Subject: Announcement of changes easing access to or streamlining the application of various fiscal measures

This information bulletin describes various changes easing access to or streamlining the application of various fiscal measures. In particular, these changes concern the refundable tax credit for home support of older persons, the refundable tax credit for taxi, the setting of the zero contribution threshold of the Health Services Fund, donations of bare property of a work of art or cultural property and the tax credit regarding the acquisition of a share of Capital régional et coopératif Desjardins.

This information bulletin also makes a number of changes to the fiscal measures implemented to assist businesses located in the resource regions.

Lastly, this information bulletin introduces measures to ensure compliance with the existing legislation applicable to trusts and their beneficiaries, and to correct certain situations considered inappropriate in the context of the Canadian tax system.

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

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

Paper copies are also available, on request, from the Direction des communications, at (418) 528-9321.
Bulletin d’information 2002-8

Announcement of changes easing access to or streamlining the application of various fiscal measures

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1. MEASURES CONCERNING INDIVIDUALS

1.1 Measures to facilitate access to the refundable tax credit for home support of an older person

Since January 1, 2000, persons 70 years of age or over may, under certain conditions, claim the refundable tax credit for home support of an older person.

Essentially, this tax credit is designed to provide financial support for older persons who choose to stay in their home as long as possible by providing them with tax assistance equal to 23% of the eligible expenditures they pay to obtain recognized home support services, up to a maximum of $2,760 per year.

In every case, this tax credit is paid in advance, as the recognized home support services are paid for. This advance payment is made possible through the service employment paycheque (SEP), which is primarily designed as a payroll service, to pay the expenditures eligible for the tax credit.

Elimination of management charges for the use of the SEP

Currently, to be entitled to the tax credit, an older person must file, with the authorized SEP manager, a payment order form on which he must indicate the total amount payable to the person who provided him with home support services as well as the portion of this amount that constitutes an expenditure eligible for the tax credit.

Upon receiving the payment order, the authorized SEP manager carries out a series of operations ranging from processing the pay, if applicable, of the service supplier to paying the latter, as well as the advance payment of the tax credit.

For each payment order submitted by an older person, management charges of $2, including taxes, are charged for the use of the SEP, mainly for the payroll service. However, since these charges constitute an expenditure eligible for the tax credit, the actual cost per payment order is $1.54.
Few older persons make use of the payroll service offered by the SEP, as the recognized home support services currently in greatest demand are almost exclusively provided by entrepreneurs.

To reflect this situation, the management charges for the use of the SEP, in the amount of $2 per payment order, will be eliminated as of September 1, 2002.

Streamlining of the conditions a rental expenditure must satisfy to be eligible for the tax credit

Under the existing rules, the portion of the amount of rent for a dwelling located in a rental building that can reasonably be attributed to recognized home support services may be an expenditure eligible for the tax credit, provided the following conditions are satisfied:

— the respective value of each of these services is specifically indicated in writing by the lessor;

— such value is reasonable.

Accordingly, older persons must add each of the values thus indicated by the lessor to identify the total amount included in their rent that may be an expenditure eligible for the tax credit.

Instead of assigning a reasonable value to each recognized home support service included in the rent, as required under the existing rules, a number of lessors have used other methods to assign an overall value to all such services.

Such methods may be acceptable if they achieved the desired result, i.e. if they assign a reasonable value to the recognized home support services included in the rent.

Consequently, the existing rules will be streamlined to recognize the validity of such methods.
Accordingly, the tax legislation will be amended to stipulate that a portion of the amount of rent for a dwelling or of co-ownership charges, that can be reasonably attributed to all the recognized home support services provided or to be provided to an older person, may also constitute an expenditure eligible for the tax credit provided such portion is reasonable in relation to the rent or charges, as the case may be, and is indicated in writing by the supplier of the services.

This change will apply beginning in taxation year 2000.

Production of a statement by the lessor indicating the portion of the rent that constitutes an expenditure eligible for the tax credit

As mentioned above, the existing rules require that lessors indicate, in writing, the value of recognized home support services included in the rent so that the portion of the rent relating to such services may constitute an expenditure eligible for the tax credit for the lessee.

Unfortunately, many older persons are having difficulty obtaining this information from their lessor. Since older persons cannot claim the tax credit without this information, the tax regulations will be amended to require that a lessor file an information statement, using a prescribed form, when the following conditions are satisfied:

— the lessor has rented to an individual a dwelling that is a self-contained domestic establishment or an eligible room;

— the individual declared to the lessor, prior to the conclusion of the initial lease for such dwelling or, as the case may be, before its renewal, that at some point during the stipulated length of the initial lease or, as the case may be, the renewed lease, he will turn 70 or an individual with whom he shares the dwelling will turn 70;

— the agreed rent indicated or to be indicated in the lease relating to such dwelling includes the cost of one or more recognized home support services.
For greater clarity, the agreed rent indicated or to be indicated in the lease shall also include the additional rent that may be indicated in an appendix to the lease in relation to additional services offered a lessee because of his physical condition, including his age, when such appendix, whose content is shown in the Regulation respecting mandatory lease forms and the particulars of a notice to a new lessee, is used by the lessor, as required by such regulation.

The expression "eligible room" means the same type of room as currently recognized by the tax legislation to make household services supplied in their regard eligible for the tax credit, subject to the same exclusions. Accordingly, any of the following rooms will constitute an eligible room rented to an individual:

— a room located in a residence for older persons that is the individual’s principal place of residence;

— a room in a hotel establishment or in a rooming house that is rented by the individual for a period of at least 60 consecutive days and that is his principal place of residence.

As a result, no information statement will have to be produced regarding an individual renting a room located, in particular, in an installation maintained by a public or private institution covered by an agreement that operates a hospital centre, a residential and long-term care centre or a rehabilitation centre covered by the Act respecting health services and social services.

Furthermore, the information statement a lessor will be required to produce, using a prescribed form, regarding an individual must, among other things, mention the amount corresponding to the portion of the agreed rent indicated (or to be indicated) in the lease that can reasonably be attributed to recognized home support services and the nature of the services relating to such amount.

The lessor must send this information statement to the Minister of Revenue within ten days following the conclusion of the initial lease or, in the case of a renewed lease, no later than its renewal date. The lessor must also send the lessee concerned a copy of such statement within the same period.
It is understood that when the lease for a dwelling to which an individual is a party is renewed under terms that involve no change to the information statement previously produced in his regard in relation to such dwelling, for instance if there is no change either to the rent or to the recognized home support services included in such rent, the lessor is not required to produce a new statement.

These changes will apply regarding a lease concluded or renewed after December 31, 2002.

 Revision of the payment order form

Many taxpayers who live in a dwelling located in a residence for older persons pay their rent using the SEP, to claim the tax credit regarding the portion of the rent that can reasonably be attributed to recognized home support services and that may, under certain conditions, constitute an expenditure eligible for the tax credit.

Such taxpayers must file a payment order form each month with the authorized SEP manager for payment of their rent. This form is not always adapted to their needs because of the variety of situations it covers.

Over the coming months, the payment order form will be revised to simplify it mainly for taxpayers living in a residence for older persons.

1.2 Tax relief regarding the donation of the bare ownership of a work of art or cultural property

The tax system stipulates various tax relief measures to encourage taxpayers to donate works of art or cultural property to enrich the collections of museums and other museum-related institutions.

Briefly, a taxpayer who donates such property in favour of a qualified donee may claim either a deduction in calculating his taxable income, or a non-refundable tax credit, depending on whether the donor is a corporation or an individual, respectively.
The deduction or the tax credit is calculated based on the fair market value of the gift. However, taxpayers may claim a 25% gross-up of such fair market value, if they give a work of art to a qualified donee that is also a Québec museum-related institution.

Furthermore, the gift of an object that is specified cultural property differs from other donations through the additional tax relief it affords the donor.

First, the amount eligible for the deduction or the tax credit is not limited on the basis of the donor’s income, contrary to the situation in most other cases. Second, the capital gain that may result from the donation is tax-exempt.

For the purposes of such additional tax relief, specified cultural property is divided into three categories, namely:

— Canadian cultural property, i.e. objects that, according to the Canadian Cultural Property Export Review Board, satisfy the significance and importance criteria stated in the *Cultural Property Export and Import Act* and are alienated in favour of an entity specified under the Act;

— Québec cultural property, i.e. objects that are recognized or classified in accordance with the *Cultural Property Act* and are alienated in favour of an entity specified in *Cultural Property Export and Import Act*;

— recognized cultural property, i.e. property covered by a certificate issued by the Commission des biens culturels du Québec indicating that it has been acquired by a certified archival centre or accredited museum-related institution, in accordance with its acquisition and conservation policy and the directives of the ministère de la Culture et des Communications.

Currently, when a taxpayer gives a work of art or cultural property but retains the usufruct or usage, i.e. he agrees to give the object but reserves full right of enjoyment, for himself or for another person, he may not claim the same tax relief as he could have had the donation been made without reserve.

Accordingly, to encourage more taxpayers to enrich the collections of museums and other museum-related institutions, changes will be made to the tax system so that all the tax relief relating to gifts of specified cultural property or works of art made without reserve apply equally, subject to certain conditions, to gifts of such property, other than immovable property, made with reserve of usufruct or usage.
Recognition of certain usufructs and rights of use

From a civil law standpoint, when a taxpayer donates a work of art or specified cultural property but reserves the usufruct or usage, the donee only receives, at the time of the donation, a separated real right over the object, i.e. the bare ownership of such object.

However, from a tax law standpoint, donation with usufruct or usage reserved results in the creation of a deemed trust. The property covered by the usufruct or usage, in this case the work of art or specified cultural property, is deemed to have been transferred to the trust and to be held in trust and not otherwise.

In such a case, the author of the gift and the donee are deemed to have a beneficial right in the trust, and this presumption leads to the result that the author of the gift becomes the holder of an interest in the income of the trust and the donee, an interest in the capital.

The dismemberment of the right of ownership created by the donation with usufruct or usage reserved is accordingly ignored at the tax level, which constitutes an obstacle to the application, regarding this type of donation, of the same tax treatment as the treatment that would have obtained had the donor not stipulated a reserve.

The second obstacle to the application of the tax relief specific to gifts of specified cultural property or works of art lies in the fact that the gift must, according to the existing tax legislation and regulations, bear on the full property of the object and not just on its bare ownership.

Accordingly, the tax legislation and regulations will be amended to stipulate that the presumption according to which a usufruct or usage is a trust shall not apply when such a right is set by a taxpayer by means of a "recognized donation with reserve of usufruct or usage", and to ensure that the tax relief specific to specified cultural property or works of art be applicable to a recognized donation with reserve of usufruct or usage.
For this purpose, a donation made by a taxpayer shall be considered a recognized donation with reserve of usufruct or usage, provided such donation bears on an "eligible object", i.e. a work of art or specified cultural property, other than immovable property, and the following conditions are satisfied:

— the bare ownership of the eligible object was alienated by the taxpayer by means of a donation *inter vivos* under whose terms he reserves the usufruct or usage of the object;

— the donation *inter vivos* was made either, when the eligible object is specified cultural property, to a donee currently recognized regarding such type of property, or, when the eligible object is a work of art that is not specified cultural property, to a Québec museum-related institution recognized for the purposes of the tax credit for charitable gifts;

— the usufruct or usage was established for the sole benefit of the taxpayer, being neither successive nor joint;

— the usufruct or usage was established either for the lifetime of the taxpayer, or for not more than 30 years;

— the taxpayer was the sole owner of the eligible object immediately prior to donating the bare ownership;

— the deed of gift includes a series of imperative clauses covering the alienation of the usufruct or usage, custody of the eligible object, purchase of insurance, as well as the deterioration or disappearance of the eligible object.

More specifically, the deed of gift must include an undertaking by the taxpayer not to alienate his usufruct or usage over the eligible object without first obtaining the authorization of the donee.

Furthermore, such deed must include the obligation, on the taxpayer, to keep the eligible object in a designated place, any removal of the object from such place being authorized only with the consent of the donee and under terms and conditions set by the donee.
The deed of gift must also specify that the taxpayer be required to insure the eligible object against the usual risks, such as theft or fire, and pay the premiums for such insurance during the length of the usufruct or usage. Such obligation must be accompanied by the taxpayer's undertaking to inform the donee without delay of the deterioration or disappearance of the eligible object.

Should the object become deteriorated, the deed of gift must stipulate that the decision whether or not to restore the object lie with the donee. Restoration of the object, as the case may be, may only be carried out by a person designated by the donee, and the taxpayer must undertake to use the insurance indemnity for such purpose. Should the donee decide not to restore the object, it must be specified that taxpayer must remit to him the insurance indemnity within ten days of receiving written confirmation of this decision.

In the event the eligible object disappears, the deed of gift must stipulate that the usufruct or usage terminates and that the insurance indemnity is payable to the donee.

For greater clarity, the deed of gift may include any stipulation that is not incompatible with the required clauses.

Furthermore, the alienation by the donee of the bare ownership of an eligible object may entail, according to the same terms and conditions, the assessment of the special tax payable by a donee recognized for the purposes of the cultural property regime when he alienates, during a certain period, specified cultural property in favour of a non-recognized donee.

- Determination of the fair market value of a recognized donation with reserve of usufruct or usage of an eligible object

For the purposes of the provisions relating to gifts and capital gains, the fair market value of a recognized donation with reserve of usufruct or usage of an eligible object shall be deemed equal to the product obtained by multiplying the amount of the fair market value of the eligible object set otherwise by the determined percentage of the value of the bare ownership.
If the usufruct or usage the donor reserves for himself on the eligible object is for life, the determined percentage shall correspond to the percentage attributed to the value of the bare ownership on the basis of the donor’s age, as indicated in the following table.

