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**HARMONIZATION WITH TAX CHANGES ANNOUNCED BY
THE GOVERNMENT OF CANADA AND ADJUSTMENTS
TO CERTAIN MEASURES OF A TAX NATURE**

The purpose of this information bulletin is to make public the Ministère des Finances' position on various tax measures announced by the federal government as part of Budget 2023, tabled on March 28, and Bill C-47, assented to on June 22, 2023.

It also makes changes to the Québec tax legislation to extend the eligibility criteria for the tax credit for persons living alone, with respect to age and for retirement income to include certain single recipients of the new Basic Income Program.

In addition, this information bulletin revises the parameters of the tax credit relating to investment and innovation and the new tax holiday relating to the carrying out of a large investment project to take into account the Institut de la statistique du Québec' recent update of the economic vitality index of the territories. It also introduces an adjustment to the criterion relating to the number of remunerated hours used to calculate the small business deduction to better reflect the tax consequences of an amalgamation.

Moreover, it announces changes to the Québec legislation that will streamline the QST rebate mechanism for the Québec government, its departments and its mandataries.

Lastly, this information bulletin introduces additional amendments to the Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi, the Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) and the Act constituting Capital régional et coopératif Desjardins, to update their intervention framework.

To obtain information on 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 secteurdroitfiscaletdelafiscalite@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.

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1. FEDERAL TAX LEGISLATION AND REGULATION

1.1 Harmonization with various tax measures announced in the March 28, 2023 federal budget

On March 28, 2023, the Minister of Finance of Canada presented the federal government's budget for the year 2023. On that occasion, she tabled in the House of Commons additional information describing each of the tax measures proposed in the budget, as well as notices of ways and means motions to amend the related federal tax legislation and regulation.¹

The Ministère des Finances du Québec wishes to make public its position on the harmonization of Québec's tax legislation and regulation with the federal tax legislation and regulation in this regard.

□ Income tax measures

Québec's tax legislation and regulation will be amended to incorporate some of the income tax measures proposed in the 2023 federal budget. However, the amendments to the Québec tax system will be adopted only after the assent of any federal legislation or the adoption of any federal regulation giving effect to the retained measures, taking into account the technical amendments that may be made prior to the assent or adoption. For greater clarity, these amendments will be applicable on the same dates as the federal measures with which they are harmonized.

■ Measures retained

Québec's tax legislation and regulation will be amended² to incorporate, with adaptations on the basis of their general principles, the measures relating to:

1. employee ownership trusts (BRs 1 to 4);³
2. the enhancement of the deduction for tradespeople's tool expenses (BR 5);
3. the increase in withdrawal limits for educational assistance payments and the authorization given to divorced or separated parents to jointly enter into a registered education savings plan contract (BR 6);
4. the extension of the temporary measure allowing certain family members to become Registered Disability Savings Plan (RDSP) holders, and the temporary broadening of the definition of "qualifying family member" to include a brother or sister of an RDSP beneficiary who is 18 years of age or older (BR 8);
5. the modification of most of the alternative minimum tax rules, subject to those set out below (BR 10);

¹ DEPARTMENT OF FINANCE CANADA, *Budget 2023 – Tax Measures: Supplementary Information*, [Online], March 28, 2023, [<https://www.budget.canada.ca/2023/pdf/tm-mf-2023-en.pdf>].

² Some of the measures retained, however, may not require any changes to Québec's tax legislation or regulation.

³ References in brackets correspond to budget resolution (BR) numbers in the Notice of Ways and Means Motion to amend the *Income Tax Act* and other legislation, tabled in the House of Commons on March 28, 2023.

6. intergenerational business transfers (BRs 11 to 15), subject to the rules set out below;
7. the general anti-avoidance rule, with regards to the preamble, the avoidance transaction and the economic substance rule (BRs 26 to 28 in part);
8. the dividend received deduction by financial institutions (BR 29);
9. income tax treatment of credit unions (BR 30).

- **Alternative minimum tax rules**

Since its introduction in the Québec tax system in 1986,⁴ the alternative minimum tax (AMT) has been calculated by generally taking into account parameters similar to those used in the federal tax system, although certain adjustments have been made over the years to take into consideration certain specificities of the Québec tax system.

The 2023 federal budget briefly outlined the main parameters for calculating the federal AMT. In the absence of federal legislation enacting the proposed changes to the AMT calculation, the Ministère des Finances du Québec will announce its definitive position on the new parameters announced in the 2023 federal budget at a later date.

As has been its approach to the AMT in the past, the Ministère des Finances du Québec is confirming that it intends to use parameters similar to those proposed by the federal government.

However, the projected AMT rate in the Québec tax system will be 19%, which is the rate applicable to the second taxable income bracket of the personal income tax table. Similarly, for the purposes of calculating the Québec AMT, the amount of the basic exemption will be increased from \$40 000 to \$175 000 for the 2024 taxation year. The new basic exemption amount of \$175 000 will be automatically indexed each year as of the 2025 taxation year.

- **Rules for intergenerational business transfers**

Federal and Québec tax legislations provide for a specific integrity rule applicable to the disposition of shares by an individual in certain specific circumstances.⁵ This integrity rule aims to prevent surplus stripping in a business that is being transferred within a family. When applied, this rule has the effect of treating as a taxable dividend the capital gain that would otherwise have resulted from this disposition and which, in certain cases, might qualify for the capital gains exemption with respect to the disposed shares.

⁴ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 1985-1986 – Énoncé de politiques budgétaires du gouvernement*, Appendix C (“Les mesures fiscales et budgétaires”), December 18, 1985, pp. 45-51.

⁵ This integrity rule is outlined in section 84.1 of the *Income Tax Act* and in Chapter III.1 of Title IX of Book III of Part I of the *Taxation Act*. In particular, it may apply to the disposition of shares of the capital stock of a family farm or fishing corporation, or of a small business corporation.

In recent years, this integrity rule has been the subject of major changes, both in the Québec and federal tax systems. First, in the 2015-2016 budget⁶ and the 2016-2017 budget,⁷ the Ministère des Finances du Québec announced an easing of the Québec tax legislation to minimize the undesirable effects of this integrity rule to the extent that the proposed transfer of a family business meets certain qualification criteria.

On June 29, 2021, Bill C-208 was assented to, introducing an exception to the application of the federal integrity rule.⁸ However, the conditions set out do not make it possible to ensure that the exception only apply in the case of a genuine intergenerational business transfer.

Then, to reconcile the objectives pursued by Québec's tax policy and those set out in Bill C-208, the Ministère des Finances du Québec announced, on August 12, 2021, amendments to the Québec tax legislation under which the easing of Québec's integrity rule can apply notwithstanding the amendments made to the federal integrity rule.⁹

The 2023 federal budget now proposes to amend the rules introduced by Bill C-208 by putting in place conditions to ensure that these rules only apply in the case of a genuine intergenerational business transfer.

To meet this objective, the federal budget proposes two transfer options: immediate transfer over a three-year period, or gradual transfer over a period of five to ten years.

The conditions set out under both transfer options must be met for the transfer to be considered a genuine intergenerational transfer. These conditions concern the transfer of control, economic interests and management of the business, as well as the obligation for the child¹⁰ to retain control of the business and to remain actively involved in the business for the specified period.

Other changes proposed by the federal budget include an extension of the limitation period, the requirement for a joint election between the transferor and the child (or children), and the capital gains reserve.

Given the scope of the changes proposed by the 2023 federal budget and to facilitate and simplify transfers of family businesses, the Québec tax legislation will be amended to incorporate all the conditions and rules applicable to intergenerational business transfers set out in the federal legislation, as amended by the budget.

⁶ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2015-2016 – Additional Information*, March 26, 2015, pp. A.113-A.117.

⁷ *Id.*, *Budget 2016-2017 – Additional Information*, March 17, 2016, pp. A.38-A.44.

⁸ S.C. 2021, c. 21.

⁹ MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2021-6*, August 12, 2021.

¹⁰ For the purposes of these rules, the term “child” may also refer to a grandson, granddaughter, nephew or niece.

For the purposes of the Québec tax system, the joint election between the transferor and the child (or children) will constitute a “binding election”.¹¹ This election will have to be made on a prescribed form, which will have to be forwarded to the Minister of Revenue no later than the filing due date applicable to the transferor for the taxation year that includes the time of disposition. This form will have to be accompanied by any documents sent to the Minister of National Revenue regarding the election made.

The amendments to the Québec tax system will apply to dispositions made after December 31, 2023.

As a result, the easing of the Québec integrity rule currently provided for will be abolished in respect of a disposition of shares made after December 31, 2023.

