l
10 to less than 15 km	2 ¢/l	13.2 ¢/l
15 to less than 20 km	1 ¢/l	14.2 ¢/l

However, persons who sell gasoline in a border region with New Brunswick otherwise included in a peripheral or specified region may, as is also the case in the other border regions of Québec, enjoy the reduction of the specific tax on gasoline allowed in the peripheral or specified region where the rate then applicable is more favourable to them.

21 Border regions consist of regions of Québec included within a range of less than 20 kilometres from a point of contact with a Canadian province or an American state, where there is a fuel retailer whose establishment is located less than 20 kilometres from the point of contact.

❑ Taking of inventory for purposes of refund

Persons who, in border regions with New Brunswick, sell gasoline regarding which the specific tax is paid in advance or should have been, may obtain a refund of the amount corresponding to the difference between the specific tax applicable at the rate currently in effect and that applicable at the reduced rate. To be entitled to such refund, they must take an inventory of all the gasoline they have in stock at midnight the day of publication of this information bulletin.

For that purpose, such persons will have to use the form supplied by Revenu Québec and return it to Revenu Québec no later than January 26, 2007. For greater clarity, gasoline acquired by a person before midnight the day of publication of this information bulletin but not yet delivered to him will be included in his inventory.

3.2 Application of the fuel tax refund relating to mining operations to slate

The fuel tax system stipulates a refund of the tax paid on gasoline or non-coloured fuel oil used for the operation of a motor vehicle registered exclusively for off-road use and that is used in mining operations.

For the purposes of this refund, a mining operation consists of an activity carried out to discover a mineral resource in Québec or for the mining of such a resource.

Currently, slate is not included on the list of mineral resources that give rise to the fuel tax refund relating to mining operations.

To enable such a refund regarding slate, the fuel tax system will be changed to add it to the list.

This change will apply to fuel acquired after the date of publication of this information bulletin.

3.3 Application of the tax on lodging in the Baie-James tourist region

The government has set up a tourist partnership fund to strengthen and sustain tourist promotion and development in Québec. The fund is financed in part by a tax on lodging applicable to each sleeping-accommodation unit rented in a sleeping-accommodation establishment located in a Québec tourist region which requests the government accordingly through its regional tourist association (RTA).

RTAs that want the lodging tax to apply in their territory may choose between the imposition of the specific tax of $2 per overnight stay or the imposition of an *ad valorem* tax of 3% of the price of each overnight stay.

The revenue generated by this tax, after deducting the costs of its administration, are remitted to the participating regions and the amounts thus remitted are used in accordance with the terms and conditions agreed to in a memorandum of understanding between the ministère du Tourisme and the RTAs of these participating regions. Currently, the tax is applicable in 16 of the 21 Québec tourist regions, namely Montréal, Laval, Québec, Charlevoix, Outaouais, Saguenay–Lac-Saint-Jean, Cantons-de-l'Est, Chaudière-Appalaches, Centre-du-Québec, Gaspésie, Bas-Saint-Laurent, Lanaudière, Mauricie, Abitibi-Témiscamingue, Montérégie and Laurentides tourist regions. The tax will be also applicable in the Manicouagan tourist region as of January 1, 2007.

Following requests submitted by the RTA of Baie-James, the specific tax on lodging of $2 per overnight stay will apply in this tourist region as of April 1, 2007.

Accordingly, the tax will be applicable regarding any sleeping-accommodation unit rented in a sleeping-accommodation establishment located in the Baie-James tourist region, when the sleeping-accommodation unit is billed by the operator of the establishment after March 31, 2007 for occupation after that date.

However, the operator of a sleeping-accommodation establishment will not have to pre-collect the tax in respect of sleeping-accommodation units billed to a travel intermediary when the price of these units has been set under an agreement reached before April 1, 2007 between the operator of the establishment and the travel intermediary, and occupation by tourist customers takes place between March 31, 2007 and January 1, 2008.

The territorial entities included in the Baie-James tourist region are listed in the appendix.