### DETERMINED PERCENTAGE

<table>
<thead>
<tr>
<th>Donor’s age</th>
<th>Value of bare ownership</th>
<th>Donor’s age</th>
<th>Value of bare ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 25</td>
<td>25%</td>
<td>55 or over</td>
<td>68%</td>
</tr>
<tr>
<td>25 or over</td>
<td>31%</td>
<td>60 or over</td>
<td>73%</td>
</tr>
<tr>
<td>30 or over</td>
<td>38%</td>
<td>65 or over</td>
<td>78%</td>
</tr>
<tr>
<td>35 or over</td>
<td>44%</td>
<td>70 or over</td>
<td>83%</td>
</tr>
<tr>
<td>40 or over</td>
<td>50%</td>
<td>75 or over</td>
<td>87%</td>
</tr>
<tr>
<td>45 or over</td>
<td>56%</td>
<td>80 or over</td>
<td>91%</td>
</tr>
<tr>
<td>50 or over</td>
<td>62%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If the usufruct or usage is constituted for a fixed length of time, the determined percentage of the value of the bare ownership shall be, with no fraction and regardless of the donor’s age, equal to:

- 87% if the fixed length of time is less than or equal to 10 years;
- 74% if the fixed length of time is greater than 10 years and less than or equal to 20 years;
- 61% otherwise.

For greater clarity, if a taxpayer donates, by means of a recognized donation with reserve of usufruct or usage, the bare ownership of a work of art to a Québec museum-related institution, the fair market value of such donation shall be grossed up by 25%.

- **Application date**

These changes will apply regarding a recognized donation with reserve of usufruct or usage made after the day of publication of this information bulletin.
1.3 Increasing the attractiveness of investing in Capital régional et coopératif Desjardins

At the initiative of the Mouvement Desjardins du Québec, a joint stock company with the mission of raising venture capital for the resource regions of Québec and the cooperative sector was created under the name of "Capital régional et coopératif Desjardins".

To support the mission of this company, it was announced in the Budget Speech of March 29, 2001 that Capital régional et coopératif Desjardins would be authorized to collect, up to December 31, 2010, capital enjoying a tax benefit for an amount not in excess of $1.5 billion, at a rate of $150 million per year.

The tax benefit, consisting of a non-refundable tax credit relating to the acquisition of a share of Capital régional et coopératif Desjardins, is designed to encourage taxpayers to participate in the economic development of the resource regions and the growth of cooperatives in Québec.

More specifically, the tax system stipulates that an individual, other than a broker acting in his capacity as intermediary or firm underwriter, can deduct in calculating his tax otherwise payable for a given taxation year prior to taxation year 2011, an amount equal to 50% of all the amounts, up to $2,500, he paid in the given taxation year to purchase, as first acquirer, a share of the corporation.

However, to receive this tax credit with respect to the acquisition of a share of Capital régional et coopératif Desjardins, the individual must reside in Québec at the end of December 31 of the taxation year in the course of which he acquired the share and must not have requested its redemption in writing within 30 days of its subscription or obtained in the taxation year or within a prior taxation year that a share of Capital régional et coopératif Desjardins regarding which he claimed the tax credit be redeemed or purchased by agreement by the corporation.
Change to the period of acquisition of shares for the purposes of the tax credit

According to the existing rules, to receive the tax credit relating to the acquisition of a share of Capital régional et coopératif Desjardins for a given taxation year, an individual must have acquired a share of the corporation during the calendar year. Since one of the most favourable periods for selling investments giving rise to a tax benefit is during the first two months of a year, changes will be made to the eligibility conditions for the tax credit relating to the acquisition of a share of Capital régional et coopératif Desjardins to further encourage individuals to participate in economic development of resource regions and the growth of cooperatives in Québec.

More specifically, for taxation year 2002, an individual, other than a broker acting in his capacity as intermediary or firm underwriter, may deduct, in calculating his tax otherwise payable, an amount equal to 50% of all the amounts, up to $2,500, he paid during the taxation year and no later than February 28, 2003, to purchase, as first acquirer, a share of Capital régional et coopératif Desjardins.

For a given taxation year after 2002 and before taxation year 2011, an individual, other than a broker acting in his capacity as intermediary or firm underwriter, may deduct, in calculating his tax otherwise payable, an amount equal to 50% of all the amounts, up to $2,500, he paid, at any time during a period beginning on March 1 of such given taxation year and ending on the last day of February of the following taxation year, to purchase, as first acquirer, a share of Capital régional et coopératif Desjardins.

In the event that the acquisition period applicable for a given taxation year ends on a public holiday, it shall be deemed, for the purposes of this tax credit, to end on the preceding day.

However, to receive the tax credit regarding the acquisition of a share of Capital régional et coopératif Desjardins for a given taxation year after 2001, an individual must reside in Québec at the end of December 31 of the given taxation year and not have requested the redemption of such share in writing within 30 days of its subscription nor have obtained, prior to March 1 of the taxation year following the given taxation year, that a share of Capital régional et coopératif Desjardins regarding which he claimed the tax credit be redeemed or purchased by agreement by the corporation.
Information statement

To reflect the new eligibility conditions for the tax credit regarding the acquisition of a share of Capital régional et coopératif Desjardins, various changes will be made to the obligation on the corporation to send the Minister of Revenue an information statement regarding the issue of any share of its capital stock.

For a given taxation year after 2001 and prior to 2011, Capital régional et coopératif Desjardins will be required to produce an information statement regarding all the shares acquired by an individual during the period covered by such statement, other than a share whose redemption was requested within 30 days of its subscription, unless, at the request of the individual, the corporation, after December 31, 2001 and before the end of such period:

— either proceeded to redeem a share, other than a share received by inheritance or a share subscribed within the 30 days preceding the redemption request;

— or proceeded to purchase a share by agreement, unless the reason for such purchase was that the individual or his spouse had not received the tax credit regarding the acquisition of the share.

The information statements that must be produced by Capital régional et coopératif Desjardins, for each of taxation years 2002 to 2010, must cover shares issued:

— for taxation year 2002, during a period beginning January 1, 2002 and ending February 28, 2003;

— in other cases, during a period beginning March 1 of the taxation year concerned and ending the last day of February of the following taxation year.

In every case where a statement must be produced regarding a share issued after December 31, 2001, such statement must be sent to the Minister of Revenue no later than:

— if the share is issued during the months of January and February of a calendar year following 2002, March 31 of such calendar year;

— in other cases, March 31 of the calendar year following the calendar year in which the share was issued.
Change to the capitalization periods of Capital régional et coopératif Desjardins

The Act constituting Capital régional et coopératif Desjardins stipulates that the paid-up capital of the issued and outstanding shares of Capital régional et coopératif Desjardins may increase by $150 million per calendar year, to a maximum of $1.5 billion by the end of 2010. However, should the increase in capital for a given year be less than $150 million, the legislation stipulates that the difference between the latter amount and the increase in capital obtained for the year may be added to the limit applicable for a subsequent year.

Should the paid-up capital of the issued and outstanding shares of the capital stock of Capital régional et coopératif Desjardins exceed at the end of a year, the maximum paid-up capital stipulated for such year, Capital régional et coopératif Desjardins must pay, no later than March 31 of the following year, a special tax of an amount equal to 50% of such excess amount, from which all the amounts paid under such special tax for a prior year must be subtracted.

To reflect the changes that will be made to the tax credit regarding the acquisition of a share of Capital régional et coopératif Desjardins, the capitalization periods of the corporation will be changed to correspond to the acquisition periods stipulated for the purposes of this tax credit.

The following table shows the maximum amount that the paid-up capital of the issued and outstanding shares of Capital régional et coopératif Desjardins may reach at the end of each capitalization period in the period beginning on the date of its incorporation and ending on February 28, 2011.
### MAXIMUM AUTHORIZED CAPITAL

<table>
<thead>
<tr>
<th>Capitalization period</th>
<th>Maximum paid-up capital</th>
<th>Capitalization period</th>
<th>Maximum paid-up capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>From July 1 to December 31, 2001</td>
<td>$150 million</td>
<td>From March 1, 2006 to February 28, 2007</td>
<td>$900 million</td>
</tr>
<tr>
<td>From January 1, 2002 to February 28, 2003</td>
<td>$300 million</td>
<td>From March 1, 2007 to February 29, 2008</td>
<td>$1 050 million</td>
</tr>
<tr>
<td>From March 1, 2003 to February 29, 2004</td>
<td>$450 million</td>
<td>From March 1, 2008 to February 28, 2009</td>
<td>$1 200 million</td>
</tr>
<tr>
<td>From March 1, 2004 to February 28, 2005</td>
<td>$600 million</td>
<td>From March 1, 2009 to February 28, 2010</td>
<td>$1 350 million</td>
</tr>
<tr>
<td>From March 1, 2005 to February 28, 2006</td>
<td>$750 million</td>
<td>From March 1, 2010 to February 28, 2011</td>
<td>$1 500 million</td>
</tr>
</tbody>
</table>

Should the paid-up capital of the issued and outstanding shares of the capital stock of Capital régional et coopératif Desjardins exceed, at the end of a capitalization period beginning after December 31, 2001, the maximum paid-up capital stipulated for such period, Capital régional et coopératif Desjardins shall be required to pay, no later than the May 31 following the end of such period, a special tax of an amount equal to 50% of such excess amount, from which all the amounts paid under such special tax for a prior capitalization period must be subtracted.

1.4 **Lowering of the individual contribution to the Health Services Fund**

Under existing rules, individuals who, during a calendar year, receive income other than employment income, are required to pay, for such year, a 1% contribution to the Health Services Fund (the 1% HSF contribution) on the portion of such income in excess of $11 000. However, some types of income are excluded from the contribution. In particular, income security benefits, indemnities paid by the Commission de la santé et de la sécurité du travail and the old age security pension are excluded.

The table currently used to calculate this contribution is given below.
### 1% HSF CONTRIBUTION TABLE

<table>
<thead>
<tr>
<th>Contributable income</th>
<th>Greater than $0</th>
<th>Not exceeding $11 000</th>
<th>Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 $11 000</td>
<td>Zero</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$11 000 $40 000</td>
<td>1% of the excess over $11 000, maximum $150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$40 000</td>
<td>$150 plus 1% of the excess over $40 000, maximum $1 000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Higher zero-contribution threshold

To exempt more low-income individuals from the obligation to pay this contribution, the exemption threshold, which is currently $11 000, will be raised, as of 2002, to $11 500. Concordance changes will be made to the table used to calculate the 1% HSF contribution, as shown below.

### CONTRIBUTION CALCULATION TABLE AS OF 2002

<table>
<thead>
<tr>
<th>Contributable income</th>
<th>Greater than $0</th>
<th>Not exceeding $11 500</th>
<th>Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 $11 500</td>
<td>Zero</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$11 500 $40 000</td>
<td>1% of the excess over $11 500, maximum $150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$40 000</td>
<td>$150 plus 1% of the excess over $40 000, maximum $1 000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Indexation of contributable income brackets

To provide permanent protection for taxpayers’ purchasing power, each income bracket of the table used to calculate the 1% HSF contribution will automatically be fully indexed as of January 1, 2003.

The indexing method applicable for a given year will be the same as the one used to index the parameters of the personal income tax system. For greater clarity, the indexing factor will be equal to the percentage change in the average Québec consumer price index (QCPI) for the 12-month period ended September 30 of the year preceding the one for which an amount is to be indexed, compared to the average QCPI for the 12-month period ended September 30 of the year prior to the year preceding the one for which an amount is to be indexed.
This indexing factor will be applied, for a given year, to the established value, for the preceding year, of the amounts subject to such indexing.

If the result obtained by applying the indexing factor to a given amount is not a multiple of $5, the result must be adjusted to the nearest multiple of $5 or, if it is equidistant between two multiples of $5, to the nearest higher multiple of $5.

1.5 Averaging of certain retroactive payments for the purposes of calculating the premium for the prescription drug insurance plan

The basic prescription drug insurance plan introduced by the Québec government ensures all Quebecers fair access to the medication required by their state of health. Coverage under this plan is provided by the Régie de l’assurance maladie du Québec (RAMQ), or by insurers transacting group insurance or administrators of private-sector employee benefit plans.

As a rule, everyone whose coverage is provided by RAMQ in a given year must, in filing their income tax return for that year, pay a premium to finance the Québec prescription drug insurance plan of which they are beneficiaries.

This annual premium is calculated on the basis of the family income of the plan beneficiary, i.e. the beneficiary’s net income and that of his eligible spouse, if any, determined according to the rules of the simplified tax system.

However, to take each person’s ability to pay into account, deductions are granted in calculating this annual premium. The level of these deductions is set, notably, to exempt from paying the annual premium a person or a couple who receives the maximum amount of guaranteed income supplement stipulated, for the year, by the Old Age Security Act.

Despite the fact that an individual is entitled, for a given year, to the maximum amount of guaranteed income supplement stipulated by the Old Age Security Act, it is possible that such individual may be required to pay, for such year, a premium to the prescription drug insurance plan if he or his eligible spouse also received, during such year, benefits stipulated under the Act that are attributable to a prior year, since such benefits must be included in calculating the net income of the beneficiary for the year in which they are received.
To prevent an individual who is entitled to the guaranteed income supplement from paying an annual premium to the prescription drug insurance plan that is higher than he would have paid had the benefits stipulated by the Old Age Security Act been received during the year to which they relate, a mechanism for averaging retroactive payments received under the Act will be implemented.