It should also be noted that subparagraph 55(5)(e)(i) of the *Income Tax Act* (ITA) was amended by Bill C-208 to provide an exception, in certain specific circumstances, to the rule under which, for the purposes of section 55 of the ITA, persons who are brothers and sisters are deemed to deal with each other at arm’s length and are not related to each other.

Considering the scope of this exception, it has been decided to incorporate it into the Québec tax legislation. This amendment will apply as of January 1, 2024.

■ Measures not retained

Certain measures have not been retained because they do not correspond to the characteristics of the Québec tax system or because the latter is satisfactory or does not contain similar provisions. These measures relate to:

- ensuring that fees or premiums paid for the purposes of securing or renewing a letter of credit for a retirement compensation arrangement (RCA) are not subject to the refundable tax, and allowing employers to request a refund of previously remitted refundable taxes in respect of these fees or premiums (BR 7);
- introducing an investment tax credit for clean hydrogen (BR 16);
- the clean technology investment tax credit (BR 17);
- the labour requirements related to certain investment tax credits (BR 18);
- the investment tax credit for clean technology manufacturing (BR 19);
- the reduced tax rates for zero-emission technology manufacturers (BR 20);
- the investment tax credit for carbon capture, utilization and storage (BRs 21 to 23);

¹¹ This election will be added to the list of elections in this regard. See MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2006-6*, December 20, 2006, pp. 10-12. For greater clarity, if such a joint election is made in respect of a disposition of shares for the purposes of the federal tax system, the same election will be deemed to have been made for the purposes of the Québec tax system. As a corollary, if no valid election is made for the purposes of the federal tax system, no election will be possible for the purposes of the Québec tax system.

- flow-through shares and critical mineral exploration tax credit (BR 24);
- introducing a tax on repurchases of equity (BR 25);
- the general anti-avoidance rule, with regards to the penalty and the reassessment period (BRs 26 to 28 in part), subject to the rules set out below.

▪ **Rules relating to the general anti-avoidance rule**

On October 15, 2009, the Ministère des Finances announced amendments to the Québec tax legislation to introduce a new penalty where the general anti-avoidance rule (GAAR) applies to an avoidance transaction involving a taxpayer.¹² This penalty is currently 50% of the amount of the tax benefit eliminated as a result of the application of the GAAR.¹³

The 2023 federal budget proposes amendments to introduce a federal penalty of 25% of the amount of the tax benefit for transactions subject to the GAAR. However, where the tax benefit includes a tax attribute that has not yet been used to reduce tax, the amount of the tax benefit, for the purposes of applying the new penalty, will be considered to be nil.

The Québec tax legislation will be amended to include, for the purposes of applying the penalty of 50% of the amount of the tax benefit currently provided for in the Québec tax system, the measure relating to the tax benefit considered to be nil when it includes a tax attribute that has not yet been used to reduce tax.

This amendment will apply as of April 7, 2022.

1.2 Harmonization with certain measures of an *Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023* (Bill C-47)

On June 22, 2023, Bill C-47, entitled *An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023* (hereinafter referred to as “*Budget Implementation Act, 2023, No. 1*”), was assented to.¹⁴

The purpose of *Budget Implementation Act, 2023, No. 1* is, among other things, to give effect to certain tax measures introduced in the federal budget of March 28, 2023, and to implement other measures relating to the *Income Tax Act* and the *Income Tax Regulations*, some of which were the subject of legislative and regulatory proposals made public on August 9, 2022. It also introduces technical amendments to improve the certainty and integrity of the tax system.

The Ministère des Finances has already stated Québec’s position on most of the tax measures contained in *Budget Implementation Act, 2023, No. 1*.

With regard to the new measures implemented by Part 1 of *Budget Implementation Act, 2023, No. 1*, most of them will be incorporated into Québec’s tax legislation and regulation.

¹² MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2009-5*, October 15, 2009, pp. 23-30.

¹³ Initially, the penalty was 25%. It was increased to 50% by *Information Bulletin 2017-10* dated November 10, 2017.

¹⁴ S.C. 2023, c. 26.

More specifically, Québec's tax legislation and regulation will be amended¹⁵ to incorporate, with adaptations based on their general principles, the measures relating to:

- the standby charge for automobile and the automobile operating expense benefit (section 2);¹⁶
- the certificate of employer signed electronically (subsection 3(3));
- the exchanges of property and transitional provisions (section 5);¹⁷
- the repeal of rules defining and governing the treatment of small business development bonds and small business bonds (subsections 4(1) and (2), sections 7, 15, 21, 34, 35, subsection 73(1) and section 102);
- shareholder debts (subsection 6(1));
- deductions permitted in computing income from business or property (section 8);¹⁸
- the definition of *principal residence* (section 10);
- the deduction of a premium or payment under a registered plan (section 11);
- the effect of pension income splitting (section 12);
- Canadian exploration expenses incurred in previous years (section 14);
- the exclusion, in calculating income, of Canadian Forces members and veterans amounts and the exemption of income from a trust created under the Indian Residential Schools Settlement Agreement (section 16);
- exceptions to loans from foreign affiliate (section 18);
- specified trusts (section 19);
- rules applicable when a partnership ceases to exist (section 22);
- the income of a trust (section 23);
- the definition of *pension income* (section 27);

¹⁵ Some of the measures retained, however, may not require any changes to Québec's tax legislation or regulation.

¹⁶ References in parentheses correspond to section numbers in *Budget Implementation Act, 2023, No. 1*.

¹⁷ The election provided for in subsection 5(3) will constitute a "binding election" for the purposes of the Québec tax system. This election will be added to the list of elections in this regard. See MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2006-6*, December 20, 2006, pp. 10-12.

¹⁸ The election provided for in subsection 8(7) will constitute a "binding election" for the purposes of the Québec tax system. This election will be added to the list of elections in this regard. See MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2006-6*, December 20, 2006, pp. 10-12.

- employee life and health trusts (section 36);
- the definition of net past service pension adjustment (section 37);
- the special rules concerning the application of definitions in the case of a home buyers' plan (section 38);
- changes to the Tax-Free Savings Account (section 40);
- transfers under a registered retirement income fund (section 41);
- income from a registered disability savings plan trust (subsection 42(3));
- amendments relating to registered pension plans (sections 43 and 44);
- amendments relating to pooled registered pension plans (section 45);
- excluded income (municipal corporations) (subsection 46(2));
- the definition of *tax preparer* and electronic filing by tax preparers, except for estate and trust tax returns (subsection 48(1));
- information return with electronic signature (subsection 48(2));
- the electronic notice of assessment, whose application date will be the later of the date set by federal tax legislation and January 1, 2025 (subsection 48(3));
- the electronic payment requirement where the amount is referred to in subsection 160.5(2) of the *Income Tax Act* (subsection 50(1));
- electronic income tax payments (section 52);
- penalties for failure to file or make a payment electronically (section 54);
- consequences of a revocation of charitable status (section 57);
- the date when an electronic notice of assessment is sent (section 72);
 - the definition of *term preferred share* (subsections 73(3) and (4));
- the definitions of specified provisions, attribute trading restrictions, and deemed acquisition of control (section 75);
- functional currency tax reporting (section 77);
- the electronic transmission of information returns to Revenu Québec, depending on their number (section 98), with the exception of RL-24 slips;

- the issuance of certain information returns (section 99);
- taxes on income from mining operations (section 103);
- the possibility of borrowing by a master trust on behalf of defined benefit registered pension plans (subsection 104(2));
- technical amendments to certain registered plans (sections 105 to 109 and subsection 110(1)).

Amendments to the Québec tax system will apply on the same dates as the federal measures with which they are harmonized.

2. EXTENSION OF THE ELIGIBILITY FOR THE TAX CREDIT FOR PERSONS LIVING ALONE, WITH RESPECT TO AGE AND FOR RETIREMENT INCOME TO BASIC INCOME PROGRAM RECIPIENTS WITHOUT A SPOUSE

The Québec tax system recognizes that the occupation of a dwelling or residence by a single person or a single-parent family entails additional costs that people living as a couple are better able to meet. To support low- and middle-income individuals living alone or with only dependent children or qualifying students, the tax legislation provides for the tax credit for persons living alone, with respect to age and for retirement income (hereinafter the “tax credit for persons living alone”).¹⁹

This tax assistance is calculated by taking into consideration one or more of the following amounts:²⁰

- the amount for persons living alone (\$1 969 in 2023);
- the supplement for a single-parent family (\$2 431 in 2023);
- the age amount (\$3 614 in 2023);
- the amount for retirement income (maximum of \$3 211 in 2023).

¹⁹ *Taxation Act*, s. 752.0.7.4.

²⁰ These amounts are converted globally into a tax credit by applying the rate stipulated in section 750.1 of the *Taxation Act*, namely 14% as of 2023. For the purposes of calculating this tax credit, all of these amounts are reduced only once at a rate of 18.75% for every dollar of the individual's family income that exceeds the applicable reduction threshold for the year. The threshold is \$38 945 for the 2023 taxation year.