4. FEDERAL LEGISLATION AND REGULATIONS

4.1 Harmonization with certain measures relating to standardized accounting

In the federal Budget Speech of May 2, 2006, the federal Minister of Finance tabled, in the House of Commons, supplementary information, as well as notices of ways and means motions concerning, among other things, measures relating to standardized accounting. These measures are designed to harmonize provisions on administration, interest and penalties and relating especially to the *Excise Tax Act* regarding the goods and services tax (GST), but also to the *Excise Tax Act* regarding the other taxes it stipulates, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act*.[22]

These measures, which implement an integrated set of rules covering the payment of taxes and the calculation of interest and penalties, are designed to simplify application of the federal tax system.

In Information Bulletin 2006-2 released on June 29, 2006, the ministère des Finances announced that it would study these federal measures relating to standardized accounting and that the decisions on this matter would be announced at a later date.

The analysis of these measures, carried out jointly with Revenu Québec, is now completed. The result is that because of the particular features of Québec's tax system and the existing administrative practices of Revenu Québec, and since Québec's tax legislation and regulations already contain provisions that are satisfactory in many regards, only the amendments described below will be made to Québec's tax legislation.

❑ Penalty applicable following the extension of the deadline for filing a return

Under the existing rules, where the Minister of Revenue extends the deadline set for filing an income tax return by a taxpayer and the taxpayer fails to file the return by the extended deadline, the extension is not taken into account for the purposes of calculating the late filing penalty.

The tax legislation will be amended so that the late filing penalty is calculated only as of the day following the end of the extended period allowed the taxpayer to file his return.

This change will apply regarding an extension of the deadline for filing a return ending after March 31, 2007.

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22 Department of Finance Canada, *The Budget Plan 2006*, p. 262 to 268.

❑ Restrictions applicable to collection

Where a person who is entitled to a refund pursuant to the application of a tax law also owes an amount under such law, the Minister of Revenue can apply such refund to the payment of such person's tax debt. However, if the amount unpaid by the person is covered by an assessment or a determination issued under the *Taxation Act*, or by an assessment issued under sections 358 to 360 of the *Act respecting the Québec sales tax*, the Minister must wait until the end of the 90th day following the date the assessment or the determination, as the case may be, is sent before applying the refund to which the person is entitled to the payment of such amount.

The tax legislation will be amended so that the Minister is no longer required to wait until the end of such 90-day period to apply a refund to which a person is entitled to the payment of an amount covered by an assessment or a determination, as the case may be, issued in such circumstances.

This amendment will apply as of April 1, 2007.

❑ Non-deductibility of interest imposed under a tax law

The tax laws stipulate the levying of various taxes and deductions (employer contributions for instance). Where a person fails to satisfy the tax obligations incumbent on him as a taxpayer, employer or mandatary for the payment or collection of various taxes or deductions payable under these tax laws, he may be required to pay interest and penalties.

Moreover, in general, the *Taxation Act* allows a taxpayer to deduct, in calculating his income from a business or from property, expenses incurred to earn an income from such business or property. In some cases, however, the legislation restricts the deductibility of such expenses.

Such is the case for penalties, which have not been deductible in calculating income from a business or property since March 23, 2004. For example, where a new assessment imposed a penalty on a taxpayer for failing to satisfy his tax obligations, no deduction is allowed in the calculation of the taxpayer's income in respect of such penalty.

However, a deduction is currently allowed for the interest portion of such an assessment, provided that the amount of taxes or deductions payable is itself deductible in the calculation of income. Such is the case, for example, where a mandatary fails to collect a tax that he is required to collect.

There is no reason for different treatment of interest and penalties imposed under a tax law since they are both a consequence of a failure to satisfy a tax obligation.

Moreover, the federal government recently limited the deductibility of interest imposed under the *Excise Tax Act* regarding the GST and the *Air Travellers Security Charge Act* for the purposes of the *Income Tax Act*.

In this context, the legislation will be amended to stipulate the non-deductibility of interest that a person is liable for under a tax law, whether such law is under provincial, federal or foreign jurisdiction. For the purpose of this measure, a tax law means all or part of a law enacted by a competent authority and stipulating the collection of a tax or deduction by any tax system.

