

CHANGES TO THE REFUNDABLE TAX CREDIT FOR THE TREATMENT OF INFERTILITY

The refundable tax credit for the treatment of infertility was introduced along with the March 14, 2000 budget¹ in order to ease the financial burden inherent to the various steps that infertile couples must take to start a family.

In August 2010, following the implementation of the Québec Assisted Reproduction Program, which offered all medical procedures related to artificial insemination and the first three cycles of in vitro fertilization (IVF) free of charge, the refundable tax credit for the treatment of infertility was refocused to offset a portion of the costs related to IVF treatments that were not covered by a public health insurance plan, provided that these treatments were carried out in compliance with the standards set by the Québec government to ensure quality, safe and ethical practice.

On June 6, 2014, the Health and Welfare Commissioner published an opinion on assisted procreation activities in Québec² in which he made 12 recommendations to ensure better supervision of the Québec Assisted Reproduction Program, improve the benefits of the program and better administer public funds allocated to it.

In November 2015, in response to this opinion, the government terminated coverage, under the Québec Health Insurance Plan, of services related to IVF activities.³ In return, the tax assistance provided through the refundable tax credit for the treatment of infertility underwent a major restructuring.⁴

As part of this restructuring, new eligibility conditions for the refundable tax credit for the treatment of infertility were introduced to ensure that the assistance covers only a limited number of IVF cycles and that assistance is reserved for persons who do not have children and who did not choose voluntary sterilization for contraceptive purposes. In addition, the list of expenses eligible for the refundable tax credit for the treatment of infertility was significantly modified.

In addition, the method of calculating the tax credit was revised to take into account the financial capacity of households to contribute to the payment of IVF treatments. These calculation methods, which are still in effect, essentially provide for tax credit rates ranging from 20% to 80% to be applied to eligible expenses, these rates being determined according to family income and family status.⁵ However, expenses eligible for this tax credit remain limited to \$20 000 annually.

¹ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2000-2001 – Additional Information on the Budget Measures*, March 14, 2000, section 1, p. 16-17.

² The detailed advisory report (in French) and summary advisory are available on the website of the Health and Welfare Commissioner, at <https://www.csbe.gouv.qc.ca>.

³ *Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted procreation* (S.Q. 2015, c. 25, s. 25, subpara. 2).

⁴ MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2015-6*, November 11, 2015.

⁵ Rate tables have been established for a couple and a person alone.

On May 15, 2019, the government announced the reinstatement of public coverage, by the Québec Health Insurance Plan,⁶ of expenses incurred for the provision of assisted reproduction services. In response, the government introduced Bill 73, An Act to amend various provisions relating to assisted procreation, which was passed on March 10, 2021 and assented to on March 11, 2021.⁷

Briefly, this legislation provides for coverage, by the Québec Health Insurance Plan, of up to six artificial inseminations⁸ and a single IVF cycle, subject to certain conditions.⁹ Among these conditions, the parties to the assisted reproduction project will have to respect certain age limits and not have undergone voluntary surgical sterilization or had reanastomosis of the uterine tubes or the vas deferens.

In order to ensure better complementarity with the services covered by the Québec Health Insurance Plan and to make tax assistance available to a greater number of people wishing to start a family, changes will be made to the refundable tax credit for the treatment of infertility.

Specifically, certain eligibility requirements will be removed, the number of IVF cycles for which fees paid are eligible will be unlimited and fees paid for certain artificial inseminations will now be eligible.

❑ Removal of certain eligibility requirements

Since the abolition by the Québec Health Insurance Plan, in 2015, of the coverage of most services related to IVF activities, several eligibility conditions for the refundable tax credit for the treatment of infertility have been introduced to limit access to the tax credit to certain persons.¹⁰

Among other things, it is provided that expenses incurred after November 10, 2015 are eligible for the tax credit only if the following conditions are met:

- neither the individual nor the person who is the other party to the parental project has a child before the beginning of the IVF treatment;
- a physician certifies that neither the individual nor the person who is the other party to the parental project has undergone surgical sterilization by vasectomy or tubal ligation, as the case may be, for reasons that are not strictly medical;
- the expenses are attributable to no more than one and the same IVF cycle in the case of a woman 36 years of age or under, and to no more than the same two IVF cycles in the case of a woman 37 years of age or over.