To be eligible, for a taxation year, for the amount for persons living alone, an individual must, among other things, ordinarily live, throughout the year or, if the individual dies during the year, throughout the period of the year before the time of the individual's death, in a self-contained domestic establishment²¹ maintained by the individual and in which no person, other than the individual, a person under 18 years of age or an eligible student of whom the individual is the father, mother, grandfather, grandmother, great-grandfather or great-grandmother,²² lived during the year.

❑ Impact of the coming into force of the Basic Income Program and payment of the monthly adjustment for persons without a spouse

On January 1, 2023, the Basic Income Program (BIP), provided for in Chapter VI of Title II of the *Individual and Family Assistance Act*, came into effect.²³ This program, which provides for the payment of a basic income, is aimed at people who, for at least 66 months out of the last 72 months, have had a severely limited capacity for employment and have been recipients of the Social Solidarity Program or similar government measures.²⁴

In addition to the basic benefit, some recipients of the BIP receive a monthly adjustment for persons without a spouse, which is paid by the Ministère de l'Emploi et de la Solidarité sociale, under section 177.73 of the *Individual and Family Assistance Regulation*.

As a result of the payment of the adjustment, these recipients of the BIP could have to pay income tax for the 2023 taxation year and subsequent years, since the total amount of benefits they will receive during a year could exceed the basic personal amount of the Québec personal income tax system for that year.²⁵

❑ Extension of the eligibility for the amount for persons living alone

To ensure that BIP recipients who benefit from the adjustment for persons without a spouse do not have to pay income tax for the 2023 taxation year and subsequent years because of that adjustment, the tax system needs to be amended so that these persons without a spouse can become eligible for the amount for persons living alone.

²¹ Under section 1 of the *Taxation Act*, the expression "self-contained domestic establishment" means a dwelling-house, apartment or other similar place of residence in which a person as a general rule sleeps and eats.

²² The last four items in this list result from changes made in 2018. See MINISTÈRE DES FINANCES DU QUÉBEC, *The Québec Economic Plan – Additional Information 2018-2019*, March 27, 2018, pp. A.38-A.40.

²³ CQLR, chapter A-13.1.1.

²⁴ For the purpose of calculating the time limit for eligibility for the BIP, the months during which a person has received a disability benefit will be taken into consideration. On this subject, see section 177.46 of the *Individual and Family Assistance Regulation* (CQLR, chapter A-13.1.1, r. 1).

²⁵ The basic personal amount for the 2023 taxation year is \$17 183.

More specifically, to ensure that targeted recipients benefit from the amount for persons living alone, the tax legislation will be amended to include, as of the 2023 taxation year, the following terms and conditions:

- individuals receiving the BIP under Chapter VI of Title II of the *Individual and Family Assistance Act* who receive, in addition to the basic amount, a monthly adjustment for persons without a spouse in accordance with section 177.73 of the *Individual and Family Assistance Regulation*, during a year, will be deemed to ordinarily live with no other person, throughout the year or, if they die during the year, throughout the period of the year before the time of their death, for the purposes of the amount for persons living alone;²⁶
- BIP recipients who benefit from the monthly adjustment for persons without a spouse provided for in section 177.73 of the *Individual and Family Assistance Regulation*, in addition to the basic amount, will not have to claim the amount for persons living alone for a taxation year, since this amount will be automatically granted to them in the calculation of the tax credit for persons living alone for that year, provided that they file an income tax return for the taxation year, that they do not have an eligible spouse²⁷ for that year and that the amounts included in the calculation of their income under the BIP²⁸ for the year exceed the basic personal amount for that year.²⁹

Thus, in general, when BIP recipients who receive a monthly adjustment for persons without a spouse, in addition to the basic benefit, are granted the amount for persons living alone, they will not have to pay any tax for that year, provided that the basic BIP benefit and the adjustment for persons without a spouse are their only income for the year.³⁰

For greater clarity, the other parameters of the tax credit for persons living alone will remain unchanged.³¹

□ Application date

This measure will apply as of the 2023 taxation year.

²⁶ *Taxation Act*, s. 752.0.7.4, 1st par., subs. a, subpar. i.

²⁷ Within the meaning of section 776.41.1 of the *Taxation Act* for the purposes of the transfer to spouse of unused portion of non-refundable tax credits.

²⁸ If an individual becomes a BIP recipient during the course of a year, the individual's BIP income may be made up of benefits from the Social Solidarity Program or the other amounts provided for in section 177.46 of the *Individual and Family Assistance Regulation*.

²⁹ The Relevé 5 issued by the Ministère de l'Emploi et de la Solidarité sociale will be amended accordingly to identify these recipients, notably by entering the adjustment for persons without a spouse in a different box from that for basic benefits received during the year.

³⁰ To illustrate, for 2023, the total amount of BIP benefits is estimated at \$18 576, which corresponds to the total of the basic benefit of \$1 211 per month and the monthly adjustment for persons without a spouse of \$337. This is less than the total of the basic personal amount for 2023 (\$17 183), and the amount for persons living alone for 2023 (\$1 969), for a total of \$19 152.

³¹ Among other things, it should be noted that, following the announcement made in the budget of March 21, 2023, the rate of this tax credit has been decreased to 14% as of the 2023 taxation year. In addition, the amounts making up this tax credit will continue to be automatically indexed each year.

3. MODIFICATION TO THE LIST OF TERRITORIES WITH LOW ECONOMIC VITALITY FOR THE PURPOSE OF CERTAIN TAX INCENTIVE MEASURES

In recent years, the tax credit relating to investment and innovation³² and the new tax holiday relating to the carrying out of a large investment project³³ (hereinafter the “new tax holiday”) were introduced to accelerate the creation of wealth in Québec.

More specifically, these incentive measures are intended to encourage productivity gains for businesses in all regions of Québec, while further promoting investments in territories where the economic vitality index is low.

Briefly, the rate of the tax credit relating to investment and innovation, applicable to a specified property, and the rate of the new tax holiday, applicable to a large investment project, are determined according to the territory in which the investment is carried out, that is, a territory with low economic vitality,³⁴ a territory with intermediate economic vitality³⁵ or a territory with high economic vitality.³⁶

The Institut de la statistique du Québec (ISQ) periodically issues the economic vitality index of the territories. This tool classifies Québec’s various localities according to specific indicators and makes it easier to target economic interventions.

When the tax credit relating to investment and innovation and the new tax holiday were introduced, it was determined that investments carried out in a territory whose economic vitality index was among the 25% lowest in Québec would benefit from a higher rate.³⁷

³² MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2020-2021 – Additional Information*, March 10, 2020, pp. A.3-A.18.

³³ *Id.*, *Budget 2023-2024 – Additional Information*, March 21, 2023, pp. A.17-A.36.

³⁴ Prior to the changes announced in this information bulletin, the expression “territory with low economic vitality” refers to the agglomeration of La Tuque, the city of Shawinigan, as well as the regional county municipalities (RCMs) of Antoine-Labelle, Argenteuil, Avignon, Bonaventure, Charlevoix-Est, La Haute-Côte-Nord, La Haute-Gaspésie, La Matanie, La Matapédia, La Mitis, La Vallée-de-la-Gatineau, Le Domaine du Roy, Le Golfe-du-Saint-Laurent, Le Rocher-Percé, Les Basques, Les Etchemins, Les Sources, Maria-Chapdelaine, Maskinongé, Matawinie, Mékinac, Papineau, Pontiac and Témiscouata. (See MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2021-5*, June 30, 2021, pp. 5-7 and *Budget 2023-2024 – Additional Information*, p. A.33).

³⁵ The expression “territory with intermediate economic vitality” refers to a territory in Québec that is neither a territory with high economic vitality nor a territory with low economic vitality.

³⁶ The expression “territory with high economic vitality” refers to a municipality listed in Schedule I to the *Act respecting the Communauté métropolitaine de Montréal* (CQLR, chapter C-37.01) or in Schedule A to the *Act respecting the Communauté métropolitaine de Québec* (CQLR, chapter C-37.02).

³⁷ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2020-2021 – Budget Plan*, March 10, 2020, p. C.42 and *Id.*, *Budget 2023-2024 – Budget Plan*, March 21, 2023, p. B.21.

Currently, the list of territories with low economic vitality is based on the classification presented in the ISQ's 2021 *Bulletin d'analyse – Indice de vitalité économique des territoires*.³⁸

However, on March 30, 2023, the ISQ published its 2023 issue and revised the classification.³⁹

As a result of this update, modifications need to be made to the aforementioned tax measures to reflect the fact that the Appalaches and Témiscamingue RCMs are now in the bottom quartile while they were previously in the third quartile, and that the Matawinie and Argenteuil RCMs are no longer in the bottom quartile.