This amendment will apply regarding interest payable under a tax law for any period following the publication date of this information bulletin.

4.2 News release 2006-049 of September 25, 2006

On September 25, 2006, the Minister of National Revenue, on behalf of the Minister of Finance of Canada, issued, in a news release, a notice of ways and means motion proposing to amend the *Excise Tax Act* with a view to eliminating, as of April 1, 2007, the goods and services tax (GST) visitor rebate program.

While the Québec sales tax (QST) system was previously fully harmonized with the streamlining measures in effect under this federal program, the Québec system is no longer harmonized with the GST in this regard relating to streamlining measures in relation to conventions.

Indeed, since October 1, 2000, consumers who are non-residents of Canada are no longer entitled to a rebate of the QST paid on eligible goods acquired to be taken or shipped out of Québec. Similarly, since November 1, 2001, short-term accommodations intended for occupation by individuals who are not residents of Canada no longer give rise to a rebate of QST to persons who acquire them for their own purposes, or to non-registered foreign suppliers that acquire them directly or as part of tour packages supplied outside Canada to non-residents of Canada.[23]

Concerning the streamlining measures relative to conventions that are to be eliminated in the GST system, the QST system will not be harmonized in this regard. Accordingly, these measures will be maintained in full in the Québec system.

4.3 News release 2006-061 of October 31, 2006

On October 31, 2006, the Minister of Finance of Canada announced a *Tax Fairness Plan* designed to standardize the tax treatment of flow-through entities and corporations, with a view to restoring fairness to Canada's tax system.[24] In addition, on December 15, 2006, the Minister of Finance of Canada provided additional clarifications concerning the notion of "normal growth" that will apply as part of the tax measures regarding flow-through entities.[25]

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23 Information Bulletin 2000-4, June 29, 2000.

24 Department of Finance Canada, News Release 2006-061.

25 Department of Finance Canada, News Release 2006-082.

Accordingly, the Minister tabled a Notice of Ways and Means Motion in the House of Commons to amend the *Income Tax Act* in relation to the tax treatment applicable to flow-through entities, as well as to the general corporate income tax rate.

The Notice of Ways and Means Motion also deals with an increase of $1 000 to the amount used to calculate the tax credit for age and the option that henceforth will allowed couples to split certain retirement income.

The Minister of Finance of Québec has already announced that, as of January 1, 2007, Québec's tax system will be harmonized with the bases of the federal system in relation to the measure concerning the splitting of certain retirement income.[26]

Similarly, Québec's tax legislation will be harmonized with the federal tax legislation concerning the new rules relating to the tax treatment of flow-through entities, but a separate Québec tax regime will be implemented.

Moreover, since Québec's tax system is satisfactory in this regard, the measures relating to the general corporate income tax rate and the tax credit for age will not be incorporated.

❑ Tax treatment of flow-through entities

For a number of years, investors have increasingly turned to flow-through entities and this growth has accelerated sharply since 2000. Flow-through entities include income trusts and partnerships listed on a Canadian securities exchange.

One factor that has contributed to the growing popularity of flow-through entities is their ability to transfer income to investors, so that they are not taxed themselves on such income.

- **Measures proposed by the federal government**

Briefly, the tax regime that will apply henceforth to flow-through entities, other than real estate investment trusts, will be comparable with that of corporations, and investors in such entities will be considered as shareholders.

In accordance with the new federal rules, an income trust will not be able to deduct, in calculating its income, non-portfolio earnings it distributes to investors, while a partnership will itself be taxed in their regard.

Accordingly, a tax will be payable by a flow-through entity regarding its non-portfolio earnings at the rate applicable to corporations. In addition to this tax there will also be a provincial tax, to be collected by the federal government and redistributed to the provinces according to an allocation method to be negotiated with them.

26 Minister's statement of December 5, 2006 concerning the tax reduction for couples with retirement income.

On the other hand, investors will be taxed as though the amounts they receive are dividends, giving rise to the application of the dividend tax credit for individuals and to a deduction in calculating their taxable income for corporations, as well as to the application of federal Part XIII tax payable regarding a dividend paid to a non-resident. Moreover, tax-exempt investors will not be subject to tax on the amounts they receive since the nature of the distribution by flow-through entities continues to be without effect for them.

