

## Refundable Tax Credit for the Development of E-Business

The refundable tax credit for the development of e-business in information technologies (IT) is designed to consolidate the development of IT throughout Québec.

Since businesses in the IT sector are facing very stiff competition worldwide, it is important to maintain the jobs in this sector in order to limit the exodus of specialized workers.

### Nature of Tax Assistance

The tax assistance consists of a refundable tax credit equal to 30% of the eligible salaries paid by an eligible corporation as of March 14, 2008 and paid to eligible employees to carry out eligible activities. An eligible corporation may claim this tax credit until December 31, 2015.

### Eligible Corporation

An eligible corporation for a given taxation year designates any corporation, other than an excluded corporation, which has an establishment in Québec where it carries on a business during the year.

Under the *Taxation Act*, an excluded corporation, for a given taxation year, means:

- a corporation that is tax-exempt for the year;
- a Crown corporation or a subsidiary wholly owned by such corporation.

In addition, to receive this tax credit, the corporation must obtain an eligibility certificate from Investissement Québec each year confirming that it satisfies the criteria relating to:

- the proportion of activities in the IT sector;
- services provided;
- the number of eligible employees.

### Criteria relating to the percentage of activities in the IT sector

To obtain an eligibility certificate regarding the corporation, at least 75% of the corporation's activities must constitute activities in the IT sector. Activities in the IT sector refer to activities grouped under the following NAICS codes:<sup>1</sup>

- 334110 – Computer and Peripheral Equipment Manufacturing;
- 334220 – Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing;

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<sup>1</sup> North American Industry Classification System (NAICS).

- 417310 – Computer, Computer Peripheral and Pre-Packaged Software Wholesaler-Distributors;
- 443120 – Computer and Software Stores;
- 511210 – Software Publishers;
- 51821 – Data Processing, Hosting and Related Services;
- 541510 – Computer Systems Design and Related Services.

To determine whether at least 75% of the activities of a corporation constituted activities in the information technology sector, the criterion considered is the corporation's gross revenue. Accordingly, a corporation is considered to have carried out at least 75% of its activities in the information technology sector (i.e., the activities grouped under one or more of the above-mentioned NAICS codes) when the gross revenue from such activities accounts for 75% or more of its total gross revenue in relation either to the taxation year preceding the one covered by the eligibility certificate application, or to the taxation year covered by such application.

In the event that the taxation year preceding the one covered by the eligibility certificate application has fewer than 183 days, the gross income considered is that of the last taxation year prior to such given taxation year, which has more than 182 days.

In addition, to satisfy this criterion, an additional condition must be met, i.e. that at least 50% of the corporation's gross income be earned from activities included under the following NAICS codes:

- 511210 - Software Publishers;
- 541510 - Computer Systems Design and Related Services; or
- a combination of these activities.

The additional condition mentioned above must also be satisfied in relation either to the taxation year preceding the one covered by the eligibility certificate application, or to the taxation year covered by such an application. However, both conditions, i.e. the one regarding 75% based on the seven NAICS codes and the one regarding 50% based on only two NAICS codes, must be satisfied in the same taxation year.

#### CHANGES ANNOUNCED IN INFORMATION BULLETIN 2010-7

Two NAICS codes covering personnel supply activities have been added to the codes used for the two criteria relating to the percentage of activities, i.e., the 75% criterion and the 50% criterion. These two codes are:

- 561320 – Temporary Help Services
- 561330 – Professional Employer Organizations.

However, for the purposes of the 75% criterion based on nine NAICS codes and the 50% criterion based on four NAICS codes, the activities grouped under NAICS codes 561320 and 561330 are considered only if the following three conditions are satisfied:

- The activities grouped under these two NAICS codes relate to the supply of employees carrying out **mainly** activities covered by one of the following seven NAICS codes: 334110, 334220, 417310, 443120, 511210, 51821 and 541510.
- The supply of employees is for the benefit of a customer of the corporation, which is at arm's length from the corporation.
- The corporation's gross revenue from the activities covered by these two NAICS codes for the taxation year is less than the gross revenue from the activities covered by NAICS codes 511210 and 541510 for that taxation year.