3.1 Tax credit relating to investment and innovation

Briefly, the tax credit relating to investment and innovation is granted to a qualified corporation⁴⁰ who acquires, before January 1, 2025, manufacturing or processing equipment, general-purpose data processing equipment or certain management software packages.

The rate of the tax credit relating to investment and innovation applicable to specified expenses incurred for the acquisition of a specified property is established based on the territory where the property is acquired to be used mainly and the date on which the specified expenses are incurred.

The following table shows the applicable rates.

TABLE

Rates of the tax credit relating to investment and innovation
(per cent)

| Territory where the property is acquired to be used mainly | Rates applicable after March 25, 2021 but before January 1, 2024 | Rates applicable after December 31, 2023 but before January 1, 2025 |
|--|--|---|
| Territory with low economic vitality | 40 | 20 |
| Territory with intermediate economic vitality | 30 | 15 |
| Territory with high economic vitality | 20 | 10 |

To maintain the objective of allowing corporations established in territories where the economic vitality index is among the 25% lowest in Québec to benefit from the highest rate of the tax credit relating to investment and innovation, the definition of “territory with low economic vitality” will be amended.

³⁸ INSTITUT DE LA STATISTIQUE DU QUÉBEC, *Bulletin d'analyse – Indice de vitalité économique des territoires. Édition 2021*, [Online], [<https://statistique.quebec.ca/fr/fichier/bulletin-analyse-indice-vitalite-economique-territoires-edition-2021.pdf>] (in French only).

³⁹ *Id.*, *Bulletin d'analyse – Indice de vitalité économique des territoires. Édition 2023*, [Online] [<https://statistique.quebec.ca/en/fichier/bulletin-analyse-indice-vitalite-economique-territoires-edition-2023.pdf>] (in French only).

⁴⁰ A qualified corporation that is a member of a qualified partnership may, on certain conditions, receive the tax credit relating to investment and innovation in respect of its share of the specified expenses incurred by the qualified partnership.

The tax legislation will therefore be amended to add the RCMs of Appalaches and Témiscamingue to the list of territories with low economic vitality for the purposes of the tax credit relating to investment and innovation.

In the case of the Témiscamingue RCM, this amendment will apply to specified expenses incurred after March 31, 2023, for the acquisition of a specified property after that date.

However, it will not apply to a property:

- acquired in accordance with a written obligation entered into on or before March 31, 2023;
- whose construction by the corporation or partnership, or on its behalf, was underway on March 31, 2023.

In the case of the Appalaches RCM, since it is back on the list of territories with low economic vitality, it will be considered a territory with low economic vitality with regard to specified expenses incurred after March 10, 2020, for the acquisition of a specified property after that date.

As first announced, however, the property must not be:

- a property acquired in accordance with a written obligation entered into on or before March 10, 2020;
- a property whose construction by the corporation or partnership, or on its behalf, was underway on March 10, 2020.

Moreover, given the expiry date of the tax credit relating to investment and innovation, which is set for December 31, 2024, no changes will be made to the tax legislation in this information bulletin to remove the Matawinie and Argenteuil RCMs from the list of territories with low economic vitality for the purposes of this tax credit.

3.2 New tax holiday relating to the carrying out of a large investment project

Briefly, under the new tax holiday, a corporation⁴¹ that carries out a large investment project in Québec may, under certain conditions, benefit from an income tax holiday and a holiday from the employer contribution to the Health Services Fund.

The new tax holiday is granted for a period of ten years beginning on the start date of the tax-free period for the large investment project, and is calculated by applying a rate of 15%, 20% or 25% to the cumulative total of eligible expenditures related to the carrying out of the large investment project.

⁴¹ Similarly, a partnership that carries out a large investment project in Québec may, under certain conditions, benefit from a holiday from the employer contribution to the Health Services Fund. A corporation that is a member of the partnership may benefit from a tax holiday in respect of its share of the income of the partnership.

The rate of the new tax holiday that a corporation or a partnership may benefit from is determined in the date of the beginning of the tax-free period and is equal to the following rate:

- if the large investment project is carried out in a territory with low economic vitality: 25%;
- if the large investment project is carried out in a territory with intermediate economic vitality: 20%;
- if the large investment project is carried out in a territory with high economic vitality: 15%.

To maintain the objective of allowing corporations and partnerships carrying out a large investment project in territories where the economic vitality index is among the 25% lowest in Québec to benefit from the highest rate of the new tax holiday, the list of territories with low economic vitality will be modified to include the Appalaches and Témiscamingue RCMs.

This modification will apply to a large investment project if the tax-free period of the corporation or the partnership carrying it out begins after March 31, 2023.

The tax legislation will also be amended to remove the Matawinie and Argenteuil RCMs from the list of territories with low economic vitality for the purposes of the new tax holiday.

Moreover, to ensure an adequate transition period, this amendment will apply to a large investment project if the tax-free period of the corporation or partnership carrying it out begins after June 30, 2025.

4. AMENDMENT TO THE CRITERION PERTAINING TO THE NUMBER OF REMUNERATED HOURS FOR THE PURPOSE OF THE SMALL BUSINESS DEDUCTION – IN THE EVENT OF AN AMALGAMATION

In Québec, the general tax rate applicable to corporations is 11.5%.

A Canadian-controlled private corporation whose paid-up capital is \$10 million or less and whose adjusted aggregate investment income is \$50 000 or less receives a tax rate reduction of 8.3 percentage points on the first \$500 000 of annual income—the business limit⁴²—from an eligible business, which lowers the tax rate applicable to this first \$500 000 from 11.5% to 3.2%. This reduced tax rate is also known as the small business deduction, or SBD.

⁴² The \$500 000 business limit is gradually reduced if the corporation's paid-up capital and that of the corporations with which it is associated is between \$10 million and \$50 million and if the adjusted aggregate investment income of the corporation and the corporations with which it is associated is between \$50 000 and \$150 000. It is totally eliminated when paid-up capital reaches \$50 million or the adjusted aggregate investment income reaches \$150 000.

To benefit from the SBD, a corporation must also be a primary and manufacturing sectors corporation or meet a qualification criterion pertaining to the number of remunerated hours.

A corporation satisfies, for a particular taxation year, the qualification criterion pertaining to the number of remunerated hours and may benefit from the SBD if the number of remunerated hours exceeds 5 000 in either of the following cases:⁴³

- the number of remunerated hours determined in respect of the employees of the corporation for the particular year;
- the number of remunerated hours determined in respect of the employees of the corporation and of those of the corporations with which the corporation is associated in the particular year, for the taxation years of those corporations that ended in the calendar year preceding the calendar year in which the particular year ends (the latter case being hereinafter referred to as the “previous year consolidated basis test”).

In general, when a corporation is the result of an amalgamation, the new corporation is deemed to continue the corporate existence of any predecessor corporation.⁴⁴ However, the first taxation year of the new corporation is deemed to begin at the time of the amalgamation.⁴⁵

Due to this latter presumption, the previous year consolidated basis test cannot, for the first year of an amalgamated corporation, be applied to the number of remunerated hours determined in respect of that corporation’s employees.

In order to make the qualification criterion relating to the number of remunerated hours following an amalgamation more flexible, an amendment will be made to the tax legislation.

More specifically, a special rule will be provided for the first taxation year of a new corporation resulting from an amalgamation (the “first particular year”), so that the number of remunerated hours determined in respect of the employees of the predecessor corporations, as a result of the amalgamation, for the taxation years of those corporations that ended in the calendar year preceding the one in which the first particular year ends, will also be considered for that first particular year, for the purposes of the previous year consolidated basis test.

This amendment will apply to a taxation year of a corporation that ends after the day on which this information bulletin is issued.

⁴³ The rate of the SBD a corporation can claim for a taxation year is reduced linearly when total remunerated hours are between 5 500 and 5 000, and reaches zero when the total does not exceed 5 000 hours.

⁴⁴ *Taxation Act*, s. 549, par. 1.

⁴⁵ *Ibid.*, s. 549, par. 2.

5. REBATE OF QUÉBEC SALES TAX PAID BY THE GOVERNMENT OF QUÉBEC, ITS DEPARTMENTS AND SOME OF ITS MANDATARIES

Under the terms of the Comprehensive Integrated Tax Coordination Agreement (hereinafter referred to as the “CITCA”) entered into on March 28, 2012, between the Government of Canada and the Québec government, the parties have agreed to pay, effective April 1, 2013, the goods and services tax and harmonized sales tax (GST/HST) and Québec sales tax (QST) on supplies made to their respective governments or their mandataries. Where inter-jurisdictional immunity from taxation applies, such GST/HST and QST amounts will be subject to a rebate mechanism.

