ISSN 2368-8874

Finances Québec

INFORMATION BULLETIN

July 22, 2019 2019-8

HARMONIZATION WITH CERTAIN MEASURES ANNOUNCED BY THE FEDERAL GOVERNMENT

On December 26, 2018, the federal government published amendments to the Canada Education Savings Regulations. This information bulletin is intended to make public the position of the Ministère des Finances du Québec on this subject.

This information bulletin also outlines the Ministère des Finances' position on the legislative proposals relating to the goods and services tax and the harmonized sales tax (GST/HST), as set out in News Release 2019-049 of the Department of Finance Canada, which extend the GST/HST holding corporation rules to holding partnerships and trusts, as well as with respect to legislative proposals relating to the GST/HST regarding the *de minimis* threshold for non-taxable imports that are subject to the Agreement between Canada, the United States of America and the United Mexican States.

For information concerning the matters dealt with in this information bulletin, contact the Secteur du droit fiscal, de l'optimisation des revenus et des politiques locales et autochtones at 418 691-2236.

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

HARMONIZATION WITH CERTAIN MEASURES ANNOUNCED BY THE FEDERAL GOVERNMENT

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1. Harmonization of Certain Québec Education Savings Incentive Rules with the Amendments to the *Canada Education Savings Regulations*

To encourage saving for a child's post-secondary education, funds set aside in registered education savings plans – or RESPs as they are commonly called – accumulate free of tax up to the time the child (the beneficiary of the plan) undertakes recognized post-secondary studies.

To further encourage families to save for their children's education starting at a very early age, the government, through the Québec tax system, provides for the payment, consisting of a refundable tax credit, of a Québec education savings incentive (QESI), where contributions are made, after February 20, 2007, in a RESP for the benefit of a child residing in Québec.

This refundable tax credit, which is paid directly into the RESP at the request of the plan trustee, can reach $3 600 per child, on a cumulative basis, i.e., 50% of the maximum grant paid under the *Canada Education Savings Act.*[1] The government assistance is in addition to the income accumulated in the plan as a result of private savings, eventually to be paid to the child as an education assistance payment (EAP).

In general, the QESI provides financial assistance that corresponds, for a given year, to 10% of the first $2 500 paid in the year on account of contribution to an RESP for the benefit of a child under age 18. The maximum basic QESI for a child can therefore reach $250 per year. However, for children of low- and middle-income families, the applicable rate is increased regarding the first $500 of annual contributions. For a child from a low-income household, the basic QESI can therefore be increased by up to $50 per year, so that the maximum assistance granted is increased from $250 to $300 per year, subject to accumulated entitlements.

In some circumstances, all or part of the QESI financial assistance may be recaptured through special taxes, for example, upon termination of an RESP, revocation of the registration of an education savings plan or in the case of an unauthorized transfer of property held in an RESP.

On December 26, 2018, the federal government published amendments to the *Canada Education Savings Regulations* (CESR).[2] Since Québec's tax legislation is generally harmonized with the CESR as far as QESI rules are concerned, the Taxation Act will be amended to incorporate, with adaptations on the basis of its general principles, the amendments made to the CESR described below. In addition, these amendments will be applicable on the same date as the one used for the application of the amendments to the CESR with which they harmonize, namely September 1, 2019.

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1 S.C. 2004, chapter 26.

2 *Regulations Amending the Canada Education Savings Regulations* (SOR/2018-275), *Canada Gazette*, Part II, Vol. 152, N° 26: www.gazette.gc.ca/rp-pr/p2/2018/2018-12-26/html/sor-dors275-eng.html. Section 1 of these Regulations provides that the title of the French version of the *Canada Education Savings Regulations* is replaced by the following: "Règlement canadien sur l'épargne-études". This amendment came into force on December 7, 2018, the date of registration of the Regulations.

❑ Introduction of a proportionality rule applicable in cases of repayment

Under the current wording of the CESR, where the repayment of federal and provincial education savings incentives is required, which is the case when an RESP is terminated or when the registration of the education savings plan is revoked, the balances of the Canada Education Savings Grant account and the Canada Learning Bond account of the RESP – i.e., federal funds – must be repaid in priority to the federal authorities.