⁶ MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *La ministre Danielle McCann annonce la mise sur pied d'un groupe d'experts en vue du rétablissement de la couverture publique de la fécondation in vitro*, [Online], May 15, 2019, [<https://www.msss.gouv.qc.ca/ministere/salle-de-presse/communiqué-1804/>] (in French only).

⁷ S.Q. 2021, c. 2.

⁸ This maximum is renewable after any live birth. On this subject, see subparagraph *a* of section 34.7 of the *Regulation respecting the application of the Health Insurance Act*, introduced by section 32 of the Act to amend various provisions relating to assisted procreation.

⁹ The coming into force of the provisions relating to coverage by the Québec Health Insurance Plan has been set for November 15, 2021.

¹⁰ Under subparagraph *b* of the definition of "eligible expenses" in section 1029.8.66.1 of the *Taxation Act*.

In order to improve access to assisted reproduction services, these three conditions will be removed for expenses paid after November 14, 2021.¹¹

As a result, all expenses paid after this date will be eligible for the refundable tax credit for the treatment of infertility, regardless of whether one of the persons forming the parental project already has a child or has already undergone surgical sterilization by vasectomy or tubal ligation.

In addition, the number of IVF cycles for which expenses will be eligible will be unlimited, regardless of the age of the individual or the person who is the other party to the parental project.¹²

❑ Number of embryos transferred

Currently, an eligible IVF treatment for the purposes of the refundable tax credit for the treatment of infertility is a non-insured IVF treatment during which a single embryo is transferred in a woman 36 years of age or under or, in accordance with a decision made by a physician who has considered the quality of the embryo, a maximum of two embryos in the case of a woman 37 years of age or over. The limit on the number of embryos that may be transferred was harmonized with the provisions of the *Act respecting clinical and research activities relating to assisted procreation*¹³ as it read prior to the amendments made by the Act to amend various provisions relating to assisted procreation, which came into force on March 11, 2021.

With the assent of the Act to amend various provisions relating to assisted procreation, the *Act respecting clinical and research activities relating to assisted procreation* was amended. In summary, the Act now provides that only one embryo may be transferred in the course of IVF activity, but that a physician may transfer two embryos if acting in accordance with the guidelines of the Collège des médecins.¹⁴

In order to align the tax credit with the provisions of the *Act respecting clinical and research activities relating to assisted procreation* with respect to the number of embryos that may be transferred, the tax legislation will be amended so that an eligible IVF treatment will mean a non-insured IVF treatment in which the number of embryos transferred, after November 14, 2021, complies with section 10.3 of the *Act respecting clinical and research activities relating to assisted procreation*, as amended by the Act to amend various provisions relating to assisted procreation.

¹¹ For greater clarity, the other conditions applicable for an expense to be considered an eligible expense continue to apply.

¹² Subject to the \$20 000 annual limit on eligible expenses and the other conditions applicable to the refundable tax credit for the treatment of infertility.

¹³ CQLR, c. A-5.01, s. 10.3, introduced by S.Q. 2015, c. 25, s. 3.

¹⁴ Section 10.3 of the *Act respecting clinical and research activities relating to assisted procreation*. The amendments to this section came into force on the date of assent of the Act to amend various provisions relating to assisted procreation, on March 11, 2021.

❑ Addition of artificial insemination treatments

Currently, the only expenses eligible for the refundable tax credit for the treatment of infertility are those paid for an eligible IVF treatment. Given that the Québec Health Insurance Plan covers a maximum of six artificial inseminations¹⁵ and that certain specific conditions must be met in order for the Plan to cover artificial inseminations, the tax legislation will be amended to add certain artificial insemination treatments to the list of expenses eligible for the refundable tax credit for the treatment of infertility.