As a result, since that date, the federal government and its mandataries who were exempt from paying QST, as well as the Québec government and its mandataries who were exempt from paying GST/HST and QST, must pay taxes on their acquisitions of taxable goods and services, taxes that they may subsequently recover by submitting an application for a rebate to the Canada Revenue Agency for the GST/HST, and to Revenu Québec for the QST. In order to give effect to the CITCA, amendments have been made to the Reciprocal Taxation Agreement (Canada-Québec) (hereinafter referred to as the “RTA”). The Québec entities benefiting from immunity from taxation are listed in Schedule A of the RTA.

With regard to the QST rebate (hereinafter referred to as the “government QST rebate”) for these same entities, the QST system provides that the Québec government, its departments and its prescribed mandataries are entitled to it according to the terms and conditions determined by the Minister of Revenue. The QST system defines a “prescribed mandatary” as an entity listed in Schedule III of the *Regulation respecting the Québec sales tax* (RQST), and these prescribed mandataries correspond to the mandataries of the Québec government listed in Schedule A of the RTA.

Finally, it is also stipulated that a government QST rebate to which a department or mandatary designated by the government is entitled is paid to the Minister of Finance on behalf of that department or mandatary.

However, the current process for the government QST rebate for Québec entities benefiting from immunity from taxation is cumbersome to apply and causes several delays related to the regulatory update of Schedule III of the RQST as well as the publication of a designation decree. Such delays have no place in government accounting, which is the responsibility of the Comptroller of Finance, and may affect the operating budgets of new Québec entities.

Consequently, a change will be made to the QST system to remove the requirement for government departments and mandataries of the Québec government to be designated by the government, as currently provided for in the government QST rebate mechanism. Current Québec legislation already covers this process as a whole.

This change will come into force on the date the bill giving effect to it is assented to.

In addition, a clarification will be made in the Québec legislation for the purposes of the government QST rebate mechanism. Accordingly, in respect of such a rebate made at a given time, a mandatary of the Québec government mentioned in the version of Schedule A of the RTA in effect at that time will be deemed to be a prescribed mandatary, where this mandatary of the Québec government is not listed in Schedule III of the RQST at that time.

This clarification will come into force on the date the bill giving effect to it is assented to.

6. MODIFICATIONS TO THE GENERAL FRAMEWORK OF THE ACTS ESTABLISHING THE TAX-ADVANTAGED FUNDS

For many years, the Fonds de solidarité des travailleurs du Québec⁴⁶ (hereinafter referred to as the “Fonds de solidarité F.T.Q.”), Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l’emploi⁴⁷ (hereinafter referred to as “Fondation”) and Capital régional et coopératif Desjardins⁴⁸ (hereinafter referred to as the “Fonds CRCD”) have played an important role in Québec’s private equity industry.

Each of these funds, in its own way, stimulates Québec’s economic growth by providing Québec businesses with access to unsecured capital that complements traditional financing offered by financial institutions. In addition, as part of their mission, these funds aim to, among other things, raise awareness among workers about the importance of participating in the growth of Québec businesses by inviting them to subscribe to the shares they issue.

The government supports the activities of these tax-advantaged funds⁴⁹ by allowing them to raise capital that provides a tax benefit, which translates into a non-refundable tax credit for individuals who become shareholders.

As part of Budget 2023-2024,⁵⁰ a number of amendments were announced to the constituting acts of the tax-advantaged funds and to tax legislation. These changes were aimed, in particular, at optimizing the economic spinoffs from the tax-advantaged funds, limiting the tax expenditure associated with them, ensuring a better match between the investment horizon of the labour-sponsored funds and the minimum holding period of the shares giving entitlement to the non-refundable tax credit, and enabling a greater number of individuals to become shareholders of these funds.

In keeping with the objective of updating the intervention framework for the tax-advantaged funds, amendments will be made to their constituting acts to increase their operational agility and adjust their administrative framework, particularly in the case of labour-sponsored funds. Other amendments will be made to the constituting acts of tax-advantaged funds to facilitate their application.

⁴⁶ MINISTÈRE DES FINANCES DU QUÉBEC, *Déclaration ministérielle*, June 10, 1983.

⁴⁷ *Id.*, *Budget 1995-1996 – Budget Speech and Supplementary Information*, May 9, 1995, Appendix A, p. 71.

⁴⁸ *Id.*, *Budget 2001-2002 – Additional Information on the Budgetary Measures*, section 1, p. 56.

⁴⁹ The term “tax-advantaged funds” refers to the Fonds de solidarité F.T.Q., Fondation and the Fonds CRCD, while the term “labour-sponsored funds” refers to the Fonds de solidarité F.T.Q. and Fondation.

⁵⁰ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2023-2024 – Additional Information*, March 21, 2023, pp. A.56-A.65.

6.1 Modifications to the operating framework

□ Delegation of powers to a director, an officer or one or more committees

Each of the constituting act of labour-sponsored funds provides, on the one hand, that the affairs of the fund are to be administered by its board of directors⁵¹ and, on the other hand, that to the extent that there is no discrepancy between the constituting act and the *Companies Act*,⁵² the provisions of the *Companies Act* applicable to business corporations constituted by the filing of articles generally apply to labour-sponsored funds.⁵³

Under the *Companies Act*, a committee can only be entrusted with executive or advisory powers. For their part, the constituting acts of labour-sponsored funds do not provide that their respective boards of directors may delegate powers.⁵⁴ These limits on the delegation of powers reduce the operational agility of labour-sponsored funds.

It is therefore being proposed that the constituting acts of labour-sponsored funds be amended so that, unless specifically provided otherwise, their boards of directors may delegate powers to a director, an officer or one or more committees, any of which may be comprised, in whole or in part, of persons who are not directors.⁵⁵

■ Application date

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

□ Delegation regarding investments

The constituting act of the Fonds de solidarité F.T.Q. provides that, as a general rule, each investment must be approved in advance by the board of directors after being favourably recommended by the investment committee charged with examining it. Nevertheless, the board of directors may delegate the power to approve an investment to such a committee or, in cases it considers exceptional or urgent, to a committee composed of officers of the Fund or to the President and chief executive officer.⁵⁶

⁵¹ *Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi* [Act to establish Fondation], s. 4; *Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)* [Act to establish the FSTQ], s. 4.

⁵² CQLR, chapter C-38.

⁵³ *Act to establish Fondation*, s. 2; *Act to establish the FSTQ*, s. 2.

⁵⁴ The constituting acts of labour-sponsored funds do, however, provide for the creation of a governance and ethics committee, a human resources committee and an investment committee.

⁵⁵ This delegation of powers is consistent with section 112 of the *Business Corporations Act*, which authorizes directors to delegate the powers necessary to manage, or supervise the management of, the business and affairs of the corporation to a director, an officer or one or more committees of the board.

⁵⁶ *Act to establish the FSTQ*, s. 14.2.

For its part, the constituting act of Fondaction provides that a committee of the board of directors may authorize an investment if the committee is composed of a majority of independent persons.⁵⁷

In order to harmonize the content of these acts and enhance the operational agility of labour-sponsored funds, it is being proposed to amend their constituting act to allow their boards of directors to delegate the power to authorize an investment to an investment committee or, to the extent that such delegation is made in accordance with the terms set out in a policy adopted by the board of directors and approved by the Minister of Finance, to a committee made up of officers of the fund or to the President and chief executive officer, even in cases that the board of directors does not consider exceptional or urgent.

■ **Application date**

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

□ **Authorization for purchase by agreement**

The constituting acts of labour-sponsored funds stipulate that shares or fractional shares may only be purchased by agreement by the fund with the authorization of the board of directors or a committee composed of persons designated by the board for that purpose.⁵⁸

However, the large volume of requests to purchase shares by agreement makes the day-to-day management of labour-sponsored funds cumbersome and causes delays for shareholders.

To streamline the management of purchases by agreement, the constituting acts of labour-sponsored funds will be amended so that shares or fractional shares issued by a fund may be purchased by agreement with the authorization of the labour-sponsored fund without the need for authorization by the board of directors or a committee composed of persons designated by the board for that purpose.

However, the fund will still be required to comply with the policy adopted by the board of directors and approved by the Minister of Finance. The fund may purchase by agreement shares or fractional shares only in the cases and in a manner provided in the policy and only at a price not exceeding the redemption price determined in accordance with the applicable provisions of each labour-sponsored fund.⁵⁹

■ **Application date**

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

⁵⁷ *Act to establish Fondaction*, s. 18.2.

⁵⁸ *Act to establish Fondaction*, s. 9, first par.; *Act to establish the FSTQ*, s. 8, first par.

⁵⁹ *Act to establish Fondaction*, s. 9, second par.; *Act to establish the FSTQ*, s. 8, second par.

