

Income Tax

ADM. 8/R1

Reward Program for Informants of Transactions Covered by the General
Anti-Avoidance Rule and Sham Transactions

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This bulletin introduces Revenu Québec's Reward Program for Informants of Transactions Covered by the General Anti-Avoidance Rule and Sham Transactions and sets out the terms and conditions for rewarding informants.

PROGRAM OVERVIEW AND GOALS

1. Revenu Québec already allows taxpayers to report (anonymously or not) a person or business they suspect is not meeting its tax obligations. However, the existing framework does not offer any rewards for doing so.
2. Given that reporting another taxpayer can have far-reaching personal, social and professional consequences for the informant, offering a reward could encourage people to come forward with information about transactions aimed at avoiding Québec income tax or other duties payable under Québec tax legislation.
3. It is in this context that the Reward Program for Informants of Transactions Covered by the General Anti-Avoidance Rule and Sham Transactions was created. Revenu Québec's program covers different transactions than the Offshore Tax Informant Program (OTIP) launched by the Canada Revenue Agency (CRA) in 2014, specifically transactions leading to the application of the general anti-avoidance rule (GAAR) and sham transactions (see Appendix I for more information). In order to be eligible for a reward, informants must provide information that leads to the recovery of at least \$100,000 in duties under Québec tax legislation (not including penalties or interest).
4. If the information is considered eligible, a contract will be signed with the informant to define each party's commitments.
5. In this bulletin, "Québec tax legislation" means a fiscal law within the meaning of the *Tax Administration Act* (CQLR, c. A-6.002).

ELIGIBILITY

Information

6. To be eligible, information must be precise and credible and meet the following requirements:
 - it concerns a transaction or series of transactions that:
 - leads to the application of the GAAR, within the meaning of section 1079.10 of the *Taxation Act* (CQLR, c. I-3) and section 479 of the *Act respecting the Québec sales tax* (CQLR, c. T-0.1). Essentially, the GAAR applies to transactions that comply with the letter of the law while abusing its spirit, or
 - constitutes a sham (see Appendix I);
 - it leads to the recovery of at least \$100,000 (not including interest or penalties) under Québec tax legislation.
7. The following information is not eligible:
 - information concerning a transaction or series of transactions that has already been brought to the attention of Revenu Québec or the CRA (for example, through a voluntary disclosure, mandatory or preventive disclosure, a reportable transaction information return, or an audit or investigation conducted by Revenu Québec or the CRA); and
 - information concerning international tax non-compliance covered by the OTIP.

Informants

8. Any individual other than the following can be an informant:
 - an individual who benefitted, directly or indirectly, from one or more transactions being reported;
 - an individual who, directly or indirectly, proposed, planned or implemented a transaction or series of transactions being reported, or who was paid to do so;
 - an individual who was found guilty of tax evasion or an offence listed in section 750 of the *Criminal Code* (R.S.C. 1985, c. C-46), such as fraud against the government or Her Majesty;
 - an employee or former employee of any of the following who obtained eligible information as part of his or her duties: Revenu Québec, the CRA or another tax authority; a federal, provincial or municipal government department or body; a state-owned enterprise (or a Crown corporation); or a police force; or
 - an individual subject to the Professional Code (CQLR, c. C-26) who obtained eligible information as part of the exercise of his or her profession.

9. However, an individual who benefitted indirectly from a transaction being reported may still be eligible if he or she is able to prove to Revenu Québec's satisfaction that he or she did not take part in the transaction.

10. Informants under the program must identify themselves. However, anonymous denunciation is possible under Revenu Québec's general framework for reporting non-compliance.

Rewards

11. Rewards can reach up to 15% of the duties (not including interest or penalties) recovered by Revenu Québec under Québec tax legislation as a result of the information submitted.

12. The exact reward percentage will be based on the quality and value of the information provided, as well as the informant's level of cooperation during the information examination process.

13. Rewards are paid only once the duties in question have been recovered and all deadlines for objection or appeal by the taxpayer(s) in question have elapsed.