- Averaging mechanism for certain retroactive payments

The Act respecting the Régie de l’assurance maladie du Québec will be amended to stipulate that an individual who receives, during a given year, an amount of guaranteed income supplement may elect, if he or his eligible spouse received, during such year, a retroactive benefit payment stipulated under the Old Age Security Act (i.e. an old age security pension, spouse allowance or guaranteed income supplement benefit), that the annual premium to the prescription drug insurance plan payable by him and his eligible spouse, if any, be determined as if such retroactive payment had been received in each of the years to which it relates.

More specifically, such individual may elect that his family income for the year and, if applicable, that of his eligible spouse be determined as if the portion, that relates to one or more prior years, of all the benefits stipulated by the Old Age Security Act that were received, in the year, by him or his eligible spouse, as the case may be, had not been included in calculating the beneficiary’s income for such year.

If such an election is made, there must be added, to the premium payable to the prescription drug insurance plan for the year by the individual and, if applicable, his eligible spouse, the amount of the additional premium that would have been payable respectively by him and, if applicable, his eligible spouse for each of the prior years to which the benefits stipulated under the Old Act Security Act relate, if they had been included in calculating the beneficiary’s income for such years.

- Application date

These changes will apply as of 2002. They will also apply regarding any year for which the Minister of Revenue may, on the date of publication of this information bulletin, again determine the premium payable to the prescription drug insurance plan by an individual and determine a new assessment or determine an additional assessment.
1.6 Easing of eligibility conditions for the refundable tax credit for taxi

On June 13, 2001, the ministère des Finances announced a number of improvements to the refundable tax credit for taxi, in particular so that it could be granted to taxi drivers.¹

The refundable tax credit for taxi currently has two parts: the first is intended for taxpayers who hold a taxi driver’s permit but do not hold a taxi owner’s permit, while the second is intended for taxpayers who hold a taxi owner’s permit, whether or not they hold a taxi driver’s permit.

More specifically, the first component of the tax credit for taxi stipulates that a taxpayer who, at any time of a given taxation year, holds a taxi driver’s permit may claim, for such taxation year, a refundable tax credit for taxi of up to $500 if, on December 31 of such taxation year, he is a resident of Québec and does not hold a taxi owner’s permit.

The second component stipulates that a taxpayer who holds one or more taxi owner’s permits on December 31 of a calendar year included in his taxation year may claim, for that taxation year, a refundable tax credit for taxi of up to an amount equal to the product of the multiplication of $500 by the number of taxi owner’s permits he holds on such date if, during the taxation year, he covered all or almost all the cost of fuel to keep any automobile attached to such permit in service.

However, regarding either of these two parts, the refundable tax credit for taxi a taxpayer may receive, for a given taxation year, may not exceed an amount representing 2% of all the following amounts:

— the income for the taxation year from his employment as a taxi driver plus all the deduction included in the calculation of such income;

— the gross income for the taxation year from his taxi service business;

— the gross income for the taxation year from renting the automobile attached to a taxi owner’s permit he holds.

¹ Ministère des Finances du Québec Bulletin d’information 2001-5, pages 1 and 2.
Currently, a taxpayer who, during a given taxation year, holds a taxi driver’s permit cannot claim the refundable tax credit for taxi if he dies before the end of such taxation year or, when he also holds one or more taxi owner’s permits on December 31 of such year, if, during such year, he did not cover all or almost all the cost of fuel to keep in service any automobile attached to at least one such permit.

To enable taxi drivers who are in any of these situations to benefit from the refundable tax credit for taxi, the eligibility conditions applicable to the first component of this tax credit will be eased.

More specifically, a taxpayer who, at any time of a given taxation year, holds a taxi driver’s permit and who, at the end of December 31 of such year or, if he died during such taxation year, on the day of his death, resides in Québec may claim, for such taxation year, a refundable tax credit for taxi of up to $500 if, during such taxation year, he did not cover all or almost all the cost of fuel to keep in service any automobile attached to at least one of the taxi owner’s permits he holds as at December 31 of such year.

For greater clarity, the eligibility conditions applicable to the second component of the refundable tax credit for taxi remain unchanged.

The changes to the taxi refundable tax credit will apply to taxation years ending after June 13, 2001.

1.7 Technical changes concerning support allowance refunds

Generally speaking, a taxpayer who obtains a refund of support allowance previously deducted in the calculation of his income may make use of a special mechanism to calculate tax payable regarding such refund.

Essentially, this mechanism spares the taxpayer from having to pay more tax than what he would have had to pay if the refunded support allowance had not been deducted in calculating his income for the taxation year in which it was paid.
To benefit from this mechanism, the taxpayer must make an election whose terms and conditions differ depending on whether the support allowance covered by the refund was deducted in calculating his income for a taxation year prior to taxation year 1998 or for a taxation year after taxation year 1997.

If the refund covers support allowance that was deducted in the calculation of the income of a taxpayer for a taxation year prior to taxation year 1998, the taxpayer must include the amount of such refund in calculating his net income for the taxation year in which it is received.

However, under certain conditions, he may elect to deduct the amount of this refund in the calculation of his taxable income for such year and add, to his tax otherwise payable for the year, the amount of additional tax that would have been payable for the prior taxation year to which the refunded support allowance relates, if the latter had then been included in calculating his taxable income.

If the refund received by a taxpayer relates to a support allowance that was deducted in calculating his income for a taxation year after taxation year 1997, the election, instead of bearing on the calculation of taxable income, bears on the calculation of net income.

The taxpayer may elect not to include the amount of such refund in calculating his net income for the taxation year in which it is received and to add, to his tax otherwise payable for such year, the amount of additional tax that would have been payable for the prior taxation year to which the refunded support allowance relates, if the latter had then been included in calculating his taxable income.

Briefly, the intervention level of the election – taxable income or net income – is basically justified by the treatment that was applied to the payment of support allowance for the purposes of calculating the government assistance granted to low or middle-income households.

Since, as of taxation year 2003, support allowances subject to tax will give rise, as announced in the March 19, 2002 Supplement to the Government’s Budgetary Policy, to a deduction in calculating the family income used to determine the amount of government assistance, changes will be made to the mechanism for calculating the tax payable regarding a support allowance refund.
More specifically, this mechanism will be changed to stipulate that the election regarding the calculation of a taxpayer's net income shall apply solely regarding a refund of support allowance that was deducted in calculating the income of the taxpayer for a taxation year after taxation year 1997 and prior to taxation year 2003, while the election regarding the calculation of a taxpayer's taxable income shall apply regarding a refund of support allowance that was deducted in calculating the income of the taxpayer for a taxation year that is either prior to taxation year 1998, or after taxation year 2002.

These changes will apply regarding a support allowance refund received after December 31, 2002.

1.8 Simplification of the calculation of tax withheld at source

A person who pays, at any time during a taxation year, salaries, wages, retirement benefits, employment insurance benefits or other similar amounts ("remuneration") is required to deduct or withhold an amount as income tax payable for the year by the recipient of the payment ("employee").

In general, the amount the payer must deduct or withhold from the remuneration paid to an employee is equal to the amount established according to a mathematical formula authorized by the Minister of Revenue, or in accordance with the income tax source deduction table he prepares. This amount must be calculated taking into account in particular the amount of personal tax credits of the employee or his deduction code – this code uses a letter to replace the value of the employee’s personal tax credits for the purposes of the income tax source deduction table.

If an employee’s pay period is not included in the income tax source deduction table or if the amount paid is greater than the amount provided for in this table, the payer who does not use a mathematical formula must deduct from the remuneration an amount equal to the portion of the payment represented by the proportion of the employee’s estimated annual tax, based on current rates and the employee’s personal tax credits, to his estimated annual pay.

For the purposes of establishing an amount of tax withheld at source, the amount, for a given year, of personal tax credits of an employee and his deduction code correspond, respectively, to the amount and to the code indicated in his return, entitled Source Deductions Return, that the employee must file, for the year, with the payer.
However, if an employee has filed such a return with the payer for a given year, he is not required to provide him with, in a subsequent year, a new return to indicate that the amount of his personal tax credits must be increased to reflect the automatic indexing of certain parameters of the tax system since January 1, 2002.

On the other hand, if an employee has never filed a Source Deductions Return with the payer, the source deductions must be made as if the individual were entitled to deduct, in the calculation of his or her income tax payable for a given year, only the amount (the "basic amount"), that corresponds presently to the total amount used, for the year, to calculate the basic tax credit and the flat amount under the simplified tax system in order for the preceding year. This amount corresponds to withholdings code "A" if the employer uses the income tax source deduction table.

Source withholdings, for a given taxation year, cannot be determined taking into account the flat amount applicable for the year, because one of the parameters needed to determine the flat amount, namely the maximum amount of the employee employment insurance contribution, may be changed a few days before the beginning of such year.

The Source Deductions Return stipulates that an employee may include different amounts in calculating the amount of his personal tax credits. These amounts include, in addition to the basic amount, a spousal amount, amounts for dependent children, an amount for the tax reduction in respect of families and an amount with respect to age.

Since many of the components currently used to calculate the amount of an employee’s personal tax credits for purposes of withholdings at source are not automatically indexed, payers, other than those that use the income tax source deduction table to determine the amount of income tax withholdings, must accordingly change the amount of personal tax credits of all their employees each year.

If the employees are entitled only to the basic amount or have completed, for the year, a Source Deductions Return, this operation is relatively simple, since the payer only has to replace the old amount with the new one.

However, if the employees completed a Source Deductions Return in a prior year, the employer must first determine the amounts of personal tax credits that the employees concerned would have calculated had they filed a new return.
To simplify matters for payers, various measures will be adopted concerning the calculation of the amount of tax that must be deducted or withheld at source regarding any remuneration paid after December 31, 2002.

- Basic amount for the purposes of withholdings at source

For the purposes of establishing the amount of personal tax credits of an employee who files, with a given payer, a *Source Deductions Return* and the income tax source withholding applicable to the remuneration paid to an employee who has never filed, with a given payer, such a return, the basic amount will be $8,840 subject to automatic annual indexing as of January 1, 2003.

An amount equivalent to the basic amount will also be used to calculate the spousal amount for the purposes of establishing the amount of personal tax credits of an employee who files, with a given payer, a *Source Deductions Return*.

The indexing method applicable for a given year to the basic amount will be identical to the one used to index the main parameters of the personal income tax system.

For greater clarity, the indexing factor will be equal to the percentage change in the average Québec consumer price index (QCPI) for the 12-month period ended September 30 of the year preceding the one for which the amount is to be indexed, compared to the average QCPI for the 12-month period ended September 30 of the year prior to the year preceding the one for which the amount is to be indexed.

This indexing factor will be applied, for a given year, to the established value, for the preceding year, of the basic amount. If the result obtained after applying the indexing factor is not a multiple of $5, the result must be rounded to the nearest multiple of $5 or, if equidistant from two multiples of $5, to the greater of such two multiples of $5.

- Change to the mathematical formulas

The mathematical formulas authorized by the Minister of Revenue will be changed to enable payers to automatically determine, from year to year, the amount of personal tax credits of an employee, except for the year in which an employee files a *Source Deductions Return* to change the amount of his personal tax credits.
The ministère du Revenu will provide payers at the end of August with details of the changes to be made to these formulas.

- Change to the Source Deductions Return

Mainly to simplify matters for payers who use a mathematical formula, the Source Deductions Return will be changed to group, for the purposes of establishing the amount of the personal tax credits of an employee, the components that may be automatically indexed and those that may not.

An employee who filed, for 2002 or for a prior year, a Source Deductions Return with a given payer, must file a new return with such payer to enable him to update his data, unless the latter uses the income tax source deduction table to determine the amount of tax withheld regarding him.

If such return is not filed, the income tax source withholding shall be made regarding the employee as if he was entitled only to deduct the basic amount in calculating his tax payable for 2003 and subsequent years. However, such employee may at any time file a new return with the payer to increase the amount of his personal tax credits.

For greater clarity, employees regarding whom tax withholdings are made in accordance with the income tax source deduction table are not required to file a new return with the payer of their remuneration, since this table is produced annually by taking into account that certain parameters of the tax system are automatically indexed.
2. MEASURES CONCERNING BUSINESSES

2.1 Simplification of rules regarding the application of refundable tax credits to reduce instalment payments

The Taxation Act includes a set of measures to encourage certain types of activity and certain types of behaviour, and the tax assistance provided in this regard often consists of a refundable tax credit.

To accelerate the impact of these refundable tax credits on the cash flow of the taxpayers concerned, many of these refundable tax credits allow the taxpayer who incurs and pays the expenditure giving rise to the tax credit to reduce the instalment payments he must normally make.

The rules regarding the reduction of tax instalments are not uniform, and the result is complexity, ambiguity and administrative costs both for taxpayers and for the ministère du Revenu du Québec (MRQ).

Accordingly, to simplify the administrative burden on taxpayers, and in many cases to improve their cash flow, these rules will be simplified and standardized relating to refundable tax credits regarding the operation of a business.

In spite of the objective of maximum simplification of the rules relating to the application of refundable tax credits to reduce instalment payments, consideration should be given to the fundamental distinction between refundable tax credits based on the increase in payroll and other refundable tax credits.

This basic difference between these two groups of refundable tax credits, which exists at the level of how they are determined, requires the implementation of simplification measures adapted to each group of refundable tax credits.