❑ **Mandatory inspection by the Autorité des marchés financiers**

The constituting acts of labour-sponsored funds provide that the Autorité des marchés financiers (AMF) is charged with inspecting the internal affairs and the operations of labour-sponsored funds annually to ascertain compliance with their constituting act.⁶⁰

In this regard, the AMF has the powers vested in it by Chapters I and II of Title IX of the *Securities Act*.⁶¹ In addition, it makes a report upon each inspection to the Minister of Finance and includes therein any other information or document the Minister determines.

Given that labour-sponsored funds have developed sufficiently mature compliance structures and have teams capable of ensuring compliance with their constituting act, implementing the required controls, and facilitating the timely implementation of the necessary remedial measures, the constituting acts of labour-sponsored funds will be amended to space out the AMF's mandatory inspections of the internal affairs and operations of labour-sponsored funds. These inspections will now take place once every three years, rather than annually. However, the AMF will still be free to carry out additional inspections at its discretion, based on a risk assessment.

In addition, the AMF will continue to determine how often it wishes to conduct inspections to ensure that labour-sponsored funds comply with the *Securities Act* and its regulations. Indeed, the *Securities Act* grants the AMF inspection powers that are distinct from those provided for in the constituting acts of labour-sponsored funds.

Moreover, the constituting acts of labour-sponsored funds will be amended to add a new requirement, namely that labour-sponsored funds must conduct and report on a self-assessment in the form prescribed by the AMF, on an annual basis, with the exception of those years for which the AMF conducts an inspection, which is intended to provide reasonable assurance that the funds comply with the requirements of their constituting act.

Lastly, the constituting acts of labour-sponsored funds will stipulate that the funds must produce an annual report outlining the findings of the self-assessment. This report will be filed with the board of directors of the labour-sponsored fund, the AMF and the Ministère des Finances.

■ **Application date**

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

6.2 Modifications to the administrative framework

❑ **Confirmation of the number of shares and amount paid**

The constituting acts of labour-sponsored funds provide that each shareholder is entitled to receive written confirmation of the number of shares or fractional shares he holds and of the amount paid thereon.⁶²

⁶⁰ *Act to establish Fondation*, s. 37; *Act to establish the FSTQ*, s. 30.

⁶¹ CQLR, chapter V-1.1.

⁶² *Act to establish Fondation*, s. 15; *Act to establish the FSTQ*, s. 12.

To allow labour-sponsored funds to provide each shareholder with the relevant information, namely the total amount a shareholder has paid for shares, without having to provide details of the price paid for each share, the constituting acts of labour-sponsored funds will be amended to specify that each shareholder will be entitled to receive written confirmation of the number of shares or fractional shares he owns and the total amount paid for all his shares and fractional shares.

■ **Application date**

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

□ **Transfers to former spouses**

As part of the March 10, 2020 budget,⁶³ it was announced that amendments would be made to the constituting acts of labour-sponsored funds to extend the transfer of an investment to former spouses.

Briefly, the legislative amendments resulting from this announcement provided for the following:⁶⁴

- a class “A” share or fractional share, held within the scope of a registered retirement savings plan (RRSP) under which the shareholder or the spouse or former spouse of the shareholder is the beneficiary, may be transferred to an RRSP or registered retirement income fund (RRIF) under which the shareholder or the spouse or former spouse of the shareholder is the beneficiary;
- a class “A” share or fractional share, held within the scope of an RRIF under which the shareholder or the spouse or former spouse of the shareholder is the beneficiary, may be transferred to another RRIF or an RRSP, as the case may be, under which the shareholder or the spouse or former spouse of the shareholder is the beneficiary.

However, the former spouse cannot be the annuitant of the RRSP or RRIF from which a class “A” share or fractional share of a labour-sponsored fund is transferred. The former spouse may, however, be the annuitant of the RRSP or RRIF to which a transfer of class “A” shares or fractional shares of a labour-sponsored fund is made.

Accordingly, the constituting acts of the labour-sponsored funds will be amended to eliminate the term “former spouse” from the annuitants of the RRSP or RRIF from which a class “A” share or fractional share of a labour-sponsored fund is transferred.

■ **Application date**

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

⁶³ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2020-2021 – Additional Information*, March 10, 2020, p. D.7.

⁶⁴ *Act to establish Fondation*, s. 10.1 and 10.2; *Act to establish the FSTQ*, s. 9.1 and 9.2.

❑ Formalities applicable to certain transfers made as part of the division of property between spouses or former spouses

When a marriage, civil union or *de facto* union ends, it may be necessary to transfer assets between spouses or former spouses under a judgment or written separation agreement. However, a shareholder of a labour-sponsored fund cannot dispose of a share or fractional share in favour of a third party.⁶⁵

As an exception, the constituting acts of labour-sponsored funds allow the transfer of a share or fractional share held within the scope of an RRSP under which the shareholder or the spouse of the shareholder is the beneficiary to another RRSP or an RRIF under which the shareholder or the spouse or former spouse of the shareholder is the beneficiary.⁶⁶

However, no similar provision exists for transfers of labour-sponsored funds involving non-registered investment accounts. Consequently, the board of directors, or a committee composed of persons designated by the board for that purpose, must give the required authorization for each of these transfers before they can be purchased by agreement by the labour-sponsored fund.

To streamline the procedure for such transfers of shares or fractional shares, the constituting acts of labour-sponsored funds will be amended to allow:

- transfers of shares held in a non-registered account of the shareholder to a non-registered account of the shareholder or the spouse or former spouse of the shareholder;
- transfers of shares held in a non-registered account of the shareholder to an RRSP or an RRIF under which the shareholder or the spouse or former spouse of the shareholder is the beneficiary;
- transfers of shares held within the scope of an RRSP or an RRIF under which the shareholder or the spouse of the shareholder is the beneficiary to a non-registered account of the shareholder or the spouse or former spouse of the shareholder.

■ Application date

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

❑ Closing of small accounts upon purchase or redemption of shares

The constituting acts of labour-sponsored funds provide that they are bound to redeem any share or fractional share, in certain circumstances, upon request. In addition, a labour-sponsored fund may purchase by agreement certain shares, in accordance with a policy adopted by its board of directors.⁶⁷

⁶⁵ *Act to establish Fondaction*, s. 9; *Act to establish the FSTQ*, s. 8.

⁶⁶ *Act to establish Fondaction*, s. 10.1; *Act to establish the FSTQ*, s. 9.1.

⁶⁷ *Act to establish Fondaction*, s. 9 and 11; *Act to establish the FSTQ*, s. 8 and 10.

In some cases, a shareholder of a labour-sponsored fund may request the redemption or purchase by agreement of a large proportion of his shares, but may keep some of them. In such circumstances, labour-sponsored funds have to administer small investment accounts, incurring significant administration costs.

To reduce the administrative formalities and costs associated with small investment accounts, the constituting acts of labour-sponsored funds will be amended to allow a labour-sponsored fund to redeem the remaining balance of shares and close an account with a residual balance of \$1 500 or less following a redemption or purchase by agreement, except when the initial purchase of the shares was made as part of an eligible withdrawal under the Home Buyers' Plan (HBP) or Lifelong Learning Plan (LLP), whether or not the remaining shares qualify for one of the redemption or purchase criteria.

■ **Application date**

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

□ **Redemption at the request of a trustee of a registered retirement savings plan or a registered retirement income fund**

The constituting acts of labour-sponsored funds provide that shareholders of these funds may not alienate their shares, subject to certain exceptions. In this regard, they are permitted to alienate their shares in a labour-sponsored fund to a trustee within the scope of an RRSP or an RRIF under which the shareholder of the labour-sponsored fund or the spouse or former spouse of the shareholder is the beneficiary.⁶⁸

Some RRSP and RRIF accounts are contracts for the constitution of an annuity issued by an insurer. This situation arises when an individual has alienated capital (which may consist of shares in a labour-sponsored fund) to an insurer, which then acts as trustee of the plan. These contracts for the constitution of an annuity generally include a beneficiary designation, providing for the payment of a death benefit to the beneficiary designated by the annuitant.

To allow an insurer to pay a death benefit to a beneficiary designated under a contract for the constitution of an annuity under which the capital provided consists of shares or fractional shares of a labour-sponsored fund, the constituting acts of labour-sponsored funds will be amended to enable a labour-sponsored fund to redeem the shares or fractional shares of its capital stock at the request of a trustee of an RRSP or an RRIF whose initial beneficiary is the deceased shareholder of the labour-sponsored fund, or his or her spouse or former spouse.

■ **Application dates**

The constituting act of the Fonds de solidarité F.T.Q. will be amended to give effect to this change as of June 1, 2024.

⁶⁸ *Act to establish Fondation*, s. 10, 10.1 and 10.2; *Act to establish the FSTQ*, s. 9, 9.1 and 9.2.