SUBMISSION PROCESS AND ADMINISTRATIVE PROCEDURES

Submission process

14. To be considered under the program, information must be precise and credible and submitted using form LM-8-V. The form must be duly completed, signed and sent by mail or courier to the Direction de l'intégrité et de la recherche en matière de planification fiscale agressive, which is part of the Direction générale de la législation. The mailing address is given at the end of this bulletin.

15. To ensure confidentiality, documents should not be faxed or emailed.

16. A confidential phone line has been set up for anyone with questions about the submission procedure and the eligibility of information. The number to call is given at the end of this bulletin.

Evaluation of information

17. After examining the information submitted by the informant, Revenu Québec will evaluate the merits of the file and decide on its eligibility for the program.

18. If the file is eligible, Revenu Québec will sign a contract with the informant.

19. For analysis purposes, the information may be sent to the appropriate Revenu Québec department for further action.

Determining the reward percentage

20. When analyzing the file, the reward percentage will be determined based on the quality, relevance and value of the information, as well as the informant's level of cooperation. See Appendix II for more information about the evaluation criteria.

21. A reward is possible even if the taxpayers involved in the transaction or series of transactions are not identified in the submission.

Confidentiality and disclosure of information

Use of information and documents by Revenu Québec

22. The information submitted to Revenu Québec is collected, used and communicated in accordance with the rules set out in Québec legislation, including the confidentiality provisions of the *Tax Administration Act* and the *Act respecting Access to documents held by public bodies and the Protection of personal information* (CQLR, c. A-2.1), hereinafter the Access Act, which limit the communication of information to third parties.

23. Regardless of whether a contract is signed with the informant, Revenu Québec can use the information submitted to carry out its mission of collecting, in accordance with the applicable legislation, income tax and consumption taxes to ensure that all taxpayers contribute their fair share toward the funding of public services.

Protecting informants' identities

24. Subject to the applicable legislation, Revenu Québec will ensure the protection of all confidential information and, accordingly, will protect the informant's identity.

25. The information arising from a submission is protected under the Access Act.

26. However, in some cases, such as if an informant is called as a key witness in public legal proceedings, it may be impossible to protect his or her identity. In such cases, Revenu Québec will notify the informant before deciding whether to continue the proceedings.

Communication of information to informants

27. Once an informant has signed a contract with Revenu Québec, he or she can be informed of whether the information submitted is still being processed and, as a result, whether the amount stipulated in the contract is payable.

28. However, as taxpayer information is protected by the strict confidentiality rules set out in Québec legislation, the communication of information to informants is subject to those rules.

Duration of the process

29. Given the time needed to issue a reassessment or an additional assessment, for the taxpayer(s) in question to exercise the right to objection or appeal and for Revenu Québec to undertake collection measures, it may take several years from the signature of the contract to recover the amounts in question. If all the requirements are met, Revenu Québec will begin the process of paying a reward as soon as \$100,000 in duties has been collected. Further instalments may be paid as additional amounts are collected.

Tax treatment of rewards

30. A reward paid under a contract signed with Revenu Québec as part of the program must be included in the informant's income for the taxation year it was received in accordance with the *Taxation Act*.

31. Revenu Québec will withhold the applicable source deductions of income tax from the reward.

To contact us

By mail or courier
Direction de l'intégrité et de la recherche en matière de planification fiscale agressive Direction générale de la législation Revenu Québec C.P. 5000, Succ. Desjardins, secteur D254LC, Montréal (Québec) H5B 1A7
By phone
Toll-free 1 855 208-1131

You can also consult Revenu Québec's website at www.revenuquebec.ca.

APPENDIX I

KEY CONCEPTS

General anti-avoidance rule (GAAR)

The GAAR exists to distinguish between legitimate tax planning and abusive tax avoidance and to establish a reasonable balance between the protection of the tax base and the need for certainty for taxpayers in planning their affairs.

In order for the GAAR to apply, the following elements must be present:

- the transaction results in a tax benefit;
- the transaction constitutes an avoidance transaction, in that it was not conducted for bona fide purposes (obtaining a tax benefit is not a bona fide purpose); and
- the avoidance transaction is abusive.

The three elements must be present for the tax benefit to be denied.

When the GAAR applies, the taxpayer's tax consequences must be determined as is reasonable in the circumstances in order to deny a tax benefit that, if the GAAR did not apply, would result directly or indirectly from an avoidance transaction.