Accordingly, the amount of a refundable tax credit other than a refundable tax credit based on the increase in payroll is usually determined directly on the basis of an incurred and paid eligible expenditure, and is not generally dependent or conditional on a subsequent event.
The situation is very different in the case of refundable tax credits based on the increase in payroll. In this case, the payroll of a calendar year is compared with that of a reference calendar year. The result is that even if a corporation increases its payroll significantly during the initial months of a calendar year, it is only after the end of the calendar year that it will be able to determine with certainty whether there has actually been an increase in payroll of a given calendar year compared with that of the reference calendar year. Furthermore, only after the end of the given calendar year will the corporation be able to accurately determine the amount of this increase, even if it was virtually certain, during the given calendar year, that its payroll would rise.

- The specific case of refundable tax credits based on the increase in payroll

In the case of refundable tax credits based on the increase in payroll, it is useful to establish a balance between the risks associated with estimates, during the year, of these refundable tax credits and the desire to allow these corporations to benefit as quickly as possible from the favourable impact, in terms of cash flow, of such refundable tax credits.

In this context, allowing instalment payments to be totally offset on the sole basis of projections would be, in view of the risks inherent in these projections, an advantage that could turn into a disadvantage for certain corporations. There could be a number of corporations that, in good faith, would pay insufficient instalments on the basis of estimates that prove to be inaccurate. On the other hand, denying, in every case, a reduction in such instalment payments would fail to answer the cash flow requirements of some corporations.

For instance, a corporation that, even after the first nine months of a calendar year, still expects to increase its payroll significantly compared to its reference calendar year, could see its forecasts prove to be inaccurate because of changes in the general economic situation or in its particular sector.

Accordingly, to reconcile the divergent objectives of reducing the risk associated with projections that, in certain cases, fail to materialize, and of allowing corporations that so wish to assume this risk and thus reduce their instalment payments, a special mechanism will be set up.
More specifically, in the case of refundable tax credits based on the increase in payroll, a corporation may, regarding such a tax credit allowed for a given taxation year, reduce its instalment payments up to the amount it received in this regard for the preceding the taxation year, provided it maintains the required increase in payroll for such given taxation year.

In other words, for a given taxation year of a corporation, it may reduce its instalment payments, regarding such a refundable tax credit based on the increase in its payroll for the calendar year ending during the given taxation year, by the lesser of the refundable tax credit it received for its preceding taxation year or the refundable tax credit it will receive for such given taxation year.

For greater clarity, these calculations must be carried out independently for each of these refundable tax credits based on the increase in payroll. Only the amounts specifically attributable to such a refundable tax credit may be used to determine the reduction in instalment payments allowed in its regard.

This reduction mechanism should reduce the risk associated with projections, since one of the parameters used is already known.

The reduction in risk will be especially significant in the case of refundable tax credits based on the increase in payroll relating to a fixed reference year. In such cases, the corporation need only maintain the size of the payroll of its eligible business to benefit fully from this instalment payment reduction mechanism.

The situation is different for refundable tax credits based on the increase in payroll relating to a moving reference year. In such cases, the corporation must at least maintain the same level of growth in its payroll to benefit fully from this instalment payment reduction mechanism.

Lastly, it should be noted that in every case where a taxpayer decides to pay instalment payments on the basis of estimates, the taxpayer assumes the risks associated with insufficient instalment payments, in particular the resulting interest charge. This rule makes no distinction between the fact that such under-estimate of instalment payments is cased by an under-estimate of income tax or the tax on capital, or by an over-estimate of refundable tax credits that allow instalment payments to be reduced.
Accordingly, this rule will make no exception for this new instalment payments reduction mechanism and the risk associated with such estimates will be assumed by the corporation that decides to use it.

- Refundable tax credits other than those based on increase in payroll -

As indicated above, the amount of refundable tax credits relating to the operation of a business other than those based on increase in payroll to which a taxpayer is entitled is generally simpler to establish, even during the taxation year when such tax credits are earned.

In most cases, the amount of the refundable tax credit can easily be determined with acceptable accuracy shortly after the expenditure giving rise to it is incurred, regardless of whether such expenditure relates to the salary of an employee, a contract awarded to a third party or the acquisition of an eligible asset.

In addition, the existing rules regarding the reduction of instalment payments involve a large number of special cases.

Furthermore, some refundable tax credits allow all taxpayers entitled to them to reduce their instalment payments, while other refundable tax credits never allow this. There are also refundable tax credits that have specific rules for each component, or different treatment depending on whether the expenditure is incurred in-house or is sub-contracted.

Lastly, many refundable tax credits limit the right to reduce instalment payments to certain taxpayers, for example by using a size criterion.

In this context, the substantial increase in the number of refundable tax credits in recent years makes it necessary to simplify the rules relating to whether or not instalment payments can be reduced.

Furthermore, since the primary objective of this type of refundable tax credit is to stimulate certain specific sectors of the economy, the tax assistance taxpayers can receive ideally should be made available as quickly as possible.
In this regard, standardization of these rules requires simplification to enable all taxpayers to reduce their instalment payments when they receive, for a taxation year, a refundable tax credit.

Accordingly, the tax legislation will be amended to allow, in every case, a taxpayer who can receive, for a taxation year, a refundable tax credit relating to the operation of a business other than those based on the increase in its payroll, to reduce, for such taxation year, its instalment payments relating to income tax and the tax on capital.

However, it should be pointed out that a corporation that, for a taxation year, elects to claim a refundable credit of employer contributions to the Health Services Fund instead of the refundable tax credit for corporations established in E-Commerce Place may not, for such taxation year, reduce its instalment payments regarding such tax assistance.

Order of application of the reduction of instalment payments

Under existing rules, the method for reducing payments to be made is not the same for all refundable tax credits.

Refundable tax credits may be applied either to reduce instalment payments on each monthly payment in the case of corporations, or on the due date for the balance payable for a taxation year, i.e. two months after the end of the taxation year for a corporation.

Furthermore, when refundable tax credits can be applied to reduce monthly instalment payments, the corporation must allocate them according to the eligible expenditures incurred during each month. To do so, it must enclose with its tax return a form providing a monthly breakdown of these refundable tax credits. If the corporation does not provide a breakdown, the total amount of such refundable tax credits, that may have been applied to reduce instalment payments for certain months of the taxation year, is, according to the practice of the MRQ, applied to the last month of such taxation year.

The great majority of corporations do not take advantage of this possibility of reducing instalment payments. There are a number of reasons for this.
The main one is doubtless that an over-estimate of refundable tax credits in the calculation of instalment payments to be made leads to an interest charge for insufficient instalment payments. There is also the requirement to perform the calculations even before the end of the month since the instalment payment must reach the MRQ by the last day of each month.

In this context, many corporations prefer not to take refundable tax credits into consideration when making their instalment payments.

Accordingly, to reduce the administrative burden on taxpayers and the risk of interest charges associated with an over-estimate of refundable tax credits when calculating instalment payments, the tax legislation will be simplified.

More specifically, the tax legislation will be amended so that all refundable tax credits relating to the operation of a business, to which a taxpayer is entitled for a taxation year, are applied to instalment payments according to their chronological order. For greater clarity, the excess of such refundable tax credits over instalment payments, if any, will be applied to the balance payable on the due date.

In other words, the refundable tax credits to which a taxpayer is entitled for a taxation year will be applied first against the first instalment payments, regardless of the month of such taxation year during which the eligible expenditures giving rise to such refundable tax credits are incurred. Accordingly, it will no longer be necessary to provide a monthly breakdown of expenditures to enjoy a reduction in instalment payments.

This simplification of the instalment payments reduction mechanism should allow more taxpayers to benefit from it, while reducing the risks of interest charges associated with an over-estimate of refundable tax credits.

**Application dates**

The changes specific to refundable tax credits based on the increase in payroll will apply in relation to 2001 and subsequent calendar years. However, in view of the reduction mechanism specific to these refundable tax credits, this initial calendar year regarding which a corporation may reduce its instalment payments, namely 2001 or after, must be at least the second calendar year regarding which the corporation receives such refundable tax credit.
The changes specific to refundable tax credits other than those based on an increase in payroll and the changes relating to the order of application of the reduction in instalment payments will apply in relation to taxation years that end after the date of publication of this information bulletin.

2.2 Increase in available floor space in certain designated sites

Eligible corporations that move into certain designated sites can receive tax assistance when they carry out eligible activities. These sites include information technology development centres (CDTIs) and new economy centres (CNEs).

Because of the large number of corporations that have already indicated their intention to carry out activities in these designated sites, the available floor space of some of these sites will be increased.

2.2.1 Increase in the floor space of the CDTI de Sherbrooke

The measures relating to CDTIs were introduced in the March 25, 1997 Budget Speech. Briefly, these measures are designed to support corporations which undertake to carry out, within designated buildings, innovative projects in the new information and communications technology field.

Currently, the CDTI de Sherbrooke consists of a building located at 720-740, rue Galt Ouest, in Sherbrooke. The authorized floor space of this CDTI is 4 650 square metres.

The floor space of the CDTI de Sherbrooke will be increased by 3 350 square metres, bringing its total floor space to 8 000 square metres. This additional floor space will be divided between an increase of 1 650 square metres in the current floor space of the building located at 720-740, rue Galt Ouest, in Sherbrooke, and the designation of a second building with authorized floor space of 1 700 square metres. Investissement Québec will provide the exact location of this second building at a later date, following a call for tenders.
2.2.2 Increase in total available floor space of CNEs

The measures relating to CNEs were introduced in the March 9, 1999 Budget Speech. Briefly, a CNE designates a grouping of certain businesses carried on within an available floor space granted to all regions of Québec. In a given region, the same CNE may be established in more than one urban centre, according to the region’s needs.

The total floor space available to CNEs was initially 45 000 square metres, but that has been gradually increased to 125 000 square metres.\(^2\)

Because of the success of this tax measure and to enable more corporations to benefit from it, the total available floor space of CNEs for all regions of Québec will be increased once again, this time to 150 000 square metres.

Investissement Québec is responsible for designating the buildings and floor space attributable to each region. Accordingly, it will see that the total floor space of the designated buildings, for all regions of Québec, does not exceed, at any time, 150 000 square metres. In addition, Investissement Québec will give preference to expanding and consolidating existing CNEs, rather than creating more.

Lastly, it should be specified that this overall floor space does not include the portions of the floor space of the CDTIs in Hull, Laval, Montréal, Sherbrooke and Québec City, that may be used to house corporations that wish to carry out activities eligible for the tax assistance applicable to CNEs, nor the portion of the biotechnology development centres in Laval, Sherbrooke, Saint-Hyacinthe and Lévis\(^3\) that may be used to house corporations that wish to carry out activities in the biotechnology field and are eligible for the tax assistance applicable to CNEs.

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\(^3\) See subsection 2.3.2 hereafter.
2.3 Adjustments concerning biotechnology development centres

Québec’s tax legislation includes a set of measures that favour businesses that carry out scientific research and experimental development (R&D) and other forms of innovation in certain activity sectors, in particular those associated with the knowledge-based economy. This applies to, for example, the measures relating to R&D and those concerning the carrying out of eligible activities in certain designated sites, such as CDTIs, biotechnology development centres (CDBs), the Cité du multimédia, the Centre national des nouvelles technologies de Québec (CNNTQ) and CNEs.

Essentially, the fiscal measures relating to the carrying out of eligible activities in certain designated sites are divided into two types: those relating to the carrying out of an innovative project and those relating to the carrying out of activities other than in the course of carrying out an innovative project (specified activities).

For the purpose of these fiscal measures, eligible activities include activities carried out in the biotechnology sector, and the designated sites where the corporations that carry out activities related to this sector must locate, in order to receive the tax assistance, are, according to the applicable conditions, CNEs and CDBs.

More specifically, the fiscal measures relating to the carrying out of an innovative project enable a corporation that carries out an innovative project relating to the biotechnology sector in a CDB, to receive a five-year tax holiday with respect to income tax, the tax on capital and the employer contribution to HSF. Such a corporation may also receive refundable tax credits for salaries paid to eligible employees, the expenses of acquiring or leasing eligible specialized equipment and eligible rental expenses relating to the short-term rental of eligible specialized facilities. In addition, a foreign specialist employed by such a corporation can claim, for a period of five years, an exemption from tax on his income from such employment.

Furthermore, the fiscal measures relating to the carrying out of specified activities enable a corporation that carries out specified activities relating to biotechnology, in a CDB or a CNE, to claim a refundable tax credit regarding the salaries paid to specified employees. In addition, a foreign specialist employed by such a corporation can claim, for a period of five years, an exemption from tax on his income from such employment.
However, to encourage the grouping of corporations operating in the biotechnology field, corporations that want to locate in cities that host CDBs, namely Laval, Sherbrooke and St-Hyacinthe, to carry out activities in the biotechnology sector, whether in the course of carrying out an innovative project or in the course of carrying out specified activities, must move into the CDB of the city concerned in order to benefit from the tax assistance inherent in carrying out such activities.

To further support corporations that carry out an innovative project in a CDB, the application details of the tax credit for short-term rental of specialized installations will be clarified and an adjustment will be made to broaden its field of application. In addition, three new specialized installations will be designated in St-Hyacinthe.

Lastly, in the wake of the announcement made in the Supplement to the Government’s Budgetary Policy on March 19, 2002 that other CDBs may eventually be designated in other regions of Québec that are particularly well equipped with infrastructures in the health field and in university research and training regarding the biotechnology sector, a new CDB will be designated in Lévis.

2.3.1 Refundable Tax credit for short-term rental of eligible specialized facilities

The tax credit for short-term rental of specialized facilities was introduced in the March 29, 2001 Budget Speech so that a corporation that carries out an innovative project in the biotechnology sector in a CDB, can claim a refundable tax credit regarding eligible rental expenses relating to short-term rental of eligible specialized facilities.

