REVENU QUÉBEC

INTERPRETATION AND ADMINISTRATIVE BULLETIN CONCERNING THE LAWS AND REGULATIONS

Consumer Taxes

TVQ. 225-1 **Fair market value of a residential complex**
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Reference(s): *Act respecting the Québec sales tax* (CQLR, c. T-0.1), sections 1, 15, 52, 223, 225 and 226

This bulletin explains the meaning of the term "fair market value" for purposes of the self-supply rule provided for in sections 223, 225 and 226 of the *Act respecting the Québec sales tax* (AQST).

APPLICATION OF THE ACT

1. Sections 223 and 225 of the AQST provide for a self-supply rule where a builder builds or substantially renovates a residential complex that is a single unit residential complex, a residential unit held in co-ownership or a multiple unit residential complex, and subsequently rents the complex or any residential unit in the complex to a third party or, where the builder is an individual, occupies the complex or any residential unit in the complex as a place of residence. According to that rule, the builder is deemed to have made and received a taxable supply by way of sale of the complex and is required to pay Québec sales tax (QST) calculated on the fair market value of the complex.

2. Section 226 of the AQST also provides for such a rule where a builder builds an addition to a multiple unit residential complex.

3. The term "fair market value" is not defined in the AQST. However, section 15 clearly indicates that the fair market value of property or a service supplied to a person must be determined without reference to any tax excluded by section 52 from the consideration for the supply.

4. By virtue of section 52 of the AQST, the consideration for a supply of property or a service includes, *inter alia*, the tax imposed under Part IX of the Excise Tax Act (R.S.C. 1985, c. E-15) and any provincial levy that is payable by the recipient, other than, in particular, the tax payable under the AQST.

5. Therefore, for purposes of the self-supply rule, QST must be excluded in determining the fair market value of a residential complex.

6. For a definition of "fair market value", it is necessary to refer to case law that, over the years, has determined the meaning to be given to the term. Thus, the fair market value of a residential complex represents the highest price, expressed in terms of money or money's worth, obtainable in

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an open and unrestricted market between knowledgeable, informed and prudent parties acting at arm's length, neither party being under any compulsion to transact.

7. In that regard, there are accepted practices for determining the fair market value of property. Three general methods or approaches to market valuation are used—the cost method, the comparison method and the income method. Different approaches may be used for different components of the complex being valued and no method should be excluded categorically.

8. Furthermore, the valuation must be made of the properties as they are described in section 1 of the AQST in the definitions of the terms "residential complex", "single unit residential complex", "residential unit held in co-ownership" and "multiple unit residential complex". According to that section, a "residential complex" includes the subjacent land and that part of any common areas and other appurtenances to the building and the land contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals.

9. In that regard, in the case of a seniors' residence, a residential complex may include the parts of the following common areas that are reasonably necessary for the use and enjoyment of the building as a place of residence for individuals:

– a cafeteria, including the kitchen, for the use of the residents of the complex and their families;

– a laundry for the use of the residents;

– parking, including garage spaces, for the use of the residents; and

– a physical therapy room for the treatment of residents only.

10. Furthermore, in making a valuation of a seniors' residence, only the complex and, where applicable, the income associated with the complex should be valued. Accordingly, the income and expenditures that arise from supplying property or performing services not related to the occupation and enjoyment of the complex by its residents—such as domestic services of a household nature and healthcare services, for example—must not be taken into account in determining the fair market value.

11. Finally, the fair market value of the property must be determined at the time set out in sections 223, 225 and 226 of the AQST, that is, at the latest of the following times:

– the time the construction of the residential complex or the addition, or the substantial renovation of the residential complex, is substantially completed;

– the time possession or use of the residential complex or any residential unit in the complex or in the addition is given to a person under a lease or similar arrangement for the purpose of its occupation for the first time by an individual as a place of residence; and

– the time the residential complex or any residential unit in the complex or in the addition is occupied by the builder, where the builder is an individual and the first to occupy the complex or a unit in the complex or addition as a place at residence.

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12. Work is “substantially completed” where the construction or substantial renovation of the residential complex has been completed to the point that a person can reasonably inhabit the premises (generally 90% or more completed).

13. The stage of completion refers to the construction or substantial renovation of the building whereas the fair market value of the complex at the time the work is almost completed includes the value of the land as well as that of the partially completed building. Thus, there is not necessarily a link between the percentage of completion of the work and the fair market value of the residential complex whose construction or substantial renovation is almost completed. For example, the fair market value of a residential complex where the construction of the building is 90% completed is not necessarily equal to 90% of the fair market value of the residential complex.

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