However, some differences will be maintained between the tax treatment of flow-through entities and that of corporations. Accordingly, the existing tax system will remain unchanged regarding the tax rate that applies to income, including non-portfolio earnings, retained by an income trust.

These new rules will apply beginning in taxation year 2007 for flow-through entities whose units are publicly traded for the first time after October 2006. In the case of existing flow-through entities, the changes will apply as of taxation year 2011.

- **Separate Québec tax regime relating to flow-through entities**

Québec fully supports the federal government's goal of ending the important tax advantages enjoyed by flow-through entities.

However, Québec has historically exercised its fiscal autonomy, which is characterized in particular by the ability to design and administer its own tax system and collect the taxes it generates.

Consequently, Québec's tax legislation will be harmonized with the federal tax legislation, but a separate Québec tax regime relating to flow-through entities will be implemented. Accordingly, Québec will itself collect the taxes payable to it in the future by flow-through entities.

Québec's tax legislation and regulations will therefore be amended to incorporate, with adaptations based on their general principles, the measures relating to flow-through entities. However, these measures will only be adopted once any federal legislation has been assented to or any federal regulations arising therefrom have been adopted, taking into account the changes that may be made before such assent or adoption. In addition, these measures will apply on the same dates as they will for federal tax purposes.

More specifically, a flow-through entity with an establishment in Québec at any time of a taxation year will be subject to this new Québec tax for the year. Furthermore, a business allocation formula will be established jointly with the federal government to ensure a balance between the two tax regimes. In addition, the Minister of Finance will release the other application details specific to Québec of these new rules in 2007.

Lastly, for greater clarity, flow-through entities will not be subject to the tax on capital.

❑ Retirement income splitting

To acknowledge that pensioners and seniors made significant investments over the years and that some of their income may be derived from income trusts, the *Tax Fairness Plan* proposes measures to allow income splitting for pensioners as of taxation year 2007.

- **Measures proposed by the federal government**

The measures proposed by the federal government are designed to enable an individual who received income eligible for the existing pension income tax credit to allocate up to half of that income to their spouse, provided each member of the couple resides in Canada.

Briefly, in the case of individuals aged 65 or over, the pension income eligible for splitting includes lifetime annuity payments under a registered pension plan, a registered retirement savings plan or a deferred profit-sharing plan and payments out of a registered retirement income fund. As for the pension income eligible for splitting of individuals under age 65, it includes lifetime annuity payments under a registered pension plan and certain other payments received as a result of the death of their spouse.

For federal income tax purposes, a pensioner may deduct, in calculating his income, an amount not exceeding 50% of his income eligible for splitting, provided that amount is included in calculating the income of his spouse. It follows that the author of the allocation and his spouse must both agree to the application of the splitting mechanism in their tax returns for a given year. The allocation will apply one year at a time.

An information document for seniors released on November 23, 2006 by the Department of Finance Canada[27] mentions that the allocated income will be treated as pension income of the transferee for the purposes of all federal income tax rules. In addition, the document mentions that there is no age restriction for the spouse who receives the income allocation.

- **Incorporation of the federal splitting measures into Québec's tax system**

Québec's tax legislation and regulations will be amended to incorporate, based on their general principles, the federal measures relating to splitting of certain retirement income between spouses, subject to the technical details described in greater detail below.

However, these measures will be adopted only after any federal law is assented to or any federal regulation giving effect thereto is adopted, taking into account technical amendments that might be made prior to such assent or adoption. Lastly, these measures will apply as of the same dates as for the purposes of federal tax system.

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27 Department of Finance Canada, *Tax Fairness Plan: Information for Seniors, Tax Relief for Canadian Seniors*.