Under the current rules, an eligible specialized facility means, for a CDB, a specialized facility of a person, located within the CDB, and regarding which such person has obtained from Investissement Québec an eligibility certificate stipulating that such facility satisfies the conditions otherwise applicable. Furthermore, an eligible specialized facility may mean, for a given CDB, a specialized facility of a person, located outside the CDB, that was designated by the Minister of Finance and for which an eligibility certificate eligibility certificate was issued to the person by Investissement Québec.
Clarification regarding the attachment of an eligible specialized facility to a given CDB

The current rules regarding the tax credit for short-term rental of eligible specialized facilities can give the impression that a corporation that carries out an innovative project in a given CDB may claim this tax credit when it leases an eligible specialized facility which is designated in regard to another CDB.

To avoid any ambiguity, it is appropriate to specify that a corporation that carries out an innovative project in the biotechnology sector within a given CDB may claim the tax credit for the short-term rental of an eligible specialized facility only if this specialized facility leased by such corporation is specifically attached to such given CDB and the conditions otherwise applicable are all satisfied.

Broadening of the notion of eligible rental expenses

Under the current rules, for the purposes of the tax credit for short-term rental of eligible specialized facilities, the expression "eligible rental expenses" corresponds to the rental expenses attributable to the rental of the eligible specialized facilities, including the expenses attributable to goods consumed in the course of utilization and indispensable thereto. However, such rental expenses do not include services attributable to an operator, a technician or any other person whose services may be required for the utilization of the eligible specialized facilities.

In most cases where specialized facilities are used, such services are indispensable to the utilization of the specialized facilities. Accordingly, the definition of the expression "eligible rental expenses" will be changed to include the expenses relating to such services in eligible rental expenses.

More specifically, for the purposes of the tax credit for short-term rental of eligible specialized facilities, the expression "eligible rental expenses" means the rental expenses attributable to the rental of the eligible specialized facilities, including the expenses attributable to goods consumed in the course of utilization and indispensable thereto, as well as the costs relating to services attributable to an operator, a technician or any other person whose services are indispensable for the utilization of the eligible specialized facilities.
This change will apply regarding rental expenses, otherwise eligible for this tax credit, incurred after March 29, 2001.

- Designation of specialized facilities for the CDB of St-Hyacinthe

In the course of the March 19, 2002 Supplement to the Government’s Budgetary Policy, a CDB was designated in St-Hyacinthe. No specialized facility located outside this CDB was designated. To assist corporations that carry out an innovative project in the biotechnology sector in the CDB de St-Hyacinthe to complete their project, three eligible specialized facilities will be designated for this CDB.

More specifically, for the purposes of the tax credit for short-term rental of eligible specialized facilities that can be claimed by a corporation that carries out an innovative project in the biotechnology sector in the CDB de St-Hyacinthe, the expression "eligible specialized facility" will also mean an installation regarding which a person has obtained an eligibility certificate from Investissement Québec stipulating that such installation is:

- either a specialized facility of Cintech agroalimentaire, used in the biotechnology sector and located in St-Hyacinthe;
- or a specialized facility of the Centre de recherche et de développement des aliments (CRDA), used in the biotechnology sector and located in St-Hyacinthe;
- or a specialized facility of the Institut de biotechnologie vétérinaire et alimentaire (IBVA), used in the biotechnology sector and located in St-Hyacinthe.

- Designation of a CDB in Lévis

A CDB with floor space of 1 100 square metres will be designated in the city of Lévis. More specifically, this CDB will consist of a space measuring 1 100 square metres in the building located on the lot designated as being part of re-subdivision TWO of re-subdivision ONE HUNDRED AND SEVENTY-FIVE of subdivision FOUR of original lot number THREE HUNDRED AND SEVENTY-THREE (373-4-175-2) of the cadastre of the Village de Lauzon, municipality of Lévis, Lévis registry division.
However, the space thus designated as a CDB shall not include the space located at level 300 of the building included in the exclusive portion attributed to the Collège d'enseignement général et professionnel de Lévis-Lauzon (Cegep de Lévis-Lauzon), under the terms of a joint possession agreement reached by the Cegep de Lévis-Lauzon and AG Bio Centre on March 19, 2002, and published in the registry office of the Lévis registry division on March 19, 2002, bearing number 457755.

A CNE with floor space of 6 500 square metres has already been designated in Lévis.

In this context, and like the situation in cities where existing CDBs are located, corporations that carry out activities in the biotechnology sector in Lévis, whether in the course of carrying out an innovative project or in the course of carry out specified activities, must move into the CDB de Lévis to benefit from the tax assistance inherent in carrying out such activities.

For greater clarity, the designation of this CDB with floor space of 1 100 square metres and the use of a portion of such floor space to carry out specified activities in the biotechnology sector will not result in diminishing the total floor space set by the Minister of Finance for sites designated as CNEs and available for all regions of Québec. Furthermore, any future increase in floor space attributable to the CDB de Lévis is the responsibility of the Minister of Finance.

Lastly, for the purposes of the tax credit for short-term rental of eligible specialized facilities that can be claimed by a corporation that carries out an innovative project in the biotechnology sector in the CDB de Lévis, the expression "eligible specialized facility" also means a facility regarding which a person has obtained an eligibility certificate from Investissement Québec stipulating that such facility is:

— either a specialized facility of the Centre collégial de transfert en biotechnologie (Transbiotech), used in the biotechnology sector and located in Lévis;

— or a specialized facility of the department chemistry and biology of the Cegep de Lévis-Lauzon, including solely the chemistry and biology laboratories, used in the biotechnology sector and located in Lévis.
2.4 Fiscal measures relating to innovation centres

Fiscal measures relating to innovation centres were introduced in the March 19, 2002 Supplement to the Government's Budgetary Policy.

Briefly, a corporation moving into a designated site, namely the Carrefour de l'innovation de Montréal or the Carrefour de l'innovation de Québec, may receive tax assistance, consisting of a refundable tax credit regarding the increase in payroll attributable to eligible employees of such corporation, for five consecutive calendar years. In addition, a foreign specialist employed by such a corporation may receive, for five years, an exemption from tax on income earned from such employment.

The notion eligible employee for the purposes of the refundable tax credit will be changed to facilitate the administration of this fiscal measure. In addition, a correction is made to the cadastral description of one of the designated sites.

- Changes to the refundable tax credit for innovation centres

To determine its refundable tax credit for a given calendar year, an eligible corporation must compare the payroll for such 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 a certified business, i.e. a business regarding which an eligibility certificate was issued by Investissement Québec.

Accordingly, an eligibility certificate is issued if the corporation carries on, in a designated site, a business whose activities relate to information technology and to certain general application technologies.

A corporation may carry on many activities of which only some are covered by the tax credit, and the number of employees assigned to each activity can vary from year to year. To facilitate the administration of this fiscal measure, while ensuring that the tax credit is actually granted regarding the target activities, the notion of eligible employee will be changed.
According to the current terms and conditions, the notion of eligible employee means an employee of an establishment of an eligible corporation located in a designated site, at least 90% of whose duties are devoted to undertaking, supervising or directly supporting the activities of the certified business carried on by the eligible corporation, and who is not a specified shareholder of the eligible corporation. In addition, duties relating to general administration, such as administrative services and clerical support, are ineligible.

In addition to these conditions, the eligible corporation must also obtain, from Investissement Québec an annual eligibility certificate to the effect that the employee satisfied the eligibility conditions concerning the nature of the employee’s duties for a given calendar year. Such annual certificate must also be issued for an employee who satisfies the same eligibility conditions for the reference calendar year. The eligibility certificate thus confirms that at least 90% of employee’s duties consisted in undertaking, supervising or directly supporting the activities of the certified business carried out by the eligible corporation.

According to the initial terms and conditions, the MRQ was to have been responsible for checking whether or not a given employee qualified as an eligible employee. Because of the change made, this responsibility will henceforth be shared with Investissement Québec, which must satisfy itself that the eligibility criteria regarding the employee’s duties are met.

However, to maintain the measure’s integrity, the MRQ may continue to consult with Investissement Québec to learn whether an employee can qualify as an eligible employee, in particular if the eligible corporation carries on, in an establishment located outside a designated site, a business whose activities are related to information technology and to certain general application technologies.

Lastly, to claim the tax credit, regarding a calendar year, the eligible corporation must enclose with its tax return, for its taxation year in which such calendar year ends, a copy of the certificates issued by Investissement Québec in relation to the eligible employees.

These changes will apply as of calendar year 2002.
Change to the cadastral description of the Carrefour de l’innovation de Québec

The Carrefour de l’innovation de Québec corresponds to the existing location of the Parc technologique de Québec métropolitain (PTQM) whose cadastral description was published in the March 19, 2002 Supplement to the Government’s Budgetary Policy.

The recent update of the compilation plan of the lots and parts of lots constituting the PTQM necessitates a number of changes to this cadastral description.

Accordingly, lots 1 313 157, 1 528 940, 1 529 168, 1 529 169, 1 533 668, 1 738 095, 1 898 270 and 1 898 271 will be added to the cadastral description of the PTQM while lots 1 309 553, 1 309 558, 1 309 559, 1 533 666, 1 534 005, 1 612 994, 1 737 906, 1 738 406, 1 896 270 and 1 896 271 will be removed.

2.5 Changes to the refundable tax credit for biotechnology development in certain designated sites

The refundable tax credit for biotechnology development in certain designated sites was introduced in the March 19, 2002 Supplement to the Government’s Budgetary Policy.

In general, this tax credit is granted regarding the increase in payroll attributable to eligible employees of an eligible corporation that moves into a designated site, namely the Cité de la biotechnologie et de la santé humaine du Montréal métropolitain or the Zone de développement des biotechnologies de Sherbrooke, regarding three consecutive calendar years.

Like the changes made to the refundable tax credit for innovation centres, the notion of eligible employee will be changed according to the same rules as those indicated in the case of the refundable tax credit for innovation centres.
Accordingly, the eligible corporation must obtain, from Investissement Québec, an annual eligibility certificate to the effect that the employee satisfied the eligibility conditions, both for a given calendar year and for the reference calendar year.

These changes will apply as of calendar year 2002.

2.6 Changes to the refundable tax credit for nutraceuticals and functional foods

The refundable tax credit for nutraceuticals and functional foods was also introduced in the March 19, 2002 Supplement to the Government’s Budgetary Policy.

In general, this tax credit is granted regarding the increase in payroll attributable to eligible employees of an eligible corporation operating in the functional foods and nutraceuticals sector in the Québec City region regarding three consecutive calendar years.

Like the changes made to the refundable tax credit for innovation centres and the refundable tax credit for biotechnology development in certain designated sites, the notion of eligible employee will be changed according to the same rules as those indicated in the case of the refundable tax credit for innovation centres.

Accordingly, the eligible corporation must obtain, from Investissement Québec, an annual eligibility certificate to the effect that the employee satisfied the eligibility conditions, both for a given calendar year and for the reference calendar year.

These changes will apply as of calendar year 2002.

2.7 Changes to the tax holiday for small and medium-size manufacturing enterprises in remote resource regions

A ten-year tax holiday was introduced in the March 29, 2001 Budget Speech for small and medium-size manufacturing enterprises in remote resource regions, to stimulate economic development of these regions where the employment situation is the most difficult.
Accordingly, in general, a corporation all of whose activities consist mainly in carrying on a manufacturing or processing business in one of these regions may claim a tax holiday with respect to income tax, the tax on capital and the employer contribution to the HSF.

Changes concerning manufacturing and processing activities

Since the tax legislation does not define manufacturing and processing, the ordinary meaning of these words and jurisprudence must be relied upon to determine whether a corporation carries out such activities.

Accordingly, the notion of manufacturing generally refers to the creation of something (for instance, making or assembling a machine) or the shaping, from something, of an object (for instance, manufacturing a part to be included in a machine).

The notion of processing generally refers to the technique of preparation, manipulation, or any other activity designed to produce a physical or chemical transformation in a product, an article or a substance, other than the transformation resulting from the natural growth process.

Manufacturing or processing activities also include certain activities associated with manufacturing or processing, provided they are incidental.

Manufacturing or processing activities may be carried out in the course of sales contract or a service contract. In the latter case, services may at times be delivered outside the establishment of the eligible corporation and outside an eligible region. For instance, refurbishment of production machinery is often carried out in establishments where such machinery is installed.

Accordingly, to ensure that the tax holiday is granted for processing activities carried out in the remote resource regions and to ensure a degree of standardization with the other fiscal measures targeting the resource regions, two clarifications will be made to the notion of manufacturing or processing business.
First, manufacturing or processing activities will also include installation activities, provided they are incidental to the manufacturing or processing activities carried out by the corporation or a corporation associated with it. For greater clarity, installation activities relating to goods manufactured or processed by a third party other than the above-mentioned associated corporation, will not be considered as manufacturing or processing activities.

This change will apply as of March 30, 2001.

Second, a manufacturing or processing activity carried out in the course of a service contract must be carried out in an eligible region for the purposes of the tax holiday.

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

Excluded activities

For the purposes of the tax holiday, excluded activities include, in general, activities carried out by a business in the primary sector, in particular farming, forest operations, mine extraction and the extraction of oil and natural gas. Accordingly, such activities may not be considered as manufacturing or processing activities.

In addition, briefly, activities carried out by a business in the tertiary sector may not be considered as manufacturing or processing activities, if such activities account for more than 50% of the activities of the corporation.