## Criterion relating to services provided

For a corporation to be considered eligible, at least 75% of its activities covered by NAICS code 541510 must consist either of services ultimately provided to a person<sup>2</sup> with whom it is at arm's length<sup>3</sup> or services relating to applications developed by the corporation that are used exclusively outside Québec, or a combination of these two items. In this regard, the criterion considered is the gross income from activities covered by NAICS code 541510.

Unlike the criterion regarding the proportion of activities in the IT sector, which can be satisfied in relation either to the taxation year preceding the one covered by the eligibility certificate application, or to the taxation year covered by such an application, the criterion regarding services provided must be satisfied in relation to the taxation year covered by the application.

The services provided by a corporation to members of a cooperative or a federation of cooperatives are considered services provided to a person with whom it is not at arm's length if the corporation that provides the services is not at arm's length with the cooperative or the federation of cooperatives.

In addition, concerning the criterion relating to the use of an application exclusively outside Québec, Investissement Québec may consider that such criterion is satisfied, even though an application is used in Québec, if such use in Québec is negligible compared to the overall use of such application. In this regard, Investissement Québec will consider in particular the impact of the application on the growth, in Québec, of activities relating to its use as well as the competitive impact of the increase in such activities on companies that already carry out similar activities in Québec.

### EXPANDED CONCEPT OF NON-ARM'S LENGTH RELATIONSHIP

For the purposes of the criterion relating to services provided, a corporation and another person that have an arm's length relationship are deemed not to be at arm's length in any of the following situations:

- As a result of an agreement, the corporation has significant influence over the other person such that, if such influence were exercised, the other person would be under the de facto control of the corporation.
- The corporation that provides services to the other person is not at arm's length with a person who has significant influence as a result of an agreement concerning that other person.
  - For example: Corporation A provides services to Corporation B. Corporation A is not at arm's length with Corporation C, which exercises significant influence over Corporation B. Consequently, Corporations A and B are deemed not to be at arm's length from one another. The same holds true for Corporations B and C.

To this end, an agreement giving rise to significant influence includes:

- a concession contract;
- a licence;
- a lease;
- a marketing, procurement or management agreement;
- any other similar agreement or arrangement.

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<sup>2</sup> For the purposes of this rule, a person includes a partnership.

<sup>3</sup> The expression "services ultimately provided to a person" does not cover services provided to the ultimate consumer of the goods and services provided by such person, but rather the services provided to businesses or organizations that are direct users of the applications developed by the corporation.

For greater clarity, “another similar agreement or arrangement” refers to an agreement whose primary purpose is to govern the relationship between a corporation and another person in respect to the manner in which a business operated by the other person is to be carried on.

## **Retention of Six Eligible Jobs**

For a corporation to obtain an eligibility certificate, it must maintain a minimum of six eligible employees at all times during a given taxation year. If it fails to fulfill this commitment during a given taxation year, it will not be issued an eligibility certificate regarding its eligible employees.

Investissement Québec may, however, issue eligibility certificates if the eligible corporation is able to show, to Investissement Québec's satisfaction, that its failure to fulfill this commitment was due to exceptional circumstances beyond its control, such as the departure of employees or the impossibility of filling vacant positions. The employees must, nonetheless, be replaced within a reasonable period of time, in light of the availability of skilled labour.

## **Retention of Six Eligible Jobs for a Portion of a Taxation Year in Situations Involving Transfers of Activities or Start-Ups**

### TRANSFER OF ACTIVITIES

The transfers covered in this section are transfers of activities requiring a minimum of six eligible employees at the time of the transfer.