- **Clarifications and other technical application details**

— **Eligible spouses**

For the purposes of Québec’s tax system, the retirement income splitting mechanism will apply only between persons who reside in Canada at the end of a given taxation year and who are eligible spouses, as this expression is understood for the transfer between spouses of the unused portion of non-refundable tax credits. In this regard, when an individual dies or ceases to reside in Canada during a given taxation year, the last day of his taxation year will be deemed to be the day of his death or the last day he resided in Canada, as the case may be.

However, a person who is tax-exempt for a given taxation year may not be considered the eligible spouse of an individual for such year.

— **Retirement income eligible for splitting**

An individual may allocate to his eligible spouse for a given taxation year an amount not exceeding 50% of all his income giving rise, for the year, to the amount used to calculate the pension income tax credit currently allowed under the federal tax system.

— **Possibility of a separate election in Québec**

Generally speaking, eligible spouses may, for the purposes of Québec’s tax system, make an election separate from the one they make for the purposes of the federal tax system concerning retirement income splitting. For greater clarity, an individual may, for a given taxation year, allocate to his eligible spouse a portion of his retirement income, even if the income of such individual for the year is equal to or less than that of his spouse.

Where an election is made for a given taxation year, such election may neither be revoked nor changed without the agreement of the two interested parties.

Moreover, where one of the eligible spouses resides in another province at the end of a given taxation year, the following rules will apply:

— if such person is the author of the allocation, his spouse will be required to include, in calculating his income for the year, the amount that has been included, for the purposes of the federal tax system, in calculating his income on account of retirement income splitting;

— if such person is the spouse of the author of the allocation, the author of the allocation will be deemed, for the purposes of Québec’s tax system, to have made an election identical to the one he made at the federal level on account of retirement income splitting.[28]

28 The lack of an election at the federal level will prevent the use of the retirement income splitting mechanism for the purposes of Québec’s tax system.

— **Special rule in the event of death**

When one of the eligible spouses dies during a given taxation year, the retirement income splitting mechanism that will apply to him for the year – deduction or inclusion in calculating income, depending on whether he is the author of the allocation or not – must apply solely in the principal tax return[29] that must be filed for such year.

— **Special rule in the event of bankruptcy**

In the event that, during a given calendar year, an individual who is the eligible spouse of the author of an allocation of retirement income declares bankruptcy, the retirement income splitting mechanism that applies to him for the year – namely inclusion of the allocated amount in calculating his income – must apply solely in the tax return he must file for the taxation year that is deemed to begin on the date of the bankruptcy, commonly known as the "post-bankruptcy return".

— **Allocated amount deemed a retirement income**

For the purposes of Québec's tax system, any amount an individual includes in calculating his income for a taxation year because of the retirement income splitting mechanism will be deemed retirement income for such year. It follows that this retirement income may, in general, be included in the amount of retirement income used to calculate the tax credit for a person living alone, with respect to age and for retirement income.[30]

Moreover, where, for a given taxation year, an amount of retirement income is allocated to an individual who is entitled, for the year, to a deduction as a foreign specialist assigned to the operations of an international financial centre, as a foreign specialist working in the Montréal Foreign Trade Zone at Mirabel or as foreign specialist working for a securities exchange or a securities clearing-house, the amount thus allocated that is included in calculating the income of the individual for the year will be considered, for the purposes of these deductions, to have been earned on the last day of such year.

— **Contribution payable by individuals to the Health Services Fund**

Any amount that, for the purposes of the tax system, is included or deducted, as the case may be, in calculating the income of an individual for a given calendar year because of the retirement income splitting mechanism must, as the case may be, be included or deducted in calculating his total income used to establish his contribution of 1% to the Health Services Fund (HSF) payable by individuals for the year.

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29 In contrast to the separate tax returns that the liquidator of the succession may file for the taxation year of the death regarding certain types of income.

30 The existing tax legislation stipulates that an individual may not take into consideration, in the amount of his retirement income used to calculate the tax credit for a person living alone, with respect to age and for retirement income, any portion of such amount that gave rise to a deduction in calculating his income or his taxable income.

— **Solidary liability among spouses**

Where an individual includes, in calculating his income for a given taxation year, an amount allocated under the retirement income splitting mechanism, the author of the allocation of such amount will be required solidarily, with the individual, to pay the tax and the 1% contribution to the HSF that can be reasonably considered to relate to such amount.