To ensure that the tax holiday is granted solely to corporations carrying out substantial manufacturing activities, activities carried out by a business in the tertiary sector will henceforth be excluded activities for the purposes of the tax holiday. For example, the preparation of meals, in particular in restaurants, hotels, shopping centres (fast food counters), supermarkets and grocery stores will be excluded activities. Similarly, the development of photographic films in a laboratory will be an excluded activity, regardless of the importance of such activities for the corporation.
Activities carried out in a business in the tertiary sector mean, in particular, wholesale and retail activities, transportation and warehousing activities, financial and administrative services, lodging and meal services as well as corporate services and personnel services.

However, to ensure a degree of standardization with the other fiscal measures relating to the resource regions, the development and recycling of waste will be manufacturing and processing activities for the purposes of the tax holiday.

These changes will apply regarding a taxation year beginning after the date of publication of this Information Bulletin.

2.8 Changes to various refundable tax credits granted in certain regions

In recent years, the government has introduced many specific fiscal measures, for the benefit of certain regions, to bolster economic development in these regions and stimulate the development and expansion of businesses.

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

These tax credits target specific activities carried out in particular in the manufacturing and processing sectors. Although their application details are identical, the three tax credits are independent and separate tax credits because the activities they cover may be specific to certain regions.

Generally speaking, these refundable tax credits are granted with respect to the increase in payroll attributable to eligible employees of an eligible corporation operating in one of the target regions, for five consecutive calendar years.
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 a certified business, i.e. a business regarding which Investissement Québec issued an eligibility certificate.

This notion of certified business will be broadened for the purposes of the tax credit for processing activities in the resource regions and certain changes will be made to it for the purposes of these three tax credits.

In addition, an adjustment will be made to the application details of the three tax credits to enable an eligible corporation to apply, under certain circumstances, for the cancellation of an eligibility certificate.

Lastly, a change will be made to the tax credit for Gaspésie and certain maritime regions of Québec to extend the territorial scope of certain activities.

2.8.1 Refundable tax credit for processing activities in the resource regions

In general, the refundable tax credit for processing activities in the resource regions is granted with respect to the increase in payroll attributable to eligible employees of an eligible corporation operating in one of the resource regions of Québec, for five consecutive calendar years.

More specifically, for the purposes of this tax credit, a corporation must carry on, in an eligible region, a certified business regarding which Investissement Québec has issued an eligibility certificate and whose activities include the manufacturing or processing of wood and metals, food processing, production of non-conventional energy or aquaculture.
Certified business

— Changes in the notion of certified business

The notion of "certified business" will be changed, as of calendar year 2002, to also designate a business whose activities are:

— the manufacturing and processing of finished or semi-finished goods from non-metallic minerals;
— the manufacturing and processing of pallet components;
— the installation of a product or a specialized equipment.

In the latter regard, the installation of a product or a specialized equipment will be considered an activity of a certified business only if such installation is incidental to the manufacturing or processing of a product or a specialized equipment by the corporation or by a corporation associated with it. The specialized equipment installed must be specialized equipment for the purposes of the tax credit.

Moreover, a "certified business" will also include commercialization activities incidental to the above-mentioned activities.

— Changes to the notion of certified business

Activities relating to the production of structural lumber

According to the existing terms and conditions, activities relating to sawing logs or bolts for structural lumber or similar products, cannot be recognized as activities of a certified business. Similar products include planks, dimension lumber, posts and cross members.

The activities subsequent to the sawing of logs or bolts also contribute to the production of structural lumber or similar products and, in some cases, these activities can be recognized as activities of a certified business.
To afford greater standardization in the treatment of activities leading to the production of structural lumber, the notion of certified business will be adjusted.

Starting in calendar year 2002, activities relating to the manufacturing of structural lumber or similar products, including sawing of logs or bolts, will not be recognized as activities of a certified business. However, the activities of drying structural lumber in kilns and planing of the structural lumber of a plant will continue to be considered as activities of a certified business.

However, a corporation that has already obtained an eligibility certificate or has applied for such a certificate, before the date of publication of this information bulletin, regarding a business whose activities are related to the manufacturing of structural lumber or similar products, will continue to be an eligible corporation, in relation to such activities, for the purposes of this tax credit.

**Rule for service businesses**

According to the existing terms and conditions, the activities covered by the refundable tax credit for processing activities in resource regions cannot be recognized as activities of a certified business if they are performed by a corporation all of whose activities consist mainly in supplying services. Activities relating to the wholesale and retail trade, as well as lodging and restaurant services are accordingly considered services.

However, this rule may appear restrictive for a corporation that carries on more than one business, of which one includes manufacturing or processing activities covered by the tax credit.

Accordingly, to enable a corporation to have such manufacturing or processing activities recognized, regardless of the importance of the activities carried out in another sector, the rule for service businesses will be eliminated.

Furthermore, a corporation may occasionally carry out manufacturing or processing activities on goods it does not own. In general, such activities are carried out in the establishment of the eligible corporation located in an eligible region. However, in some cases, the activity is carried out where the goods to be manufactured or processed are located. For instance, the refurbishment of specialized equipment is often carried out in establishments where such equipment is installed.
To be recognized as activities of a certified business, manufacturing or processing activities will henceforth have to be carried out in an eligible region.

Lastly, food manufacturing and processing activities carried out in particular in restaurants, hotels, shopping centres (fast food counters), supermarkets and grocery stores will not be considered as activities of a certified business.

These changes will apply as of calendar year 2002.

**Adjustment regarding the eligibility certificate**

As mentioned above, a corporation is eligible for the tax credit for a period of five consecutive calendar years.

During such period, a major unforeseen event, such as a fire, may force the eligible corporation to reduce its activities and lay off employees, which will necessarily result in a decrease in its payroll. In such a case, the corporation will be unable to obtain the tax credit during the stipulated five calendar years.

To mitigate the impact of such major unforeseen events and encourage a recovery in activities, an adjustment will be made to the application details of the tax credit.

Accordingly, Investissement Québec may, at the request of an eligible corporation, cancel the eligibility certificate issued to such corporation regarding a given calendar year. However, such cancellation will become effective only as of the calendar year following the last civil year regarding which the tax credit was claimed.

Such an eligible corporation may, at a later date, apply for an eligibility certificate regarding a subsequent calendar year if it otherwise satisfies the other eligibility conditions, and thus receive the refundable tax credit regarding jobs created as of such subsequent calendar year.
The period of eligibility for the tax credit, following the issuing of the new eligibility certificate, shall be established by considering the number of years during which the corporation received the tax credit. For example, during calendar year 2002, an eligible corporation ceases to carry on its business following a fire. In the course of the same year, the corporation obtains the cancellation of the eligibility certificate issued for calendar year 2001. This cancellation will become effective in calendar year 2002. If the corporation obtains an eligibility certificate for calendar year 2004, i.e. when it resumes activities, the eligibility period will be four consecutive calendar years because it had already received the tax credit for calendar year 2001. For greater clarity, the reference calendar year will then correspond to the calendar year preceding the one during which Investissement Québec issues the new eligibility certificate.

Investissement Québec will be responsible for deciding whether or not a given event constitutes a major unforeseen event for the purposes of this relief measure. However, for greater clarity, the loss of a significant customer will not be considered as a major unforeseen event.

This change will apply as of calendar year 2002.

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

In general, the refundable tax credit for Gaspésie and certain maritime regions 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 and Côte-Nord and in the Matane RCM, for five consecutive calendar years.

More specifically, for the purposes of this tax credit, a corporation must carry on, in an eligible region, a certified business regarding which Investissement Québec has issued an eligibility certificate and whose activities include the sea products processing, marine biotechnology, wind power or mariculture sectors.
To standardize the measures for job creation in the resource regions, the changes made to the notion of certified business, regarding the installation of a product or a specialized equipment and regarding service businesses, and the adjustment relating to the eligibility certificate for the purposes of the refundable tax credit for processing activities in resource regions, will also apply to the notion of certified business for the purposes of the refundable tax credit for Gaspésie and certain maritime regions of Québec.

Lastly, the territorial scope of the manufacturing and processing of finished or semi-finished products in the marine biotechnology field will be extended to two other administrative regions, namely the administrative regions of Côte-Nord and Bas-Saint-Laurent.

Accordingly, the eligible regions, regarding such activities, will henceforth consist of the territories included in the administrative regions of Gaspésie–Îles-de-la-Madeleine, Côte-Nord and Bas–Saint-Laurent.

These changes will apply as of calendar year 2002.

2.8.3 Refundable tax credit for the Vallée de l’aluminium

Generally speaking, the refundable tax credit for the Vallée de l’aluminium is granted regarding the increase in payroll attributable to eligible employees of an eligible corporation operating in the Saguenay—Lac-Saint-Jean administrative region regarding five consecutive calendar years.

To standardize the measures for job creation in the resource regions, the changes made to the notion of certified business, regarding the installation of a product or a specialized equipment and regarding service businesses, and the adjustment relating to the eligibility certificate for the purposes of the refundable tax credit for processing activities in resource regions, and the refundable tax credit for Gaspésie and certain maritime regions of Québec, will also apply to the notion of certified business for the purposes of the refundable tax credit for the Vallée de l’aluminium.

These changes will apply as of calendar year 2002.
2.9 Changes to the refundable tax credit for technology adaptation services

In the March 9, 1999 Budget Speech, a refundable tax credit, consisting of two components, was introduced to further support small businesses in gathering and processing strategic information and cooperating in research and innovation. The first component of this tax credit concerns competitive information, i.e. the results of intelligence activities carried out by a competitive intelligence centre, while the second concerns liaison and transfer services.

Briefly, the tax credit an eligible corporation may claim, for a taxation year, is determined by multiplying by 40% the amount of eligible expenditures the eligible corporation incurred, during such year, with an eligible competitive intelligence centre, an eligible liaison and transfer centre, or an eligible college technology transfer centre, as the case may be.

- Recognition of a new eligible competitive intelligence centre

The Centre d'information et de valorisation du secteur du meuble de la Mauricie will be recognized as an eligible competitive intelligence centre for the purposes of the refundable tax credit for technology adaptation services.

This recognition will apply regarding eligible expenditures incurred by an eligible corporation after the date of publication of this information bulletin, in relation to products or services offered by the Centre d'information et de valorisation du secteur du meuble de la Mauricie after such date.

- Change to the name of an eligible college technology transfer centre

The Centre de métallurgie du Québec, attached to the Cégep de Trois-Rivières, is an eligible college technology transfer centre for the purposes of the refundable tax credit.
To reflect the integration of foundry activities with its metallurgy activities, the Centre de métallurgie du Québec has changed its name to the Centre intégré de fonderie et de métallurgie. The Regulation Respecting The Taxation Act will accordingly be amended to recognize the Centre intégré de fonderie et de métallurgie as an eligible college technology transfer centre.

This change will apply by declaration.

2.10 Consequential change resulting from the name change of an eligible college technology transfer

A taxpayer that carries on a business in Canada and who, in particular, has had carried out on his behalf R&D work in Québec, by an eligible public research centre to which he is not related, may claim a refundable tax credit corresponding to 40% of 80% of the amount paid to such centre.

In this regard, the Centre de métallurgie du Québec is a college technology transfer centre recognized as an eligible public research centre for the purposes of the refundable tax credits for R&D. On February 16, 1998, the Centre de métallurgie du Québec changed its name to the Centre intégré de fonderie et de métallurgie.

Like the change made to the refundable tax credit for technological adaptation services, the Regulation Respecting The Taxation Act will be amended to recognize the Centre intégré de fonderie et de métallurgie as an eligible public research centre for the purposes of the refundable tax credits for R&D.

This change will apply as of February 16, 1998.

2.11 Québec Business Investment Companies

The system applicable to Québec Business Investment Companies (QBICs) is designed to enable Québec SMEs to have access to external sources of financing, to ensure their permanent capitalization and long-term development.
In general, a QBIC is a private corporation whose activities consist mainly in acquiring
and holding common shares of the capital stock of small and medium-size private
corporations (qualified corporation). Briefly, a qualified corporation means a
Canadian-controlled private corporation with assets of no more than $50 million,
operating in an eligible activity sector stipulated in the Québec Business Investment
Companies Regulation.

When a QBIC makes a qualified investment, the individuals who are its shareholders
can claim, in calculating their taxable income, a deduction equal to 125% or 150%, as
the case may be, of the value of their participation in the qualified investment. Under the
existing rules, to be eligible for the purposes of this system, a QBIC’s investment must
consist of the acquisition, as first acquirer, of common shares with full voting rights of
the capital stock of a qualified corporation.

For many qualified corporations, financing by means of a QBIC is a first step in seeking
external capital. Subsequently, when required by growth in activities, more substantial
external capital may be necessary. A qualified corporation of sufficient size may then
turn to the stock market to obtain the capital it needs.

However, for a qualified corporation that has yet to become sufficiently large to have
access to the stock market, private financing with institutional venture capital investors
is often an alternative.

According to the current conditions of the venture capital market, institutional investors
often demand that their investment enjoy certain privileges compared to the
corporation’s earlier financings. In this context, the financing vehicle usually favoured by
institutional investors consists of convertible preferred shares that are redeemable,
under certain conditions, and have seniority over earlier financings in the event that the
qualified corporation is wound up.

One consequence of such financing for the initial investors of the qualified corporation,
including the QBIC, is a dilution of their participation, and relegation to second rank in
the event that the qualified corporation is wound up.
Introduction of a new category of qualified investment

To limit these negative consequences, initial investors usually have the opportunity to participate in the financing through convertible preferred shares. Such participation ensures a degree of maintenance of their position in the capital stock of the qualified corporation and, in the event the latter is wound up, the benefit of priority as to this second investment.

