

CHANGES ARISING FROM THE INTRODUCTION OF A PARTIAL REBATE OF THE QUÉBEC SALES TAX TO MUNICIPALITIES

On September 13, 2013, the Ministère des Finances et de l'Économie released *Information Bulletin 2013-8* in which it was announced that municipal bodies that, as municipalities, are entitled to a rebate of the tax paid on their acquisitions of property and services in the federal goods and services tax (GST) and the harmonized sales tax (HST) system will be entitled, as of 2014, to a rebate of 62.8% of the Québec sales tax (QST) paid on such acquisitions.

Today's information bulletin provides clarifications in this regard as well as the details of the changes that will be made to the QST system to reflect the introduction of this new partial rebate.

□ **New partial rebate of the QST**

Municipal entities that, since January 1, 1997, have not been entitled to the partial rebate of the QST granted to them until then for the tax paid on property and services acquired to make their exempt supplies will, as of January 1, 2014, once again be entitled to a partial rebate of the QST paid on the property and services acquired for such purpose.

This new rebate of 62.8% of the QST granted to municipal entities will apply to their acquisitions of property and services, or their property brought into Québec, regarding which the tax becomes payable after December 31, 2013 and is paid after that date.

□ **Eligible municipal entities**

The municipal entities eligible for the new 62.8% rebate of the QST are those covered by the definitions of "municipality" stipulated in sections 1 and 383 of the Act respecting the Québec sales tax (AQST).¹ More specifically, these entities are:

- metropolitan communities, the Kativik Regional Government or any other incorporated municipal body however designated;
- such other local authority as the Minister of Finance and the Economy may determine to be a municipality for the purposes of Title 1 of the AQST;
- the persons designated to be municipalities by the Minister of Finance and the Economy for the purposes of section 383 of the AQST, but only in respect of activities, specified in the designation, that involve the making of supplies, other than taxable supplies, by such persons of municipal services.

1 CQLR, chapter T-0.1.

The persons who, on December 31, 2013, either have already received municipality status for the purposes of Part IX of the Excise Tax Act (ETA),² or have already have been designated to be municipalities for the purposes of section 259 of such Act will be deemed, as of January 1, 2014, to have received the same status or the same designation for the purposes, as the case may be, of Title I of AQST or of section 383 of such Act, unless they effectively received it earlier.

Subsequently, persons who apply to receive municipality status or to be designated as such for the purposes of the GST system will have to submit a similar application for the purposes of the QST system.

□ Taxation of certain supplies made by municipalities

When the full GST and federal portion of the HST rebate to the municipalities was introduced in 2004, the federal government made certain supplies made by municipal entities taxable to ensure that only such entities benefited from the 100% federal rebate to the municipalities.

As far as persons designated to be municipalities are concerned, these tax measures apply only to supplies of designated municipal property. Briefly, property is “designated municipal property” if it belongs to a person designated to be a municipality for the purposes of section 259 of the ETA, if such person was entitled to claim the municipal rebate stipulated in such section in relation to the property or to improvements associated with it and if the degree to which it was intended to be consumed, used or supplied in the course of the activities specified in the designation of the person was not insignificant.

In the interests of simplicity, these particular taxation measures are also applicable in provinces harmonized with the HST even if the municipal entities of such provinces are not entitled to the full municipal rebate of the provincial portion of the HST.

Given the general principle of harmonization of the QST system with that of the GST/HST, supplies made by municipal entities that are taxable in the federal tax system will likewise be taxable in Québec’s tax system.³ Briefly, this involves the following supplies:

- supplies of movable property regarding which the municipal entity was not entitled to a full input tax refund (ITR);
- supplies of property or services currently exempt under section 138.1 or section 141 of the AQST;
- supplies of corporeal movable property or services currently exempt under section 138.6 or section 148 of the AQST;
- supplies of immovables currently exempt under section 168 of the AQST.

2 R.S.C., 1985, c. E-15.

3 To ensure that the application of these tax measures by persons designated to be municipalities is the same in the federal and Québec tax systems, the definition of “designated municipal property” in the AQST will refer to the definition in the ETA.

However, since municipal entities will not be entitled to a full municipal QST rebate, rules similar to those stipulated in the HST system will be introduced in Québec's tax system to allow such entities, when they make taxable supplies by way of sale of capital movable property, to claim an ITR or rebate for the tax do not recover regarding such property.

These changes to the QST system will apply to supplies for which the consideration, even partial, becomes due after December 31, 2013 and is paid after that date.

❑ Collection of the QST by small suppliers on taxable sales of capital movable property

The application of the QST, as of 2014, to certain supplies made by municipal entities means that they will have to collect the tax on such supplies as in the GST/HST system.

Accordingly, Québec's tax system will be changed to stipulate, as in the federal tax system, that municipal entities that are small suppliers that have chosen not to register will be required to charge and to remit the tax applicable on their taxable supplies by way of sale of capital movable property.

These changes to the QST system will apply to supplies for which the consideration, even partial, becomes due after December 31, 2013 and is paid after that date.

❑ Partial rebate of the QST to qualifying non-profit organizations that make supplies of a municipal nature

Qualifying non-profit organizations (NPOs) are generally entitled to a 50% QST rebate regarding their acquisitions of property and services relating to the realization of exempt supplies they make.

However, this partial rebate does not apply regarding property and services these bodies acquire for the purposes of realizing their supplies of a municipal nature exempt in this respect. This limitation of entitlement of qualifying NPOs to claim the 50% QST rebate was stipulated following the elimination, in 1997, of the 43% QST rebate granted to municipal entities until then, to ensure fair tax treatment for all entities making exempt supplies of a municipal nature.

Given that a partial QST rebate will again be granted to municipal entities, there is no longer any reason for this limitation of entitlement of qualifying NPOs to obtain the 50% QST rebate on all their acquisitions related to the realization of exempt supplies and accordingly it will be eliminated.

Accordingly, qualifying NPOs may claim a 50% QST rebate that becomes payable after December 31, 2013 and is paid after that date regarding their acquisitions of property and services, or their property brought into Québec, made for the purposes of realizing supplies of a municipal nature exempt in this respect.

❑ Special anti-avoidance rule

To ensure the integrity of Québec's tax system, a special rule will be stipulated to prevent the new partial QST rebate granted to municipal entities from allowing, directly or indirectly, the reduction of the tax cost of property already held by such entities prior to 2014.

Accordingly, a municipal entity may be denied, in whole or in part, an ITR or a tax rebate it claims regarding property following a transaction or a transaction that is part of a series of transactions bearing on such property if, at the same time:

- the property is property regarding which the municipal entity may claim the 62.8% QST rebate after December 31, 2013;
- the property was already held by the municipal entity before January 1, 2014;
- it is reasonable to consider that the transaction or the series of transactions was conducted primarily to allow the municipal entity to recover, directly or indirectly, all or part of the QST it paid before January 1, 2014 regarding such property.

This measure will apply to transactions conducted as of the day of publication of this information bulletin.

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For information regarding the matters dealt with in this information bulletin, contact the secteur du droit fiscal et des politiques locales et autochtones at 418 691-2236.

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