To ensure that education savings incentives paid by the provinces are taken into account, the CESR is amended, effective September 1, 2019, to introduce a proportionality rule so that, in cases where a repayment is required, and the funds are insufficient to repay the full amount, the federal and provincial education savings incentives are repaid proportionately when the value of the RESP investments is impaired.

Building on the CESR, the government has introduced special taxes in respect of the QESI in the Taxation Act to ensure the integrity of the refundable tax credit to support education savings and to take into account specific events that relate to the RESP itself, such as the termination of an RESP or the revocation of the registration of an education savings plan.

Since the Taxation Act provides for the payment of a special tax for the same events that result in a repayment as those provided for in the CESR, the Taxation Act will be amended to introduce a proportionality rule that is consistent with the CESR rule and that will apply for the determination of the amount of the special tax in respect of the QESI in these cases.

❑ Amendments to the calculation of the components of an EAP

An EAP consists of the amounts of education savings incentives paid into the RESP and the income accumulated in the RESP.

The Taxation Act stipulates that the breakdown of an EAP is based on two formulas: the first one, called the “fair market value allocation formula”, applies where income has accumulated in the plan while the second, called “government assistance allocation formula”, applies where there is no such accumulated income. The formulas for allocating an EAP under the Taxation Act reflect those of the CESR and determine the portion of the QESI in the EAP.

The amendments to the CESR which were published in December 2018 provide new formulas for the breakdown of an EAP that will come into effect on September 1, 2019. These amendments include clarifying that the EAP must be calculated so as to include proportional amounts of the Canada Education Savings Grant, the Canada Learning Bond and the earnings available to the beneficiary of an EAP.

Since the formulas for allocating an EAP under the Taxation Act, which are intended to determine the portion of the QESI in the EAP, are harmonized with those of the CESR, the Taxation Act will be amended to incorporate, with adaptations on the basis of its general principles, the amendments made to the CESR formulas.

For greater clarity, the total amount available for the payment of an EAP to a beneficiary, for the purposes of the Taxation Act, will be the same as that determined in accordance with the provisions of the CESR.

❑ Amendment to restrict the payment of the QESI when contributions are withdrawn before the payment of the QESI

Generally speaking, the subscriber of an RESP can withdraw his or her contributions at any time.

Under the federal system, the Canada Education Savings Grant is paid on a monthly basis. The Canada Education Savings Program system processes transactions requesting the Canada Education Savings Grant based on contributions made, at least, one month earlier. This delay makes it possible for the contribution to be withdrawn before the grant request is processed in the system.

As of September 1, 2019, the CESR is amended to provide greater clarity on the requirement that grants made in respect of contributions that have been withdrawn must be repaid. The new wording of the CESR specifies that a Canada Education Savings Grant may be paid in respect of a contribution that has been made to an RESP and has not been withdrawn.

Under the Québec system, if a contribution in respect of which the QESI has been received is withdrawn, other than as part of a qualifying withdrawal or transfer from one RESP to another, and no beneficiary under the plan is eligible to receive an EAP, a special tax in respect of the QESI is payable. This prevents misuse of the game consisting in the withdrawal of a contribution and its immediate return in the RESP.

According to the definition of the term “amount of eligible contributions” in the Taxation Act, a contribution that qualifies for the QESI is a contribution made to the plan during a year by or on behalf of a subscriber in respect of the beneficiary, provided that the contribution has not been withdrawn from the plan at the time of the QESI request.

Under current provisions, the subscriber may withdraw a contribution after making a request for the QESI in respect of this contribution while the QESI payment is still pending for the contribution.

In order to prevent the QESI from being paid in respect of a withdrawn contribution, the government is amending the definition of “amount of eligible contributions” so that a contribution that qualifies for the QESI is one that is made to the plan during a year by or on behalf of a subscriber in respect of the beneficiary, provided that the contribution has not been withdrawn from the plan before the QESI was paid.

❑ Partial transfer of the property in one RESP to another and amendment to the rule relating to the proportional partial transfer of the amounts paid under a designated provincial program

Under the current provisions of the CESR, upon partial transfer of property from one RESP to another, assisted and unassisted contributions, Canada Education Savings grants, accumulated income and amounts paid under a designated provincial program are considered to be transferred in the same proportion as the value of property transferred is to the value of the property held in the RESP, other than the property in a Canada Learning Bond account.

