

Consumer Taxes

TVQ. 164.1-1/R3 Improvement by a municipality of roads that are under the management of the
Ministère des Transports du Québec

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Reference(s): *Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 16, 164.1 and 678*

This version of interpretation bulletin TVQ. 164.1-1 replaces the version of April 28, 2000, in view of legislative amendments. It takes effect on April 1, 2013.

This bulletin explains how the *Act respecting the Québec sales tax (AQST)* applies to a municipality that enters into a memorandum of agreement (MOA) with the Ministère des Transports du Québec (MTQ) for the improvement of roads that are under the management of the MTQ.

GENERAL POINTS

1. Typically, an MOA is entered into where the MTQ entrusts a municipality (Municipality) with road improvement work in respect of roads that are under the management of the MTQ (hereinafter “work attributable to the MTQ”).
2. Under the MOA, the Municipality agrees to carry out work to implant or restore municipal infrastructures, such as the water and sewage systems under the stretch of the road where the work attributable to the MTQ is carried out, or to carry out work with respect to municipal equipment connected with that stretch of road.
3. The MTQ and the Municipality agree that the latter will act as the client (that is, the party giving out the work) in carrying out all the work.
4. After a public call for tenders, the Municipality, as the client, awards to a contractor (Contractor) a contract to carry out all the work.
5. The MTQ undertakes to pay the Municipality an amount that is equal to the actual cost of the work attributable to the MTQ and invoiced by the Contractor, as well as the share attributable to the MTQ of the amount claimed by various firms for related costs (in respect of preparatory activities, supervision, public utilities or procurement, for example). The MOA provides that the MTQ will assume all such costs up to the maximum amount stipulated therein.

6. For its part, the Municipality undertakes to pay the Contractor and the firms responsible for carrying out related activities the amount agreed upon for the carrying out of all the work, according to the bid accepted by the Municipality and approved by the MTQ.

APPLICATION OF THE ACT

7. By virtue of paragraph (4) of section 164.1 of the AQST, a supply made by a municipality or a board, commission or other body established by a municipality of a service of repairing or maintaining roads, streets, sidewalks, or similar or adjacent property is exempt.

ADMINISTRATIVE PRACTICE

8. Bearing in mind that, under certain MOAs, it is difficult for the Municipality to determine whether the services supplied involve construction rather than maintenance, within the meaning of paragraph (4) of section 164.1 of the AQST, and that the Municipality cannot claim an input tax refund in respect of the property and services purchased in the course of a supply of such maintenance services, Revenu Québec adheres to the following administrative practice in respect of MOAs that the MTQ enters into with municipalities.

9. Work attributable to the MTQ constitutes repair or maintenance work where the cost of that work gives rise to a current expenditure or an operating expenditure as opposed to a capital expenditure in respect of which capital cost allowance can be claimed.

Construction work

10. Where the work attributable to the MTQ constitutes construction work, the Municipality makes a taxable supply of services to the MTQ, unless the direct cost exemption, provided for in section 148 of the AQST, applies to the supply.

11. If the Municipality is a Québec sales tax (QST) registrant, it can claim an input tax refund in respect of the property and services it purchases in the course of making a taxable supply to the MTQ.

12. A municipality that is not a QST registrant may apply to register retroactively for the QST. Details concerning the effective date of registration are provided in the current version of interpretation bulletin TVQ. 415-2.

Direct cost exemption

13. According to section 148 of the AQST, in order for the direct cost exemption to apply to a supply of a service, a public service body (in this case, the Municipality) must have purchased the service for the purpose of making a supply by way of sale of the service.

14. Thus, in this situation, the direct cost exemption is likely to apply only in a case where the Municipality, as the recipient of a service, makes a supply of the service to the MTQ that is separate from the supply of any other service.

15. The fact that the amount of consideration charged by the Municipality for the supply it makes to the MTQ does not exceed the total of the amounts payable by the Municipality to all its suppliers

for the portion of the work attributable to the MTQ is not sufficient to determine whether the supply is exempt.

16. To determine whether the Municipality purchased a service or services for the purpose of making a supply of each respective service that is separate from the supply of any other service, the particular facts of each situation must be considered.

17. Typically, the Municipality and each of its suppliers agree to the work to be carried out in a separate agreement between them that covers both the work attributable to the MTQ and the work for which the Municipality is responsible. Thus, the Municipality purchases from each of its suppliers a service of which it is in part the consumer. In such a case, where the Municipality consumes a portion of each service it has purchased, the Municipality inevitably makes a supply to the MTQ of a new service to which the direct cost exemption does not apply.

Repair or maintenance

18. In view of the administrative practice set out in point 9 of this bulletin, the Municipality makes an exempt supply of a repair service or maintenance service to the MTQ where the expenditure for the work attributable to the MTQ constitutes a current expenditure or an operating expenditure.

19. Because the partial QST rebate at the rate prescribed for a municipality was eliminated on December 31, 1996, a municipality cannot recover the QST paid to its suppliers in respect of the property and services purchased for the purpose of making an exempt supply to the MTQ of a repair service or maintenance service referred to in paragraph (4) of section 164.1 of the AQST.

Payment of QST by the MTQ

20. Effective April 1, 2013, the MTQ must pay QST to the Municipality in respect of the MTQ's taxable purchases of property and services.