

Consumer Taxes

TVQ. 334-1/R1 Election in Respect of Supplies Made Between Members of a Closely Related Group

Date of publication: June 29, 2012

Reference(s): *Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 11.1 and 327.10 to 334*

This version of interpretation bulletin TVQ. 334-1 replaces the version of October 29, 1999. The bulletin was revised to take into account legislative amendments since that date and to explain certain aspects thereof. However, the interpretation remains unchanged. The current version of the bulletin has effect from November 17, 2005.

This bulletin explains how section 334 of the *Act respecting the Québec sales tax (AQST)* applies in respect of corporations resident in Canada but not in Québec.

APPLICATION OF THE ACT

1. Under section 334 of the AQST, a specified member of a qualifying group may make a joint election with another specified member of the group so that every taxable supply (other than the supplies referred to in the second paragraph of that section) made between them at a time when the election is in effect is deemed to have been made for no consideration.

2. According to section 331 of the AQST, “specified member” of a qualifying group means, in particular, a qualifying member of the group. Section 330.1 of the AQST defines a “qualifying member” of a qualifying group as a registrant that is a corporation resident in Québec or a qualifying partnership and that

- is a member of the qualifying group, and
- last manufactured, produced, acquired or brought into Québec all or substantially all of its property for consumption, use or supply exclusively in the course of commercial activities of the registrant or, if the registrant has no property, all or substantially all of its supplies are taxable supplies.

3. 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.

4. Section 332 of the AQST states that a particular corporation and another corporation are closely related to each other at any time if, at that time, the other corporation is a prescribed corporation in relation to the particular corporation, or not less than 90% of the value and number of the issued and outstanding shares of the capital stock of the other corporation, having full voting rights under all circumstances, are owned by

- the particular corporation;
- a qualifying subsidiary of the particular corporation;
- a corporation of which the particular corporation is a qualifying subsidiary;
- a qualifying subsidiary of a corporation of which the particular corporation is a qualifying subsidiary; or
- any combination of the corporations or subsidiaries referred to above.

5. If under section 332 of the AQST two corporations are closely related to the same corporation, section 333 of the AQST provides that they are closely related to each other.

6. Furthermore, section 11.1 of the AQST provides that a person is deemed to be resident in Québec if the person is resident in Canada and has a permanent establishment in Québec.

7. Therefore, a corporation that is resident in Canada and has a permanent establishment in Québec may 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 of the AQST, may make a joint election with another specified member of the group so that section 334 of the AQST applies.

8. 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 of the AQST.