Sham

Generally speaking, a sham is a transaction conducted with an element of deceit so as to create an illusion calculated to lead the tax authority away from the taxpayer or the true nature of the transaction; or, simple deception whereby the taxpayer creates a facade of reality quite different from the disguised reality.¹

Without limiting the generality of the concept of a sham, the program covers sham transactions in the context of contractual relationships where there exists a simulation within the meaning of article 1451 of the Civil Code of Québec, i.e., where the parties agree to express their true intent, not in an apparent contract, but in a secret contract, in order to deceive tax authorities. The element of deceit covered by the program consists in parties creating the appearance of contractual rights and obligations that they know do not exist or are different from what is being presented, with the goal of deceiving tax authorities. The program does not cover the unilateral submission of facts that prove to be false.

Section 750 of the *Criminal Code*

Section 750 of the *Criminal Code* prevents any person convicted of certain offences from contracting with Her Majesty. As a result, individuals convicted of these offences are not eligible for

¹ *Stubar Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536.

the Reward Program for Informants of Transactions Covered by the General Anti-Avoidance Rule and Sham Transactions. Offences include:

- fraud against the government (including corruption) under section 121 of the Code;
- the sale of appointment to or resignation from an office (such as the office of judge or director of a corporation or public body) under section 124 of the Code;
- fraud under section 380 of the Code committed against Her Majesty;
- the wilful sale or delivery of defective stores to Her Majesty or fraud in connection with the sale, lease or delivery of stores to Her Majesty or the manufacture of stores for Her Majesty, under section 418 of the Code.
- the making or signature of any false entry, certificate or return committed by a person employed in the collection, management or disbursement of public money under paragraph 80(1)(d) of the *Financial Administration Act* (R.S.C. 1985, c. F-11);
- fraud against Her Majesty committed by a person employed in the collection, management or disbursement of public money under subsection 80(2) of the *Financial Administration Act*; and
- fraud against a Crown corporation committed by one of its directors, officers or employees under section 154.01 of the *Financial Administration Act*.

APPENDIX II

Reward Determination Guidelines			
Quality of information	Poor	Good	High
	<ul style="list-style-type: none"> • Hard to use • Contains many errors • Incomplete, imprecise • Unclear, disorganized 	<ul style="list-style-type: none"> • Easy to use • Contains small errors, but not in key elements • Complete for most key elements • Clear and somewhat organized 	<ul style="list-style-type: none"> • Very easy to use • Precise • Complete and detailed • Clear and well organized
Identifying information	General	Non-specific	Specific
	<ul style="list-style-type: none"> • Cannot be used to identify the taxpayer(s) involved in the transaction or series of transactions 	<ul style="list-style-type: none"> • Can be used to identify a group of related taxpayers, but not which members of the group are specifically involved in the transaction or series of transactions 	<ul style="list-style-type: none"> • Can be used to identify the taxpayer(s) specifically involved in the transaction or series of transactions
Cooperation	Low	Good	Very good
	<ul style="list-style-type: none"> • Provides basic explanations on request • Provides minimal contextual information • Actions compromised or complicated Revenu Québec's analysis 	<ul style="list-style-type: none"> • Provides useful explanations on request • Provides useful contextual information when needed 	<ul style="list-style-type: none"> • Provides clear and detailed information on request • Provides detailed contextual information to help Revenu Québec identify the tax scheme
Value of information	Low	Medium	High
	<ul style="list-style-type: none"> • Does not reduce the time needed for Revenu Québec to evaluate the risk of non-compliance • Mostly from public sources or otherwise easy to obtain • Even without the information, Revenu Québec would most likely have audited the transaction or series of transactions 	<ul style="list-style-type: none"> • Reduces the time needed for Revenu Québec to evaluate the risk of non-compliance • Hard to obtain • Even without the information, Revenu Québec may have audited the transaction or series of transactions 	<ul style="list-style-type: none"> • Greatly reduces the time needed for Revenu Québec to evaluate the risk of non-compliance • Very hard to obtain • Without the information, it is unlikely that Revenu Québec would have audited the transaction or series of transactions or it would have been impossible for Revenu Québec to do so