Like the CESR, in the case of a partial transfer of property from one RESP to another, the Taxation Act provides that the QESI must be transferred in the same proportion as the value of the transferred property is to the value of the property in the RESP, other than the property in a Canada Learning Bond account.

As of September 1, 2019, the CESR is amended to no longer require, upon partial transfer of property from one RESP to another, that amounts paid under a designated provincial program be transferred in the same proportion as other property held in the RESP, as is the case for amounts held in a Canada Learning Bond account. This provision will apply provided that the applicable provincial legislation allows amounts paid into an RESP under a designated provincial program not to be transferred proportionately in the case of a partial transfer of property from one RESP to another.

Although the QESI is part of the education savings incentives paid under a designated provincial program for the purposes of the CESR, the Taxation Act will continue to provide for a proportional transfer of the QESI where there is partial transfer of property from one RESP to another that qualifies as an authorized transfer.[3] However, to reflect the amendment to the CESR, this proportion will be determined, as of September 1, 2019, without taking into account amounts that could have been paid into the RESP under another designated provincial program for the purposes of the CESR, where appropriate, when the applicable legislation in the other province allows amounts paid under that program not to be transferred proportionately in the case of a partial transfer of property from one RESP to another.

2. Harmonization With News Release 2019-049 of the Department of Finance Canada

Like the goods and services tax and the harmonized sales tax (GST/HST) system, the Québec sales tax (QST) system provides rules for holding corporations that generally allow a parent corporation to claim input tax credits to recover GST/HST paid in respect of expenses related to another corporation.

On May 17, 2019, the Department of Finance Canada made public, in a news release,[4] draft legislative proposals relating to the GST/HST, including a measure to extend the GST/HST holding corporation rules to holding partnerships and trusts.

With the publication of *Information Bulletin 2019-7* on June 14, 2019, it was announced that the Ministère des Finances du Québec would study this federal measure and that decisions on this matter would be announced at a later date.[5]

In accordance with the principle of general harmonization of the QST system with the GST/HST system, changes will be made to the Québec tax system to incorporate, with adaptations on the basis of its general principles and with its specific features and the provincial context underlying the QST taken into account, the proposed federal measure to extend the GST/HST holding corporation rules to holding partnerships and trusts.

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3 For the purposes of the provisions relating to RESPs under the Taxation Act and the provisions relating to the QESI, the term “designated provincial program” does not include programs established under a Québec statute.

4 Department of Finance Canada, *News Release 2019-049, “Department of Finance Canada Consulting on Draft Goods and Services Tax/Harmonized Sales Tax Legislation”, May 17, 2019,* www.fin.gc.ca/n19/19-049-eng.asp.

5 As will be recalled, it was previously announced, in *Information Bulletin 2019-7* published on June 14, 2019, that the QST system would be harmonized with the other legislative proposals relating to the GST/HST system announced in News Release 2019-049 on May 17, 2019 by the Department of Finance Canada.

❑ Application date

The changes to the QST system will be adopted only after the assent to any federal legislation giving effect to this GST/HST measure, taking into account technical amendments that may be made prior to assent. The changes will apply on the same dates as those retained for the purpose of the application of the federal measure with which they harmonize.

3. HARMONIZATION RELATING TO THE IMPLEMENTATION OF THE AGREEMENT BETWEEN CANADA, THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES

On May 27, 2019, the Minister of Foreign Affairs tabled a notice of ways and means motion[6] in the House of Commons to introduce legislation to implement the Agreement between Canada, the United States of America and the United Mexican States.[7] This notice of ways and means motion contains legislative amendments to the Excise Tax Act in respect of the goods and services tax and the harmonized sales tax (GST/HST).

In accordance with the principle of general harmonization of the Québec sales tax (QST) system with the GST/HST system, changes will be made to the Québec tax system to incorporate, with adaptations on the basis of its general principles, the proposed federal measure to increase the value of the *de minimis* threshold for non-taxable imports from $20 to $40 for goods imported from the United States or Mexico.

❑ Application date

The changes to the QST system will be adopted only after the assent to any federal legislation giving effect to this GST/HST measure, taking into account technical amendments that may be made prior to assent. The changes will apply on the same dates as those retained for the purpose of the application of the federal measure with which they harmonize.

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6 www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/ways_means-motion-voies_moyens.aspx?lang=eng.

7 www.parl.ca/DocumentViewer/en/42-1/bill/C-100/first-reading.