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## Consumer Taxes

Number: TVQ. 1-4/R2

Date: December 29, 2011

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Act(s): *Act respecting the Québec sales tax (R.S.Q., c. T-0.1), sections 1, 16, 199, 407 and 422*

Subject: **Nominal Partnerships**

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*This version of interpretation bulletin TVQ. 1-4 replaces the version of September 30, 2011, which needed to be revised again to clarify the distinction between a nominal partnership and a partnership within the meaning of the Civil Code of Québec. The interpretation herein and the effective date (i.e. July 1, 1992) have not changed.*

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This bulletin explains how the *Act respecting the Québec sales tax (AQST)* applies with respect to nominal partnerships.

### GENERAL POINTS

1. "Person", as defined in section 1 of the AQST, means a trust, individual, corporation, partnership or succession or a body that is an association, club, commission, union or other organization of any kind. One of the elements of that definition is the term "partnership", which is not defined in the AQST.
2. According to article 2186 of the *Civil Code of Québec* (Civil Code), a contract of partnership is a contract by which the parties, in a spirit of cooperation, agree to carry on an activity, including the operation of an enterprise, to contribute thereto by combining property, knowledge or activities and to share any resulting pecuniary profits.
3. Thus, where the facts of a specific situation indicate that a contract of partnership has been formed in accordance with the Civil Code requirements, the partnership constitutes a person within the meaning of the AQST, whether it is a general partnership, a limited partnership or an undeclared partnership.

### Nominal partnerships

4. Persons often come together to pool their expenses, for example, by sharing the same premises, certain equipment and the services of the same employees. However, they carry on their own businesses and, individually, retain their own clientele and income. They often use their surnames as the company name. This type of group is generally referred to as a "nominal partnership" or a "partnership for expenses".
5. According to doctrine and jurisprudence, a nominal partnership is not a "partnership" within the meaning of article 2186 of the Civil Code due to the absence of at least one essential element necessary for the formation of a partnership. Thus, a nominal partnership cannot be considered a "person" under the definition of that term in section 1 of the AQST.

### APPLICATION OF THE ACT

#### REGISTRATION

6. Under section 407 of the AQST, every person who makes a taxable supply in Québec in the course of a commercial activity engaged in by the person in Québec must be a Québec sales tax (QST) registrant, unless one of the exceptions provided for in paragraphs (1) to (3) of that section applies.

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7. Since a nominal partnership is not a person, as indicated in point 5 of this bulletin, it cannot register for QST purposes. Therefore, it is the members of the nominal partnership, known as the "nominal partners", who must register for QST purposes if they engage in a commercial activity. However, in accordance with paragraph (1) of section 407 of the AQST, a nominal partner who can claim small supplier status is not required to be a QST registrant.

## **COLLECTION OF QST**

8. Section 422 of the AQST provides, in general, that every person who makes a taxable supply must, as a mandatary of the Minister of Revenue, collect the tax payable by the recipient under section 16 of the AQST in respect of the supply.

9. Since a nominal partnership is not a person within the meaning of the AQST, each partner must therefore collect the QST payable in respect of the taxable supplies, other than zero-rated supplies, made by that partner.

## **INPUT TAX REFUND**

10. A nominal partner who is a QST registrant can claim the input tax refund (ITR) to which that partner is entitled in respect of the property and services the partner acquired for consumption, use or supply in the course of the partner's commercial activities.

## **ALLOCATION OF EXPENSES**

11. Generally, the inherent nature of a nominal partnership implies that expenses must be allocated among the nominal partners. The tax treatment of such allocation depends on how the partnership operates, which must be carefully examined.

12. As a rule, in the case of a nominal partnership, one of the partners may be responsible for the administration of the partnership, making the necessary arrangements

with third persons to obtain supplies of property and services from them. Subsequently, that partner (the administrator) obtains from the other partners reimbursement of all or part of the consideration the administrator paid to suppliers for supplies. The difficulty in determining the tax consequences of such reimbursement stems from the uncertainty regarding the capacity in which the administrator is acting when acquiring property and services from third persons. In certain cases, review of the facts may lead to the conclusion that the administrator is acting as the mandatary of the other partners; in other circumstances, however, that may not be the case.

13. In a case where the administrator incurs an expense in respect of the acquisition of property or a service shared by all the other nominal partners and the latter reimburse the administrator for the expense without there being a contract of mandate between the administrator and the other partners, Revenu Québec considers that reimbursement of the expense by the other partners constitutes consideration for a supply of property or a service made by the administrator to the other partners.

14. Therefore, where such a supply is a taxable supply, other than a zero-rated supply, QST is payable in respect of the supply. For that to be the case, the consideration for the supply of the property or service made by the administrator to the other partners may consist of only the costs incurred by the administrator to acquire the property or service; the administrator need not have marked up the price of the property or service.

## **Example**

15. In order to share common expenses in the course of their professional practice, three lawyers (Mr. A, Ms. B and Mr. C) formed a partnership for expenses. In particular, Mr. A and Ms. B agreed that Mr. C would be responsible for the acquisition of office equipment and would demand payment from them (his nominal partners) for their share of the cost of the equipment.



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**16.** Mr. C must pay QST in respect of the acquisition of the office equipment and can claim an ITR in respect of the equipment, since it was acquired for consumption, use or supply in the course of his commercial activities. Furthermore, when Mr. C demands payment from his nominal partners of their share of the cost of the office equipment (that is, demands "reimbursement" from them for their share of such cost), Mr. C thereby makes a supply of a portion of the office equipment to his nominal partners and must collect the QST payable in respect of the supply. In turn, Mr. A and Ms. B can claim an ITR in respect of the equipment that they so acquired.

**17.** However, where review of the facts and circumstances surrounding the reimbursement of an expense in respect of the acquisition of property or a service from a third person leads to the conclusion that the other partners who reimburse the expense, and not the administrator, are the actual recipients of the property or service, then the amount reimbursed does not constitute consideration for a supply of property or a service made by the administrator.

**18.** In such a case, the administrator who paid the expense in respect of the acquisition of the property or service is generally considered to be a mandatary of the other partners. The administrator's mandate may consist in acquiring the property or service on behalf of the other partners and, in so doing, paying the consideration therefor (that is, paying, on behalf of the other partners, the consideration for the property or service acquired by them).

### **Example**

**19.** In order to share common expenses relating to their professional practice, three accountants (Mr. X, Ms. Y and Ms. Z) formed a partnership for expenses. Mr. X

and Ms. Z entrusted the administration of their common expenses to Ms. Y and, for that purpose, gave her a general mandate to act on their behalf. As mandators, they must therefore reimburse her for any expenses she incurs as their mandatary.

**20.** When Ms. Y acquires property or a service, Mr. X, Ms. Y and Ms. Z are considered the recipients (of their share) of the property or service, since Ms. Y is acting not only as the mandatary of Mr. X and Ms. Z but also on her own behalf. Therefore, when Ms. Y pays the consideration for the supply and the QST in respect of the supply, she does so on behalf of herself and her mandators. Consequently, Ms. Y is entitled to claim an ITR only in respect of the QST attributable to her share of the property or service. The same is true for Mr. X and Ms. Z.

**21.** Furthermore, when Mr. X and Ms. Z reimburse Ms. Y for an amount she paid as their mandatary, QST does not apply to the amount so reimbursed.

### **SUPPLY OF A SERVICE**

**22.** Finally, it should be noted that where an administrator receives any remuneration whatsoever for service rendered by the administrator to the other partners, such remuneration constitutes consideration for a supply of a service in respect of which QST may be payable.