However, since such an investment does not involve common shares with full voting rights of the qualified corporation, a QBIC’s investment in such convertible preferred shares cannot qualify as a qualified investment for the purposes of the Act respecting Québec Business Investment Companies. Consequently, a QBIC’s participation in this type of investment offers no tax benefit to its shareholders.

To prevent such a situation from detracting from the interest in investing in a QBIC, and to facilitate a QBIC’s participation in a second offering to raise capital by a qualified corporation regarding which the QBIC already holds a qualified investment, a new category of qualified investment will be introduced.

More specifically, the legislation will be amended so that, provided the requirements and conditions described below are satisfied, the investment validated by Investissement Québec and made by a QBIC in a qualified corporation in the form of convertible preferred shares acquired as first acquirer, is recognized as a qualified investment for the purposes of the QBIC system.

Ceiling on qualified investment

However, the total issue price of convertible preferred shares relating to such an investment may not, throughout the period during which the QBIC is the owner of such convertible preferred shares, exceed the total issue price of the common shares with full voting rights of the qualified corporation that the QBIC owns and relating to a qualified investment previously made by the QBIC in the common shares of the qualified corporation’s capital stock.
Convertible preferred share

A convertible preferred share means a preferred share within the meaning of the *Taxation Act*, convertible, if applicable, into a common share with full voting rights of such corporation, and redeemable by the issuing corporation, but granting no privilege, other than in the event of the winding-up of the qualified corporation, as to dividends compared with common shares.

Lastly, Investissement Québec may refuse to validate a QBIC’s investment in convertible preferred shares if it considers that, although the criteria mentioned above are satisfied, the attributes of these convertible preferred shares fail to meet fiscal policy objectives.

Tax benefit

The rules that currently apply to the determination of a shareholder’s interest in a qualified investment and those relating to the determination of a shareholder’s adjusted interest in a qualified investment will also apply to the determination of a shareholder’s adjusted interest in a qualified investment in convertible preferred shares. However, the rate applicable to the calculation of a shareholder’s adjusted interest in such a qualified investment will be reduced by 50 points, bringing it to 75% or 100%, as the case may be.

Length of investment

Except for purposes of conversion into common shares with full voting rights of the qualified corporation, during the period of 60 months following the date of validation of a qualified investment by Investissement Québec, the QBIC may not allow the redemption or otherwise alienate a convertible preferred share that is part of a qualified investment. If applicable, at the expiry of this period of 60 months, the QBIC must convert all the convertible preferred shares it still owns into common shares with full voting rights.

Lastly, for greater clarity, the QBIC must hold a common share with full voting rights obtained following the conversion of convertible preferred shares for a minimum of 24 months.
Specific case of mergers

Should a qualified corporation and a QBIC merge while the latter holds convertible preferred shares issued by the qualified corporation that are part of a qualified investment, the QBIC will be considered to have alienated its convertible preferred shares and the special tax stipulated below will apply to such a situation.

In addition, should such a merger occur during the period of 24 months following the date on which the QBIC converted its convertible preferred shares into common shares with full voting rights of the capital stock of the qualified corporation, the rules currently stipulated by the QBIC system in relation to the failure of a QBIC to hold shares that were part of a qualified investment for a minimum period of 24 months will apply.

However, like the rules currently stipulated by the QBIC system, Investissement Québec may approve such a merger before the expiry of the 24-month period following the date on which the QBIC converted its convertible preferred shares, provided more than 12 months have elapsed since the time of such conversion.

Special tax

Non-compliance with any of the requirements relating to a qualified investment in convertible preferred shares will lead to a proportional recapture of the tax benefits granted to shareholders of the QBIC. Such recapture will consist of a special tax applicable to the QBIC.

More specifically, this special tax will correspond to the result of the following formula:

\[ [A \times B \times 24\%] + [C \times D \times 1\%] \]

where:

\[ A = \] the issue price of the convertible preferred shares regarding which there is non-compliance;

\[ B = \] 75% or 100%, depending on the rate applied to the calculation of the adjusted interest of shareholders of the QBIC regarding such qualified investment;
C = the result of the first component of this formula (A x B x 24%);

D = the number of complete months elapsed between the validation of the qualified investment by Investissement Québec and the date that Investissement Québec or the tax authorities reach a conclusion of non-compliance.

Lastly, if the non-compliance relates to the redemption of a convertible preferred share by the qualified corporation from the QBIC during the 60-month period following the date of validation of the qualified investment by Investissement Québec, the qualified corporation will be required to withhold, from the proceeds of the redemption, and pay to the Minister of Revenue, the amount of the special tax applicable to the QBIC. To this end, Investissement Québec may divulge the qualified corporation of the rate that applied to the calculation of the adjusted interest of shareholders of the QBIC regarding the qualified investment.

Application date

These changes will apply in relation to a convertible preferred share issued by a qualified corporation after the date of publication of this information bulletin.

2.12 Change to the stock savings plan

Briefly, the stock savings plan (SSP) is a plan that allows an individual to deduct, in calculating his taxable income for a taxation year, the cost of shares he acquired under the plan no later than December 31 of the year. The main objective of the plan is to improve the capitalization of small and medium-size Québec companies.

A corporation that proceeds with a public offering of shares under the SSP must satisfy certain conditions. In particular, a corporation must apply to the Minister of Revenue for an advance ruling and show that the contemplated offering satisfies the objectives of the SSP as well as the various requirements stipulated in the legislation.
In the latter regard, one of these requirements is that throughout the period of 12 months preceding the date of the receipt of the final prospectus or filing exemption (receipt date), the securities of the corporation be listed on a Canadian stock exchange or, alternatively, that the corporation have at least five full-time employees during such period. Essentially, for the purposes of fiscal policy, the purpose of this requirement is to ensure that a corporation that makes a public offering under the SSP has a minimum commercial history.

From the origins of the SSP until the fall of 1999, the criterion regarding a listing on a Canadian stock exchange during a twelve-month period referred rather to the Montréal Exchange. However, following the restructuring of Canadian stock exchanges in the fall of 1999, and to reassure financial markets regarding the on-going nature of the SSP, the reference to the Montréal Exchange was replaced by a reference to a Canadian stock exchange.

Contrary to the situation that prevailed on the Montréal Exchange before its restructuring, some Canadian stock exchanges, in particular circumstances, allow listings of corporations that have no commercial activity. In particular, such is the case with the TSX venture exchange regarding start-up capital pool companies (CPC).

Essentially, a CPC is a "shell" corporation authorized to make a public offering of shares for a limited amount, and to list these shares on the TSX venture exchange. From the time of its listing, and for a period of up to 18 months, the sole activity of the CPC is to identify a business opportunity that, if it is authorized, will enable it to carry out a "qualifying transaction", i.e. the last step in the process applicable to a CPC.

Consequently, regarding the SSP, a CPC whose securities are listed on the TSX venture exchange for more than 12 months could, technically, meet the requirements of the SSP, without satisfying the fiscal policy relating to the existence of a minimum commercial history.

Although the existing legislation authorizes the Minister of Revenue to refuse to issue the advance ruling necessary for an SSP offering if the objectives of the plan are not satisfied, a specific legislative provision regarding the situation of CPCs would remove any ambiguity on this issue.
Accordingly, the legislation relating to the SSP will be amended to specify that, for the purposes of the criterion relating to listing on a Canadian stock exchange for a period of at least 12 months, the period during which the securities of a CPC are listed as such on a Canadian stock exchange will not be taken into consideration.

This change will apply to an application for an advance ruling submitted to the Minister of Revenue after the date of publication of this information bulletin.

2.13 Easing of exemption rules respecting duties on transfers of immovables

The Act respecting duties on transfers of immovables requires that a municipality collect a duty (transfer duty) on the transfer of any immovable located within its territory. Provisions of the act also stipulate certain cases of exemption from the payment of the transfer duty when, among others, the transfer involves two corporations that are part of the same corporate group.

In the March 31, 1998 Budget Speech, the exemptions that existed up to then, involving two corporations, were replaced with a general application exemption regarding any transfer between two closely related corporations.

To this end, a given corporation and another corporation are closely related, at any time, if the other corporation is a corporation at least 90% of whose issued shares, with full voting rights, of its capital stock are owned:

— by the given corporation;
— by a specified subsidiary of the given corporation;
— by a corporation of which the given corporation is a specified subsidiary;
— by a specified subsidiary of a corporation of which the given corporation is a specified subsidiary;
— by one or more of the corporations or subsidiaries covered by the above sub-paragraphs.
The expression "specified subsidiary" of a given corporation means another corporation at least 90% of whose issued shares, with full voting rights, of its capital stock, are owned by the given corporation.

In many cases, these changes helped to significantly simplify immovable transfer transactions, free of transfer duties, within the same corporate group. However, the scope of the measures remains limited.

Accordingly, some transfers of immovables between corporations of the same group cannot be exempted under existing rules, unless many transactions are carried out to achieve the desired result, even when the two corporations are in reality wholly or almost wholly held by the same corporate group.

For example, such is the case of third-tier subsidiary, of which each tier is 100% owned, and a second-tier subsidiary, of which each tier is 100% owned. The two corporations, which ultimately are 100% owned by the same corporation, are not covered by the current exemption rule, unless they carry out more than one transaction.

The limited scope of the current rules is attributable to the need to ensure that the ultimate ownership of the two corporations that carry out the transfer of an immovable is not substantially different. The current rules allow a 10% dilution at each tier of ownership of one corporation by another, hence the limited number of tiers currently allowed.

Accordingly, allowing the transfer free of the transfer duty between two corporations that are part of a complex corporate group, a portion of whose shares is held, at each tier, by persons outside the group, could give rise to situations where the ultimate ownership of an immovable changes significantly, which would be contrary to the objective of the exemption rules.

For example, such would be the case of two fourth-tier subsidiaries of which each tier is 90% owned. In such a case, the ultimate ownership of the transferred immovable would have changed significantly and no transfer duty would have been paid, which would not comply with the objective of the exemption rules.
In this context, the possibility of allowing more corporations that are part of the same corporate group to be exempted from the transfer duty, regardless of the method of ownership of the shares within the corporate group, must be achieved while satisfying this ultimate ownership criterion.

Accordingly, a new case of exemption will be stipulated by adding a rule for qualifying two closely related corporations.

More specifically, a given corporation and another corporation will be closely related, at any time, either if the other corporation is wholly or almost wholly owned directly or indirectly by the given corporation, or if both corporations are wholly or almost wholly owned directly or indirectly by the same corporation.

In this regard, the reference to the indirect ownership of shares is in fact a reference to the ownership of shares through one or more corporations.

For greater clarity, the given corporation and the other corporation may also claim the exemption from transfer duties if they are both wholly or almost wholly owned directly or indirectly by the same group of corporations.

To this end, a corporation (namely the other corporation, as well as the given corporation when both corporations are owned by the same corporation), is wholly or almost wholly owned directly or indirectly by a corporation (the holding corporation, namely the given corporation or the same corporation, as the case may be), if at least 90% of the shares of the corporation, by-value of all classes, are owned directly or indirectly by the holding corporation.

For the purposes of this rule, the shares of the capital stock of a corporation owned directly or indirectly by another corporation, at a given time, shall be deemed to be owned at this given time by each corporation, shareholder of such other corporation, in a proportion equal to the product of the multiplication of the number of such shares by the ratio between:

— the fair market value of the shares of the capital stock of the other corporation of which the holding corporation is at such given time the owner;

— and the fair market value of all the issued shares of the capital stock of the other corporation outstanding at such given time.
Furthermore, the *Taxation Act* stipulates the application of a *Special duties relating to the transfer of an immovable in certain circumstances*. For greater clarity, this alternative duty may also apply to transfers of immovables that have enjoyed an exemption from the transfer duty pursuant to this easing measure.

This easing measure will apply regarding a transfer made after the date of publication of this information bulletin.
3. OTHER FISCAL MEASURES

3.1 Tax system applicable to trusts and their beneficiaries

- Liability for income tax according to the province of residence of the trust

In the context of taxation in Canada, there is no "tax border" between the provinces regarding income tax. Accordingly, subject to the different tax treatment applicable to income from a business, an individual residing in Canada is liable solely for income tax of the province in which he resides at the end of his taxation year.

In this regard, a trust is deemed to be an individual. Accordingly, it is liable for income tax of the province in which it resides at the end of its taxation year.

Furthermore, the residence of a trust generally corresponds to the residence of the trustee, because it is generally acknowledged that the trustee controls and administers the assets of the trust. However, if the control and administration of the assets transferred to a trust lie with a person other than the trustee, such as the settlor of the trust for example, the ministère du Revenu (MRQ) considers that the residence of the trust does not correspond to the residence of the trustee, but rather to the residence of the person who in fact controls and administers a significant portion of the assets of the trust.

- Election to tax income in the hands of the trust or the beneficiary

In general, a beneficiary of a trust must include, in calculating his income for a taxation year, the income of the trust, for such year, that became payable or was paid to him.

The trust then deducts, in calculating its income for a taxation year, the income that became payable or was paid to its beneficiaries for such year.
However, according to federal tax legislation, a trustee may elect that the income and taxable capital gains of the trust, for a taxation year, be taxed in its hands. This election allows the trustee to distribute these amounts to the beneficiaries free of tax since they are deemed, for the purposes of the tax legislation, not to have become payable nor to have been paid to the beneficiaries for such year. However, the amounts thus attributed to the beneficiaries may not exceed their respective share determined according to civil law.

