

Consumer Taxes

TVQ. 92-1/R1 **The Notion of “Deposit”**
Date of publication: **March 30, 2012**

Reference(s): *Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 16, 82, 85 and 92*

This version of interpretation bulletin TVQ. 92-1 replaces the version of January 31, 1997. While the bulletin was revised to update its content, the interpretation remains unchanged.

This bulletin explains the notion of “deposit” referred to in section 92 of the *Act respecting the Québec sales tax (AQST)*, which concerns the time of taxation of the Québec sales tax.

APPLICATION OF THE ACT

TIME OF TAXATION

1. Under section 82 of the AQST, the tax provided for in section 16 of the AQST is payable by the recipient of a taxable supply on the earlier of the day the consideration for the supply is paid and the day the consideration for the supply becomes due.
2. Under section 85 of the AQST, however, where consideration for a taxable supply is paid or becomes due on more than one day, the tax in respect of the supply is payable by the recipient on the earlier of the day a part of the consideration is paid and the day that part becomes due. The tax must be calculated on the value of the part of the consideration that is paid or becomes due, as the case may be, on that day.
3. Moreover, under section 92 of the AQST, a deposit, whether refundable or not, given in respect of a supply is not considered as consideration paid for the supply unless and until the supplier applies the deposit as consideration for the supply. Thus, the tax only becomes payable in respect of such a supply if and when the supplier considers the deposit as consideration for the supply.

DISTINCTION BETWEEN A “DEPOSIT” AND A “DEPOSIT ON ACCOUNT OF CONSIDERATION”

4. It should be pointed out that to correctly identify an amount as a deposit or a deposit on account of consideration (i.e., partial payment of consideration), it is first necessary to examine the agreement binding the parties in order to determine their intentions.

5. A deposit ordinarily means an amount given by a recipient as security for the performance of an obligation by the recipient, regardless of whether the amount is refundable. In general, the payment of a deposit implies that the parties have agreed not to bind themselves definitively, but rather to oblige themselves to enter into the proposed contract at a later time, subject to the parties' right to not give effect to the contract in consideration for a penalty corresponding to the amount of the deposit. This is often the case of amounts paid in the course of a promise to enter into a contract.

6. A deposit on account of consideration, on the other hand, represents partial payment of the consideration for a supply at the time of making the contract giving rise to the supply. Thus, where a contract is entered into under which a supply must be made, and where the recipient pays an amount to the supplier at the time of entering into the contract, it should be considered that the payment of the amount constitutes partial payment, since the recipient, when paying the amount, is not seeking to secure the performance of an obligation (as is the case with a deposit), but is partially fulfilling the obligation of paying the consideration.

7. Thus, in order for an amount given by the recipient at the time of making a contract giving rise to a supply to qualify as a deposit (lodged as security), the amount must be given to secure the performance of a contractual obligation other than the obligation of paying the consideration for the supply (which then would constitute partial fulfilment of the recipient's obligation to pay).

8. Moreover, it should be mentioned that in matters of promises of sale, article 1711 of the *Civil Code of Québec* provides a presumption to the effect that "any amount paid on the occasion of a promise of sale is presumed to be a deposit on the price unless otherwise stipulated in the contract." Accordingly, unless the parties have agreed otherwise, the amount paid at the time of a promise of sale is deemed to constitute a deposit on account of the consideration for the sale.

Examples of amounts that constitute a deposit

9. Where an amount is paid by a person to a supplier without any promise of purchase in order to have the supplier lay aside a dining room set for a certain time, and thus allow the person to decide whether or not to acquire the furniture, the amount constitutes a deposit. Should the person decide to acquire the furniture in question, the tax would then be payable on the amount paid as a deposit at the time the supplier considers that the amount constitutes a part of the consideration for the supply of the furniture.

10. In bankruptcy matters, where an amount is paid by a person to a trustee in bankruptcy at the time of the filing of an assignment by an insolvent person (the bankrupt) as security for the administration fees connected with the case, the amount constitutes a deposit. Such an amount is deposited in trust in a bank account that is separate from the bank account of the bankrupt's patrimony and must be remitted to the person if the trustee does not require it for the payment of fees and disbursements.

11. Where an amount is charged at the time of renting a post office box to ensure the return of the key to the box, the amount constitutes a deposit, since the amount is refunded to the lessee at the end of the rental period.

Example of an amount that constitutes a deposit on account of consideration

12. Where an amount is paid by a recipient at the time of entering into a contract providing for the sale of household appliances and stipulating that the balance of the price of sale is payable at the time of delivery of the appliances to the recipient, the amount does not constitute a deposit lodged as security, but rather a deposit on account of consideration.