Given that Fondation was incorporated on June 22, 1995, and that Fondation's constituting act never explicitly stipulated that shares or fractional shares of Fondation could be redeemed at the request of a trustee of an RRSP or an RRIF whose beneficiary is the deceased shareholder of the labour-sponsored fund, or his or her spouse or former spouse, it is being proposed that a declaratory provision be added to give effect to this change as of June 22, 1995.

❑ **Transfer from a registered retirement savings plan to a registered retirement income fund**

The constituting acts of labour-sponsored funds exhaustively set out the situations in which the class "A" shares they have issued may be redeemed.⁶⁹ Among other things, they provide that a class "A" share or fractional share may be redeemed by the labour-sponsored fund at the request of a person who acquired it at least 730 days (two years) prior to the request if, after reaching 45 years of age, he has availed himself of his right to early retirement or retirement or if he has reached 65 years of age.

As part of the 2023-2024 budget,⁷⁰ it was announced that, in order for the non-refundable tax credit granted to individuals who become shareholders in labour-sponsored funds to contribute more to the supply of patient capital to Québec businesses, the minimum two-year holding period for shares of labour-sponsored funds will be gradually extended to five years. In this regard, it should be noted that the non-refundable tax credit for labour-sponsored funds is not granted when the individual has reached 65 years of age before the end of the year, or would have reached that age had the individual not died during the year.

Moreover, at the end of the year in which an individual turns 71, his or her RRSP matures. At that point, the individual is required to do one of the following:

- convert the RRSP into an RRIF;
- withdraw the funds from the RRSP;
- use the RRSP funds to purchase an annuity.

To facilitate the transfer of funds from an RRSP to an RRIF, the constituting acts of labour-sponsored funds will be amended to add another situation allowing for the redemption of class "A" shares or fractional shares issued by labour-sponsored funds. It will now be possible to redeem class "A" shares or fractional shares in the taxation year in which the individual's RRSP matures, without a minimum holding period for the class "A" shares or fractional shares.

■ **Application date**

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

⁶⁹ *Act to establish Fondation*, s. 11; *Act to establish the FSTQ*, s. 10.

⁷⁰ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2023-2024 – Additional Information*, March 21, 2023, pp. A.63-A.64.

❑ Problem cases relating to the issue or redemption of shares

The constituting acts of labour-sponsored funds provide⁷¹ that an individual may request his employer to deduct the amount he determines from his salary or wages, for the period he specifies, to pay for shares or fractional shares he has decided to acquire from the labour-sponsored fund.

In such cases, the employer must remit the deducted amounts to the labour-sponsored fund or to the trustee designated by the latter. The remittance must be accompanied with a statement indicating the amount deducted from each employee's salary or wages, as well as the employee's name, address, date of birth and social insurance number. Amounts deducted remain due to the employee as salary or wages until they are remitted by the employer to the labour-sponsored fund or to the trustee designated by the latter.

The employee for the benefit of whom sums have been remitted is deemed to have subscribed for as many of the labour-sponsored fund's shares and fractional shares as the amounts deducted from his salary or wages permit him to acquire.

However, labour-sponsored funds sometimes encounter situations where they are unable to issue shares in accordance with the aforementioned provisions, or are faced with share issues that generate high management fees given the size of the account.

Examples of such situations include the following:

- when payroll deductions are made by an employer to subscribe to shares or fractional shares of a labour-sponsored fund, but the employee concerned fails to sign an application form;
- when the labour-sponsored fund receives remittances on behalf of a non-Québec resident, given the impossibility of issuing shares to him under the rules governing securities;
- when shares or fractional shares are issued for a minimal amount without being followed by subsequent additional subscriptions, thereby generating high management fees for the labour-sponsored fund;
- when the sums paid into the labour-sponsored fund come from employer contributions provided for in a collective agreement, contractual agreement or other instrument, given that the employee is then not deemed to have subscribed to shares of the labour-sponsored fund, unlike the situation where the sums paid into the labour-sponsored fund come from salary deductions made at the employee's request.

In order to address these problematic cases relating to the issue or redemption of shares, the constituting acts of labour-sponsored funds will be amended to:

- allow a labour-sponsored fund to redeem shares or fractional shares at the option of the fund, in accordance with a policy adopted by its board of directors and approved by the Minister of Finance;

⁷¹ *Act to establish Fondaction*, s. 32, 35 and 36; *Act to establish the FSTQ*, s. 24, 27 and 28.

- provide that sums paid to the labour-sponsored fund or to the trustee designated by the latter must meet the subscription criteria set out by the labour-sponsored fund so that the employee for the benefit of whom sums have been remitted is deemed to have subscribed for as many shares or fractional shares as the amounts deducted from his salary or wages permit him to acquire;
- provide that employer contributions stipulated in a collective agreement, collective agreement decree, contractual agreement or other instrument must be remitted and treated in the same way as salary deductions made at the request of the employee;⁷²
- provide that a person is considered to have availed himself of his right to early retirement if, at the time of the request for redemption, he has reached 55 years of age and receives or will receive, within three months of the date of the request, a retirement pension under a life income fund, unless the annuity or payment is received because of the death of his spouse.

■ **Application date**

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

□ **Restrictions on certain transfers of shares to external registered retirement income funds**

The constituting act of the Fonds de solidarité F.T.Q.⁷³ provides, in summary, that a class “A” share or fractional share held within the scope of an RRSP or an RRIF may be transferred to a trustee within the scope of another RRSP or RRIF under which the shareholder or the spouse or former spouse of the shareholder is the annuitant.

To streamline the administrative process for the transfer of class “A” shares or fractional shares of the Fonds de solidarité F.T.Q. to an RRIF, the constituting act of the Fonds de solidarité F.T.Q. will be amended so that only transfers of such shares or fractional shares to the RRIF of the Fonds de solidarité F.T.Q. or to a FlexiFonds product will be permitted.

■ **Application date**

The *Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)* will be amended to give effect to this change as of June 1, 2024.

6.3 **Other modifications**

□ **Name of the Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)**

To align the name of the *Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)* with the new name of the Fédération des travailleurs du Québec, now called the Fédération des travailleurs et des travailleuses du Québec (“FTQ”), the name of this Act will be changed to “*Act to establish the Fonds de solidarité des travailleurs et des travailleuses du Québec (FTQ)*”.

⁷² *Act to establish Fondation*, s. 35; *Act to establish the FSTQ*, s. 27.

⁷³ *Act to establish the FSTQ*, s. 9.1 and 9.2.

■ Application date

The *Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)* will be amended to give effect to this change as of June 1, 2024.

□ Persons entitled to acquire shares of a tax-advantaged fund

The constituting acts of tax-advantaged funds currently provide that only a natural person may acquire or hold a share or fractional share of their capital stock.⁷⁴

In general, responsibility for administering the property of minors lies with their tutors, who have a legal obligation to act with prudence. To this end, the *Civil Code of Québec* stipulates⁷⁵ which investments are presumed sound, which is an important guideline for the tutor's actions. However, shares or fractional shares of tax-advantaged funds do not qualify as investments presumed sound.

To prevent minors from becoming shareholders of tax-advantaged funds, their constituting act will be amended so that only a natural person of full age can acquire or hold a share or fractional share of their capital stock.

■ Application date

The constituting acts of the three tax-advantaged funds will be amended to give effect to this change as of June 1, 2024.

□ Payroll deductions

Fondaction's constituting act provides that the employer or savings union must remit to the Fund or to the trustee designated by the Fund the deducted or debited amounts from the employee's remuneration not later than the fifteenth day of the month following the month in which the deduction or debit is made. This remittance must be accompanied with a statement indicating the amount deducted or debited and the name, address, date of birth and social insurance number of the investor.⁷⁶

In addition, the act includes a presumption whereby the individual for the benefit of whom the amounts have been remitted is deemed to have subscribed for as many of the Fund's class "A" or class "B" shares or fractional shares as the amounts remitted permit him to acquire.⁷⁷

To ensure that this presumption applies only in cases where the information required to accompany the remittance of the amounts deducted is actually received by Fondaction, Fondaction's constituting act will be amended to add the word "so" to this presumption, which will now read as follows:

"An individual for the benefit of whom sums have been so remitted is deemed to have subscribed for as many of the Fund's class "A" or class "B" shares or fractional shares as the amounts remitted permit him to acquire."

⁷⁴ *Act to establish Fondaction*, s. 9; *Act to establish the FSTQ*, s. 8; *Act constituting Capital régional et coopératif Desjardins [Act constituting CRCD]*, s. 11.

⁷⁵ *Civil Code of Québec*, articles 1339 to 1344.

⁷⁶ *Act to establish Fondaction*, s. 35; *Act to establish the FSTQ*, s. 27.

