

Consumer Taxes

TVQ. 11.1-1/R2 **Presumption of Residence in Québec – Canadian Residents Who Have a Permanent Establishment in Québec**

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Reference(s): *Act respecting the Québec sales tax* (CQLR, c. T-0.1), sections 11.1, 11.1.1, 179 to 191.11, 329.1, 330.1, 331 and 334

This version of interpretation bulletin TVQ. 11.1-1 replaces the version of September 30, 2011. The bulletin was revised to update its content and add examples regarding the election for no consideration under section 334 of the Act respecting the Québec sales tax. However, the interpretation remains unchanged.

This bulletin explains how, under the *Act respecting the Québec sales tax* (AQST), the presumption of residence in Québec applies to Canadian residents who have a permanent establishment in Québec and how this affects the election for no consideration and the zero-rating of supplies shipped outside Québec.

ELECTION FOR SUPPLIES MADE FOR NO CONSIDERATION

1. The first paragraph of section 11.1 of the AQST states that, except for the purpose of determining the place of residence of an individual in the individual's capacity as a consumer and except for the purposes of the zero-rating measures under sections 179 to 191.11 of Division V of Chapter IV of Title I of the AQST in respect of supplies shipped outside Québec, a person is deemed to be resident in Québec if the person is resident in Canada and has a permanent establishment in Québec.
2. Section 334 of the AQST sets out that a specified member of a qualifying group can make a joint election with another specified member of the group so that every taxable supply (other than a supply referred to in the second paragraph of that section, such as the supply of an immovable by way of sale) made between them at a time when the election is in effect is deemed to have been made for no consideration.
3. Section 331 of the AQST provides that for the purposes of Division X of Chapter VI of Title I of the AQST, "specified member" of a qualifying group includes, in particular, a "qualifying member" of the group, namely, within the meaning of section 330.1, a registrant that is a corporation resident in Québec.

4. According to section 329.1 of the AQST, “qualifying group” means, in particular, a group of corporations each member of which is closely related, within the meaning of sections 332 and 333 of the AQST, to each other member of the group.

5. Therefore, a corporation that is resident in Canada and that has a permanent establishment in Québec can be part of a qualifying group within the meaning of section 329.1 of the AQST and, if it is a specified member of the group within the meaning of section 331, make a joint election with another specified member of the group so that section 334 applies.

6. Finally, a corporation that has a permanent establishment in Québec but that is not resident in Canada is not covered by section 11.1 of the AQST and is not deemed to be resident in Québec under that section. Consequently, such a corporation does not constitute a specified member for the purposes of section 334.

Example 1

7. Corporation A is constituted in British Columbia and is not resident in Québec. It has permanent establishments in British Columbia, Ontario and Québec. Corporation A is the recipient of a supply of a service whose place of supply is Québec. The supplier is Corporation B, a corporation qualifying as a specified member that is closely related to Corporation A, that is part of a same qualifying group as Corporation A.

8. Even if Corporation A is not resident in Québec under the usual rules, it is nevertheless deemed to be resident in Québec under section 11.1 of the AQST, since it is resident in Canada and has a permanent establishment in Québec.

9. Corporation A therefore qualifies as a qualifying member and, as a result, as a specified member under section 334 of the AQST. Because Corporation A and Corporation B are specified members of the same qualifying group, they can make a joint election in respect of supplies made for no consideration under section 334.

Example 2

10. Corporation C is constituted in British Columbia and is not resident in Québec under the usual rules. It has only one permanent establishment in Canada, which is located in British Columbia. Corporation C is the recipient of a supply of a service whose place of supply is Québec. The supplier is Corporation D, a corporation qualifying as a specified member that is closely related to Corporation C, that is part of a same qualifying group as Corporation C.

11. Corporation C is not deemed to be resident in Québec under section 11.1 of the AQST, since it does not have a permanent establishment in Québec. It does not qualify as a qualifying member—and therefore a specified member—for the purposes of the election under section 334.

12. Corporation C and Corporation D cannot make a joint election in respect of supplies made for no consideration under section 334 of the AQST.

SUPPLY SHIPPED OUTSIDE QUÉBEC

13. Division V of Chapter IV of Title I of the AQST provides that certain supplies shipped outside Québec are zero-rated. A frequent condition under this section is that the supply must be made to a recipient or a person who is not resident in Québec.

14. The second paragraph of section 11.1 of the AQST states that, for the purposes of the zero-rating measures for supplies shipped outside Québec under Division V of Chapter IV of Title I of the AQST, a person who is not resident in Québec but who is resident in Canada and has a permanent establishment in Québec is deemed to be resident in Québec, but only in respect of activities carried on by the person through that establishment.

15. Finally, section 11.1.1 of the AQST provides that a person resident in Québec who has a permanent establishment outside Québec but within Canada is deemed not to be resident in Québec, but only in respect of activities carried on by the person through that establishment.

16. Considering the above, the zero-rating measures applicable to a supply made to a recipient or a person who is not resident in Québec only apply if the supply relates solely to activities carried on by the person through a permanent establishment in Canada, but outside Québec.

Example 3

17. Corporation E is constituted in Ontario and is not resident in Québec. It has a permanent establishment in Ontario and another in Québec. Corporation E, which is a QST registrant, acquires an advertising service from Corporation F. The service is performed entirely in Québec and concerns the Canadian image of the business.

18. For the purposes of Division V of Chapter IV of Title I of the AQST, the corporation is deemed to be resident in Québec under the second paragraph of section 11.1 of the AQST, but only in respect of activities carried on by the corporation through the establishment in Québec.

19. Because the advertising activities concern Corporation E's general activities and do not relate solely to activities carried on through a permanent establishment in Québec, Corporation E is not deemed to be resident in Québec under the second paragraph of section 11.1 of the AQST.

20. Because the supply of the service was made by a person who is not resident in Québec, it is zero-rated for the purposes of section 185 of the AQST.

Example 4

21. Corporation E referred to in the previous example acquires another advertising service from Corporation F referred to in the previous example, but solely for the promotion of activities carried on through its permanent establishment in Québec.

22. For the purposes of Division V of Chapter IV of Title I of the AQST, a corporation that is resident in Canada but not in Québec is deemed to be resident in Québec under the second paragraph of section 11.1 of the AQST, but only in respect of activities carried on by the corporation through a permanent establishment in Québec.

23. Since the advertising service pertains to activities carried on through a permanent establishment in Québec, Corporation E is deemed to be resident in Québec under the second paragraph of section 11.1 of the AQST.

24. As a result, the supply of the advertising service cannot be a zero-rated supply under Division V of Chapter IV of Title I of the AQST.