4.4 News release 2006-073 of November 27, 2006

On November 27, 2006, the Minister of Finance of Canada issued, in a news release, a notice of ways and means motion proposing in particular amendments to the *Excise Tax Act* aimed at increasing the fairness and efficiency of the goods and services tax (GST) and the harmonized sales tax (HST) system.

Most of the proposed changes in this notice of motion had been made public in news releases previously issued by the Department of Finance Canada, such that the required decisions on whether or not the Québec sales tax (QST) system will be harmonized in this regard have already been announced.

The notice of motion also includes new amendments to:

— restore the zero-rated status of a group of drugs, collectively known as Benzodiazepines;

— have the rebate of the tax relative to specially equipped vehicles for use by individuals with disabilities also apply to vehicles that have been used after having been so equipped;

— clarify the treatment of the right to use certain types of amusement or entertainment devices;

— confirm the policy intent and the practice used by the tax authorities to calculate the maximum allowable value for input tax credit purposes relating to a passenger vehicle;

— exempt the supply of a right to file or retrieve documents or information stored in an electronic official registry.

In accordance with the principle of general harmonization of the QST and the GST systems, the Québec tax system will be harmonized with the federal tax system regarding these new amendments, subject to the specific Québec features and taking the provincial context into account.

However, some of the new federal measures have not been retained because they do not correspond to the features of the QST system. This involves the measure ensuring that the small supplier division of a municipality is treated in the same manner as a municipality that is a small supplier, and the rules relating specifically to the HST system.

Moreover, concerning the measure authorizing the Minister of National Revenue to exchange GST/HST information with foreign governments that are signatories to the Convention on Mutual Administrative Assistance in Tax Matters, as well as the measure granting a discretionary power to the Chief Statistician of Canada authorizing him to provide statistical information concerning business activities to the provinces, they are currently being studied at the ministère des Finances du Québec and the decisions in this regard will be announced at a later date.

The harmonization measures retained will only be adopted once any legislation arising from the federal news release has been assented to or any regulation arising therefrom have been adopted, taking the technical changes that may be made to them before such assent or adoption into account. They will apply on the same dates as they will for the purposes of the GST system, except for the measures applicable since December 17, 1990 that, for the purposes of the QST system, will be effective as of July 1, 1992.

Despite the preceding, the changes to the tax rebate measure relative to specially equipped vehicles for use by individuals with disabilities will apply:

— in the case of the supply or bringing into Québec of a vehicle equipped with a device designed exclusively to facilitate loading a wheelchair, regarding such vehicle supplied or brought after December 10, 1992 if the recipient is an individual and after April 23, 1996 if the recipient is a person other than an individual;

— in the case of the supply or bringing into Québec of a vehicle equipped with an auxiliary driving control to facilitate the operation of the vehicle by an individual with disabilities, on the same dates as those stipulated in the federal tax system;

— in the case of the bringing into Québec of a vehicle on which a service consisting in specially modifying it for a person with disabilities was carried out outside Québec, on the same dates as those stipulated in the federal tax system.

Moreover, a person who, because of the changes made to this measure, is entitled to a rebate of the tax that became payable before November 27, 2006 regarding a vehicle, will have four years as of such date to claim the rebate from Revenu Québec.

APPENDIX

BAIE-JAMES TOURIST REGION

		Geographic code
—	Baie-James	99060
—	Chapais	99020
—	Chibougamau	99025
—	Chisasibi	99055
—	Chisasibi	99814
—	Eastmain	99045
—	Eastmain	99810
—	Lebel-sur-Quévillon	99005
—	Matagami	99015
—	Mistissini	99030
—	Mistissini	99804
—	Nemiscau	99040
—	Nemiscau	99808
—	Oujé-Bougoumou	99818
—	Waskaganish	99035
—	Waskaganish	99806
—	Waswanipi	99010
—	Waswanipi	99802
—	Wemindji	99050
—	Wemindji	99812
—	Whapmagoostui	99070
—	Whapmagoostui	99816