When such election is made by the trustee of a trust resident in Québec, it is also deemed to be made for the purposes of Québec’s tax legislation.

**Announcement of December 20, 2001**

Last December 20, the ministère des Finances announced that it would analyze the tax system applicable to trusts and their beneficiaries to assess whether the flexibility currently allowed by the system is adequate in the current context of taxation in Canada, more specifically regarding tax planning designed to reduce provincial tax regarding income from the assets held in trust.\(^4\)

The ministère des Finances has completed this analysis and has identified situations regarding which the tax system applicable to trusts and their beneficiaries may lead to an undue reduction in provincial tax, in the current context of taxation in Canada.

In this regard, measures will accordingly be implemented to ensure compliance with existing legislation with respect to the tax system applicable to trusts and their beneficiaries, and to correct certain situations identified as inappropriate as a result of this analysis.

Additional legislative amendments may also be made at a later date to the tax system applicable to trusts and their beneficiaries, if the amendments announced in this information bulletin prove insufficient to counter the tax planning deemed inappropriate by the ministère des Finances.

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Introduction of a new information statement

In order to better target the Québec beneficiaries of a non-Québec Canadian trust, Québec’s tax legislation will be amended to require taxpayers subject to it, and who are beneficiaries of a designated trust, during a taxation year, to declare in the tax return they must file under the Taxation Act, for such taxation year, the name of the designated trust, the name and address of the trustee of such trust, and the date from which the taxpayer has been a beneficiary of the trust.

In addition to this information, a taxpayer who is a designated beneficiary of a designated trust, during a taxation year, must also declare in the tax return he must file under the Taxation Act, for such taxation year, if applicable, the change in trustee of such trust or of the latter’s address during the last five years and the name and address of the preceding trustee, as the case may be, in addition to all the amounts paid or that became payable in the year and regarding which the trustee made the election stipulated in subsections 13.1 or 13.2 of section 104 of the Income Tax Act.

In this regard, the existing tax legislation stipulates that a person who omits to provide information on a prescribed form, filed in accordance with a tax law, incurs a penalty of $100.

Accordingly, in relation to the information mentioned above that a beneficiary and a designated beneficiary must henceforth declare in their tax return, each such item of information may give rise to a penalty of $100 if it is omitted.

For greater clarity, if such information is omitted, the MRQ may issue an assessment in this regard at any time.

Residence of a trust

In the context of taxation in Canada, Québec taxpayers may reduce their tax that would be otherwise payable under Québec’s tax legislation regarding income generated by assets, simply by assigning such assets to a trust residing in a province with lower tax rates than those in Québec.
However, in such circumstances, for the trust to be considered to reside in a province other than Québec, there must not be any criteria of attachment to Québec that would allow the MRQ to conclude that a person residing in Québec in fact controls and administers the assets transferred to the trust. In this regard, the MRQ will pay particular attention to situations where a Québec taxpayer is the beneficiary of a non-Québec Canadian trust.

Accordingly, under currently applicable legislation and considering the introduction of a new information statement as mentioned above, if the facts show that a significant portion of the control and administration of the assets of a trust whose trustee resides outside Québec, lies with persons who are residents of Québec, the MRQ shall determine that the residence of the trust corresponds to the residence of such persons in Québec, despite the fact that such persons are not the trustees of this trust.

In such situations, the MRQ may issue any assessment it deems relevant, even regarding past taxation years, according to the provisions of Québec’s tax legislation.

Definition of the expressions "designated trust" and "designated beneficiary"

For the purposes of the amendments to Québec’s tax legislation mentioned in this information bulletin:

— a "designated trust" means a trust residing in Canada, outside Québec, with the exception of a unit trust and a trust regarding which the tax legislation specifically stipulates that the election stipulated in subsections 13.1 and 13.2 of section 104 of the Income Tax Act may not be made;

— a "designated beneficiary" of a designated trust for a taxation year of the latter means a beneficiary having, for such year, either a share of the aggregate of income interests of the designated trust representing an amount of $5,000 or more, or a share corresponding to 10% or more of the aggregate of capital interests or of the aggregate of income interests of the designated trust.

In this regard, a beneficiary’s share will be established considering the share of the aggregate of capital interests or of the aggregate of income interests of such designated trust attributable to persons with whom such beneficiary is not at arm’s length.
Furthermore, to ensure the integrity of this rule, the Minister of Revenue may determine that a beneficiary of a designated trust is a designated beneficiary of such trust, if he considers that the share of such designated trust attributable to such beneficiary and to persons with whom he is not at arm’s length is less than the above mentioned thresholds because of a series of transactions or operations.

- Election stipulated in subsections 13.1 and 13.2 of section 104 of the Income Tax Act

According to federal tax legislation, a trustee may make the election stipulated in subsections 13.1 and 13.2 of section 104 of the Income Tax Act, according to which the income and taxable capital gains of the trust, for a taxation year, are taxed in its hands.

This election allows a Québec beneficiary to repatriate income or taxable capital gains from a non-Québec Canadian trust, without payment of Québec provincial tax.

Accordingly, provided the trust is subject to tax of a province with lower tax rates than those of Québec, the result is a reduction in provincial tax that otherwise should have been paid regarding such income and such taxable capital gains.

In this context, the flexibility currently allowed by the tax system applicable to trusts and their beneficiaries, which comes under the fiscal policy not to create "tax borders" between the provinces, allows some Québec taxpayers to reduce their provincial tax by means of tax planning involving the assignment of assets to a trust residing in a province with lower tax rates than those of Québec.

This type of tax planning produces an undue reduction in the provincial tax a Québec taxpayer would have had to pay, had it not been for the flexibility currently allowed by the tax system applicable to trusts and their beneficiaries.

- Level of provincial tax maintained

To maintain the level of provincial tax of Québec beneficiaries of a non-Québec Canadian trust, a change will be made to the tax system applicable to trusts and their beneficiaries, so that the provincial tax payable by a trust and its beneficiaries is not reduced because of the disparity in tax rates that currently exists among the provinces.
In this regard, the election made by the trustee of a designated trust under subsections 13.1 and 13.2 of section 104 of the Income Tax Act will no longer be recognized for the purposes of Québec's tax legislation.

More specifically, Québec's tax legislation will be amended so that a designated beneficiary is required to include in the calculation of his income, for a taxation year, the amounts attributed to him by a designated trust, for such year, despite the election made by the trustee of such trust under subsections 13.1 and 13.2 of section 104 of the Income Tax Act.

— Granting of a non-refundable tax credit

Nonetheless, to comply with the fiscal policy not to create "tax borders" between the provinces, and thus prevent the same amounts being taxed in more than one province, such a designated beneficiary may deduct from its tax otherwise payable (non-refundable tax credit), for a taxation year, an amount equivalent to the amount of tax of a province, other than Québec, paid by the designated trust, and that relates to the amounts attributed to such beneficiary, for such year, and that were covered by an election by the trustee of such trust under subsections 13.1 and 13.2 of section 104 of the Income Tax Act.

However, for the purposes of the non-refundable tax credit, the amount of tax of another province, paid by the designated trust, may not exceed the amount of tax such trust would have paid under Québec's tax legislation, had it been a resident of Québec.

— Non-refundable tax credit claim

It may be difficult for the MRQ to accurately assess the amount of tax of a province, other than Québec, paid by the designated trust, to determine the amount of such non-refundable tax credit.

In this context, to be entitled to this non-refundable tax credit, the designated beneficiary will be required to join to his income tax return the information showing the amount of provincial tax paid by the designated trust, and that relates to the amounts that were attributed to the designated beneficiary, in the context of the election stipulated under subsections 13.1 and 13.2 of section 104 of the Income Tax Act.
Adjustment of the ACB of the beneficiary’s participation

Québec’s tax legislation will also be amended to maintain parity as much as possible between this legislation and federal tax legislation, in relation to the tax attributes attached to the participation of a designated beneficiary in a designated trust.

More specifically, the tax legislation will be amended so that, when a designated beneficiary receives a non-refundable tax credit relating to the tax of a province, other than Québec, paid by a designated trust, the adjusted cost base of his participation in such trust is reduced, if applicable, by an amount equivalent to such non-refundable tax credit.

Trust resident in Québec

For greater clarity, these changes will not apply in regard to a trust resident in Québec. Accordingly, beneficiaries of such a trust that makes the election stipulated under subsections 13.1 and 13.2 of section 104 of the Income Tax Act will continue to be subject to the rules currently in effect in this regard.

Introduction of a penalty

In view of the objective of the changes that will be made to the tax system applicable to trusts and their beneficiaries, in relation to tax planning designed to reduce provincial tax, a new penalty will be introduced to sanction the omission by a designated beneficiary to include in the calculation of his income, for a taxation year, the amounts attributed to him in the year by a designated trust, and that were covered by the election made for the year by the trustee of such trust under subsections 13.1 and 13.2 of section 104 of the Income Tax Act.

More specifically, the tax legislation will be amended so that a designated beneficiary who omits to include in the calculation of his income, for a taxation year, the amounts attributed to him in the year by a designated trust, and that were covered by the election made for the year by the trustee of such trust under subsections 13.1 and 13.2 of section 104 of the Income Tax Act, incurs a penalty equal to the greater of $100 or 25% of the excess of the tax he would have had to pay for the year had he included these amounts in the calculation of his income, over the tax he paid for the year based on the information he provided.
For greater clarity, the procedures for calculating this penalty will be to the same effect as those of the penalty for a false statement or intentional omission currently stipulated in the *Taxation Act*.

**Application dates**

**New information statement**

The amendments to the tax legislation concerning the new information statement will apply, regarding corporations, for a taxation year ending after the day of publication of this information bulletin. In other cases, they will apply as of taxation year 2002.

**Election stipulated in subsections 13.1 and 13.2 of section 104 of the *Income Tax Act***

The amendments to the tax legislation concerning the election stipulated under subsections 13.1 and 13.2 of section 104 of the *Income Tax Act* will apply regarding such election made after the date of publication of this information bulletin.

**Penalty for omitting to include an amount covered by the election stipulated under subsections 13.1 and 13.2 of section 104 of the *Income Tax Act* in the calculation of income**

The amendments to the tax legislation concerning the penalty for omitting to include an amount covered by the election stipulated under subsections 13.1 and 13.2 of section 104 of the *Income Tax Act* in the calculation of income will apply after the date of publication of this information bulletin.

**3.2 Adjustment to the attribution rule relating to the assignor of assets in favour of a trust**

According to federal tax legislation, when a trust is constituted *in any way whatsoever*, and the assets assigned to the trust can be returned to the assignor or cannot be alienated without his consent, all the income and all the taxable capital gains, in particular, resulting from such assets are deemed to be those of the assignor.
According to Québec’s tax legislation, when a trust is constituted by a person, and the assets assigned by such person to the trust can be returned to him or cannot be alienated without his consent, all the income and all the taxable capital gains, in particular, resulting from such assets are deemed to be those of such person.

Accordingly, Québec’s tax legislation covers fewer situations than the federal tax legislation, since the settlor of a trust and the person who assigns assets to such trust may be two different persons. This distinction is not justified since the two legislations should be harmonized in this regard.

In this context, Québec's tax legislation will be amended so that, when a trust is constituted in any way whatsoever, and the assets assigned to the trust can be returned to the assignor or cannot be alienated without his consent, all the income and all the taxable capital gains, in particular, resulting from such assets shall be deemed to be those of the assignor.

This amendment will apply after the date of publication of this information bulletin.

3.3 Adaptation of the tax laws to Canadian bijuralism

The existing tax legislation makes many references to notions of private law. These notions can be defined or otherwise shaped so as to assign a particular meaning to them. However, it can happen that the tax legislation is silent in this regard. In such cases, it is necessary to turn to the rules of private law to interpret the notion whose meaning has not been thus defined.

In Québec, private law corresponds to civil law whose rules are set out in the Québec Civil Code, while in the other provinces and the territories, it corresponds to common law.

The existence of bijuralism in Canada has prompted the federal government to undertake a broad revision of its legislation, in particular regarding tax matters, to ensure that it interacts adequately with civil law and common law.
Amendments in this sense have been made to federal tax legislation, in particular as part of the *Income Tax Amendments Act, 2000*.\(^5\)

In the context of the harmonization of Québec’s tax laws with federal tax laws, any amendment to the latter arising from this revision process may have relevance for the purposes of Québec’s tax legislation, since the co-existence of civil law and common law also has an impact, albeit more marginal, on it.

Although in most cases, civil law must be referred to in order to interpret a notion of private law that is not otherwise defined or shaped by Québec’s tax legislation, it may be necessary, in certain specific circumstances, to turn to common law to interpret such a notion, because, for instance, Québec’s tax legislation asserts itself over a legal relation that originated outside Québec.

In particular, this can happen when it is a question of determining the tax consequences arising from the existence of a relationship of ownership between an asset and a taxpayer. Such a determination may lead to the application of common law concepts in right of ownership, for example when the relationship of ownership is attached to a building located in a province other than Québec. Notions of ownership are substantially different in common law and civil law jurisdictions.

Consequently, to better recognize, within Québec’s tax system, that civil law and common law are two sources of law that may be applied, any amendment to federal tax legislation and regulations arising from the revision process relating to bijuralism will be incorporated into Québec’s tax legislation and regulations, provided it concerns a provision with which Québec's tax system is harmonized and this amendment is appropriate in the circumstances.

However, these measures relating to bijuralism will only be adopted after the assent of any federal statute or the adoption of any federal regulations giving effect to them, and will apply on the same dates as for the purposes of federal income tax and the federal tax system.