

Consumer Taxes

TVQ. 31-1/R1 Combined Supply of Immovables
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Reference(s): *An Act respecting the Québec sales tax* (CQLR, c. T-0.1), sections 1
("residential complex"), and 31

This version of interpretation bulletin TVQ. 31-1 replaces the version of June 30, 1999. The position set out in the bulletin remains unchanged. Only some style changes were made.

This bulletin discusses the application of the *Act respecting the Québec sales tax* (AQST) with respect to the supply of an immovable that includes a residential part and a non-residential part.

THE AQST

1. Under section 31 of the AQST, where a supply of an immovable includes the provision of a residential complex (the residential part of an immovable) and another immovable that is not part of a residential complex (the non-residential part of the immovable), the residential complex and the other immovable are deemed to be separate properties and the provision of each is deemed to constitute a separate supply.
2. Under paragraph 3 of the definition of the expression "residential complex" in section 1 of the AQST, a residential complex is the **whole** of a building that is a single-family house, or of premises that are a semi-detached house, a rowhouse unit or a residential unit held in co-ownership, if the building or premises are owned by an individual (the individual, an individual related to the individual, or a former spouse of the individual) who uses that building or premises **primarily** as a place of residence.

The following are part of a residential complex:

- in the case of a building that is a single-family house: any appurtenances to the building, the land subjacent to the building and that part of the land contiguous to the building, that are reasonably necessary for the use and enjoyment of the building, or
- in the case of premises that are a semi-detached house, a rowhouse unit or a residential unit held in co-ownership: that part of any common areas and other appurtenances to the building and the land subjacent or contiguous to the building that is attributable to the premises and that is reasonably necessary for the use and enjoyment of the unit.

3. Thus, section 31 of the AQST does not apply to the supply of an immovable referred to in paragraph 3 of the definition of the expression “residential complex” in section 1 of the AQST because even if the immovable includes a part used for non-residential purposes, the whole of the immovable is considered to be a residential complex if all the conditions mentioned in that paragraph are met.

Examples of the Application of Section 31 of the AQST

4. An individual owns an immovable (land and building). The building has two storeys; the ground floor (50% of the area) is leased to a merchant for the purposes of his trade. The first floor (the remaining 50% of the area) is occupied by the individual as a place of residence. The common areas (among which is the basement) and the appurtenances to the building as well as the land contiguous to the building are used by the individual and the merchant for the same purposes and in the same proportions. The individual sells the immovable.

Under section 31 of the AQST, the immovable is deemed to be two separate immovables and its provision is deemed to constitute two separate supplies of immovables. The whole of the immovable cannot qualify as a “residential complex” under paragraph 3 of the definition of “residential complex” in section 1 of the AQST, since the individual does not use it primarily as a place of residence.

5. An individual owns an immovable (land and building). The building has two storeys. A part of the ground floor of the building is leased to a merchant for the purposes of his trade. The other part of the ground floor is occupied by the individual as a place of residence. For its part, the first floor includes two apartments leased to individuals who are not related to the individual who owns the immovable. Those individuals occupy the apartments as a place of residence. The individual sells the immovable.

Under section 31 of the AQST, the immovable is deemed to be two separate immovables and its provision is deemed to constitute two separate supplies of immovables. The whole of the immovable cannot qualify as a “residential complex” under paragraph 3 of the definition of “residential complex” in section 1 of the AQST, since the individual does not personally use it primarily as a place of residence.

6. An individual owns an immovable that is a single-family house. The individual occupies the whole of the immovable as a place of residence. However, the land subjacent and contiguous to the house has an area of one hectare. The individual sells the immovable.

Under section 31 of the AQST, the immovable is deemed to be two separate immovables, i.e. a residential complex including a house and one half-hectare of land, and another half-hectare of land. Its provision is deemed to constitute two separate supplies of immovables.

Revenu Québec considers that land up to a half-hectare (5 000 square metres or 53 820 square feet) is reasonable for the use and enjoyment of a building as a place of residence. The land in excess thereof is not generally considered as part of the residential complex. An individual though, may demonstrate the contrary by establishing that the excess land is necessary, and not merely desirable, for the use and enjoyment of the building as a place of residence for individuals.

Examples of the Application of the Definition of the Expression “residential complex” in Paragraph 3 of Section 1 of the AQST

7. An individual owns an immovable that is a single-family house. It has two storeys. The individual occupies the entire house as a place of residence except for a part of the ground floor which is used as an office in exercising the individual's profession. The individual sells the immovable.

The whole of the immovable constitutes a residential complex since it is owned by an individual who uses it primarily as a place of residence. Thus, a supply of the immovable by the individual by way of sale constitutes a supply of a residential complex and consequently, section 31 of the AQST does not apply.

8. An individual owns an immovable that is a single-family house. It has two storeys. The individual leases the whole of the house to his brother who occupies it as a place of residence, except a part of the ground floor that the individual leases to a third party who uses that part as an office in practising his profession. The individual sells the immovable.

The whole of the immovable constitutes a residential complex since it is owned by an individual and used primarily as a place of residence by an individual related to the individual who owns the immovable. Thus, the supply of the immovable by the individual by way of sale constitutes the supply of a residential complex. Consequently, section 31 of the AQST does not apply.

9. An individual owns an immovable that is a single-family house. It has three storeys and the individual occupies it as a place of residence. The individual operates a “Bed and Breakfast” in the house. In this respect, the individual leases three rooms on a daily basis throughout the year. The space occupied by the business represents an area corresponding to one third of the total area of the house. The individual sells the immovable.

The whole of the immovable constitutes a residential complex since it is owned by an individual who uses it primarily as a place of residence. In addition, in this situation, although the part of the house that is used for the individual's business may be considered as premises similar to an inn, a hotel, a motel, or a boarding house, this part of the house nonetheless continues to be part of the residential complex and to qualify as such, since paragraph 6 of the definition of “residential complex” in section 1 of the AQST specifically excludes this situation from the scope of its application. Thus, the supply of the immovable by the individual by way of sale constitutes the supply of a residential complex and consequently, section 31 of the AQST does not apply.

10. This bulletin has effect from July 1, 1992.