In this regard, an "eligible artificial insemination treatment" will mean a "non-insured artificial insemination treatment". A "non-insured artificial insemination treatment" will mean an artificial insemination treatment in respect of which no cost for artificial insemination activities is paid on behalf of a person participating in the treatment, or for which the person may not be reimbursed, by the administrator of a universal health insurance plan.

Expenses paid with respect to eligible artificial insemination treatments must meet the same conditions as expenses paid after November 14, 2021, with respect to eligible IVF treatments, with the necessary modifications.¹⁶

For greater clarity, as is the case for expenses paid for an IVF activity, expenses paid after November 14, 2021, in respect of an artificial insemination activity that began after November 14, 2021, and performed in an establishment located outside Québec, may be eligible for the tax credit for the treatment of infertility, unless the person who began such activities was domiciled in Québec at the time the expenses were incurred.

For the purpose of defining the term "eligible expenses," a person will be considered to have begun artificial insemination activities if:

- she herself has received services required for intrauterine insemination;
- the person participating with her in the artificial insemination has received services required for intrauterine insemination.

These changes will apply in respect of an eligible artificial insemination treatment for which expenses are paid after November 14, 2021.

❑ Consequential amendments to the tax credit for medical expenses and the tax credit for expenses relating to medical care

The Québec tax system provides an individual who pays eligible medical expenses for himself, his spouse and his dependents with a non-refundable tax credit for the portion of such expenses that exceeds 3% of his family income. Only this portion of eligible medical expenses is included in the calculation of the non-refundable tax credit, which is calculated at a rate of 20%.

The tax credit for medical expenses covers a multitude of expenses incurred by an individual with health professionals, such as a dentist, nurse or practitioner, to obtain medical, paramedical or dental services.

¹⁵ This maximum is renewable after any live birth.

¹⁶ Subject to the additional time provided by section 33 of the Act to amend various provisions relating to assisted procreation for obtaining a licence for a centre for assisted procreation.

In addition, an individual is entitled to a non-refundable tax credit equal to 20% of the travel and accommodation expenses paid by the individual in order for the individual or a dependent to obtain medical care in Québec that is not available within 200 kilometers of the individual's residence. The purpose of this measure is to provide tax relief to households that must incur certain expenses to obtain specialized medical care that is only available in large urban centers.

However, medical expenses eligible for the tax credit for medical expenses and travel and accommodation expenses eligible for the tax credit for expenses relating to medical care do not include expenses paid in respect of IVF treatments, where such expenses are:

- expenses taken into account in computing the amount that a person is deemed to have paid to the Minister under Division II.12.1 of Chapter III.1 of Title III of Book IX for the taxation year in which the expenses were paid;
- paid in respect of an IVF activity carried out in Québec in a centre for assisted procreation that does not hold a licence issued in accordance with the *Act respecting clinical and research activities relating to assisted procreation*;
- paid in respect of an IVF treatment during which an IVF activity is carried out that does not meet a condition of paragraphs *a* and *b* of the definition of “eligible in vitro fertilization treatment” in the first paragraph of section 1029.8.66.1 of the *Taxation Act*.¹⁷

The tax legislation will be amended with respect to medical expenses eligible for the tax credit for medical expenses and travel and accommodation expenses eligible for the tax credit for expenses relating to medical care to reflect the changes to the refundable tax credit for the treatment of infertility. As a result, these medical expenses and travel and accommodation expenses will not include expenses paid in respect of an eligible IVF treatment or an eligible artificial insemination treatment, given the changes made to the refundable tax credit for the treatment of infertility relating to the removal of certain conditions of application, the addition of certain artificial insemination treatments¹⁸ and the change in the number of embryos that may be transferred.

To obtain information on the matter dealt with in this information bulletin, contact the Secteur du droit fiscal, de l'optimisation des revenus et des politiques locales et autochtones at: secteurdroitfiscalitdelafiscalite@finances.gouv.qc.ca.

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

¹⁷ *Taxation Act*, ss. 752.0.11.1.3 and 752.0.13.1, para. 2.

¹⁸ See note 16.