⁷⁷ *Act to establish Fondaction*, s. 36; *Act to establish the FSTQ*, s. 28.

■ Application date

The constituting act of Fondation will be amended to give effect to this change as of June 1, 2024.

□ Delegations granted to Fondation’s investment committee

Fondation’s constituting act provides that a “committee of the board of directors” may authorize an investment if the committee is composed of a majority of independent persons.⁷⁸

Since 2015, the constituting act of the Fonds de solidarité F.T.Q. explicitly provides that an investment committee may be composed of persons who are not members of the board of directors.

Given that Fondation’s investment committee was formed on July 8, 2020, and that Fondation’s constituting act did not explicitly provide that an investment committee may be composed of persons who are not members of the board of directors, it is being proposed that a declaratory provision be added to this effect.

■ Application date

Considering the declaratory provision, Fondation’s constituting act will be amended to give effect to this change as of July 8, 2020.

□ Adding social trusts to the definition of “enterprise”

The constituting acts of labour-sponsored funds currently provide that the term “enterprise” refers to a partnership or a legal person pursuing economic objects.⁷⁹

In some cases, however, the most appropriate legal vehicle for carrying out certain projects related to the missions of labour-sponsored funds is a trust. Because social trusts can be perpetual, they are particularly well suited to certain projects, such as affordable housing.

While the essential object of a social trust cannot be to make a profit or to operate a business,⁸⁰ it can, as an accessory, operate a business to achieve its main purpose.

Accordingly, in order to promote certain investments related to the missions of labour-sponsored funds, the constituting acts of such funds will be amended so that, for the purposes of these acts, an enterprise may also refer to a social trust pursuing economic objects.

■ Application date

The constituting acts of the two labour-sponsored funds will be amended to give effect to this amendment as of June 1, 2024.

⁷⁸ *Act to establish Fondation*, s. 18.2.

⁷⁹ *Act to establish Fondation*, s. 18; *Act to establish the FSTQ*, s. 14.

⁸⁰ *Civil Code of Québec*, article 1270.

□ Qualification criteria for large enterprises

As part of the 2023-2024 budget,⁸¹ various changes were made to the investment requirements for tax-advantaged funds to enable a reorganization of eligible investment categories. Briefly, three categories of eligible investments by tax-advantaged funds were defined.

The first category includes investments in small, medium and large Québec businesses, plus strategic investments, major investments, investments made otherwise than as first purchaser, and reinvestments in Québec businesses.

In this respect, it has been ruled that a maximum of 30% of the average value of a tax-advantaged fund's net assets, as established for the previous fiscal year, may be devoted to investments in large businesses. In this context, a large business has been defined as one whose assets on its financial statements exceed \$200 million, or whose net worth exceeds \$100 million, at the time a tax-advantaged fund makes such an investment.

To give tax-advantaged funds greater flexibility in terms of the investments they can make, it is being proposed to make the criteria for determining whether an entity constitutes a large business cumulative. As a result, an entity will be a large business if the assets shown in its financial statements exceed \$200 million and if it has a net worth exceeding \$100 million at the time the tax-advantaged fund makes such an investment.

■ Application date

The constituting acts of the three tax-advantaged funds will be amended to give effect to this change. In the case of the labour-sponsored funds, this change will take effect on June 1, 2024, while in the case of the Fonds CRCD, it will take effect on January 1, 2024.

□ Calculation of the investment requirement for tax-advantaged funds

As part of the 2023-2024 budget,⁸² the government announced that the calculation of the 65% minimum investment requirement will take into account an additional year to establish the average net asset value. As a result, the calculation of the requirement will take into account three years rather than two, by considering the eligible investments of a tax-advantaged fund at the beginning of the previous fiscal year and the assets of a tax-advantaged fund at the beginning of the second previous fiscal year.

To follow up on this announcement, it is necessary to specify the adjustments that will have to be made to the calculation of eligible investments for the purposes of the investment requirement and to the calculation of average net assets.

⁸¹ MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2023-2024 – Additional Information*, March 21, 2023, pp. A.56-A.59.

⁸² *Ibid.*, p. A.60.

■ **New calculation of eligible investments**

■ **Fonds de solidarité F.T.Q.**

The formula for determining average eligible investments will be modified by adding the letters F and G, and replacing the 2 with a 3 as the denominator. As a result, the formula will now be as follows:⁸³

$$(A + B + C + D + F + G) \div 3 + E$$

For the purposes of this formula:

- A is the Fund’s eligible investments at the beginning of the fiscal year;
- B is the Fund’s eligible investments at the end of the fiscal year;
- C is the amount by which an amount that is the total of the eligible investments already made by the Fund that were disinvested in the fiscal year, exceeds an amount equal to 2% of the Fund’s average net assets for the preceding fiscal year;
- D is the amount determined under letter C for the preceding fiscal year;
- E is any of the following amounts:
 - if the fiscal year ends on May 31, 2008, \$500 000 000,
 - if the fiscal year ends on May 31, 2009, \$450 000 000,
 - if the fiscal year ends on May 31, 2010, \$400 000 000,
 - if the fiscal year ends on May 31, 2011, \$300 000 000,
 - if the fiscal year ends on May 31, 2012, \$200 000 000,
 - if the fiscal year ends after May 31, 2012, the amount designated by the Fund for the fiscal year, which amount may not exceed the lesser of \$500 000 000 and the amount determined for the fiscal year by the following formula:

$$(F_{A-1} - G_{A-2}) + \{(F_{A-2} - G_{A-3}) - [E_{A-1} - (F_{A-3} - G_{A-4})]\}$$

For the purposes of this formula:

- E_{A-1} is the amount designated by the Fund under subparagraph f of subparagraph 5 of the fourth paragraph for the preceding fiscal year or, in the absence of such a designation, an amount equal to zero,
- F_{A-1} is the amount of the Fund’s average eligible investments for the preceding fiscal year, which amount is determined as if the formula in subparagraph 3 of the third paragraph were read without reference to “+ E”,

⁸³ Act to establish the FSTQ, s. 15.

- F_{A-2} is the amount of the Fund’s average eligible investments for the second preceding fiscal year, which amount is determined as if the formula in subparagraph 3 of the third paragraph were read without reference to “+ E”,
 - F_{A-3} is the amount of the Fund’s average eligible investments for the third preceding fiscal year, which amount is determined as if the formula in subparagraph 3 of the third paragraph were read without reference to “+ E”,
 - G_{A-2} is the percentage specified in the second paragraph of the Fund’s average net assets that is applicable for the second preceding fiscal year,
 - G_{A-3} is the percentage specified in the second paragraph of the Fund’s average net assets that is applicable for the third preceding fiscal year,
 - G_{A-4} is the percentage specified in the second paragraph of the Fund’s average net assets that is applicable for the fourth preceding fiscal year,
 - where the result of a subtraction is less than zero, it is deemed to be equal to zero;
- F is the Fund’s eligible investments at the beginning of the preceding fiscal year;
 - G is the amount determined under letter C for the second preceding fiscal year.

▪ **Fonds CRCD and Fondaction**

For the Fonds CRCD and Fondaction, the formula for determining average eligible investments will be modified by adding the letters E and F, and replacing the 2 with a 3 as the denominator. As a result, the formula will now be as follows:⁸⁴

$$(A + B + C + D + E + F) \div 3$$

For the purposes of this formula:

- A is the Fund’s eligible investments at the beginning of the fiscal year;
- B is the Fund’s eligible investments at the end of the fiscal year;
- C is the amount by which an amount that is the total of the eligible investments already made by the Fund that were disinvested in the fiscal year, exceeds an amount equal to 2% of the Fund’s average net assets for the preceding fiscal year;
- D is the amount determined under letter C for the preceding fiscal year;
- E is the Fund’s eligible investments at the beginning of the preceding fiscal year;
- F is the amount determined under letter C for the second preceding fiscal year.

⁸⁴ Act to establish Fondaction, s. 19; Act constituting CRDC, s. 19.

- **New calculation of average net assets for the purpose of calculating the investment requirement**

The average net assets for a fiscal year of tax-advantaged funds are currently determined by adding the net assets at the beginning of that year to the net assets at the end of that year and by dividing the sum so obtained by 2.

As a result of the change in the calculation of the investment requirement, which will take into account three years rather than two in order to establish the average of investments eligible for the requirement, the average net assets for a fiscal year will be determined by adding the net assets at the beginning of the preceding fiscal year, the net assets at the beginning of that year and the net assets at the end of that year, and by then dividing the sum so obtained by 3.

- **Application date**

The constituting acts of the three tax-advantaged funds will be amended to give effect to this change as of June 1, 2024 in the case of the labour-sponsored funds, and as of January 1, 2024 in the case of the Fonds CRCD.