Accordingly, the qualification of a corporation for a taxation year in which activities are transferred applies to **the portion of the taxation year** preceding or following the transfer, as the case may be. Moreover, the corporation must have maintained a minimum of six eligible employees at all times **during such portion of the taxation year**. The two criteria relating to the proportion of the Corporation's activities (the NAICS codes 75% and 50% tests) and the criterion relating to services provided must also be met **for that portion of the taxation year**.

Moreover, where a corporation meets the qualification criteria for the entire taxation year despite a transfer of activities, it is not required to meet the criteria for the portion of the taxation year preceding or following the transfer, as applicable.

By way of example, a corporation whose taxation year ends on December 31 transfers a part of its activities on September 1, 2009. As a result, the number of eligible employees falls from 55 to 10. Despite the reduction in the level of its eligible activities as of September 1, 2009, the corporation meets all the qualification criteria when they are applied to the 2009 taxation year in its entirety. In such a case, the corporation can qualify as an eligible corporation for its entire 2009 taxation year, even if, for example, it does not meet the criteria relating to the proportion of activities carried out by the corporation when applied to the period following the transfer alone, that is, the period from September 1, 2009 to December 31, 2009.

A transfer of activities includes a transfer resulting from the liquidation or winding-up of a corporation. Moreover, the qualification of the author or beneficiary of a transfer of activities is determined irrespective of whether the other party qualifies or not as an eligible corporation.

By way of example, even if the author of a transfer of activities does not qualify as an eligible corporation because the transferred activities were not carried out in Québec prior to their transfer, or because the author of the transfer did not satisfy the criteria relating to the proportion of activities carried out, the corporation benefiting from the transfer of eligible activities may qualify as an eligible corporation for the portion of its taxation year following the transfer if it satisfies all the qualification criteria for that portion of its taxation year.

## BUSINESS START-UPS IN QUÉBEC

A start-up corporation may qualify as an eligible corporation with respect to the portion of a taxation year ending at the end of such taxation year and beginning on the day as of which the corporation's eligible activities required a minimum of six eligible employees for the entire duration of such portion of the taxation year. The corporation must also satisfy the two criteria relating to the proportion of activities that it carries out (the NAICS codes 75% and 50% tests) and the criterion relating to services provided for that portion of the taxation year.

### Eligible Employee

The expression "eligible employee" means, for a given taxation year, an employee of an eligible corporation with an establishment in Québec for which Investissement Québec has issued, for such year, an eligibility certificate certifying that the following conditions have been satisfied:

- the employee held a full-time job involving at least 26 hours of work a week, for an expected minimum period of 40 weeks;
- he or she devoted at least 75% of his or her time to carrying out, supervising or directly supporting the work relating to the execution of an eligible activity by the eligible corporation or, if the employee is supplied to a customer of the corporation, by such customer;<sup>4</sup>
- he or she is not a "specified shareholder" within the meaning of the *Taxation Act*.

Investissement Québec may issue an eligibility certificate for part of an eligible corporation's taxation year, in which case the eligibility certificate must indicate the employee's eligibility period.

### Eligible Activities

For the purposes of this tax credit, the expression "eligible activities" means the following:

- Information technologies consulting services relating to technology, systems development, e-business processes and solutions (for instance, strategic planning, reconfiguration of business processes and technology architecture design);
- Development, integration, maintenance and evolution:
  - of information systems (for instance, distribution packages, software and computer programs);
  - technology infrastructure (for instance, technology architecture upgrading and integration of hardware and software components).

However, activities relating to the maintenance and evolution of information systems technology infrastructures carried out by an eligible corporation constitute eligible activities only if they are incidental to the development and integration activities carried out by the eligible corporation.

- Design and development of e-commerce solutions (for instance, portals, search engines and transactional web sites);
- Development of security and identification services (for instance, electronic imaging, artificial intelligence and interface) relating to e-commerce activities (for instance, security over Internet networks).

## CHANGES ANNOUNCED IN INFORMATION BULLETIN 2010-7

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<sup>4</sup> For corporations that are not covered by the new rules announced in Information Bulletin 2010-7, the condition should read: "he or she devoted at least 75% of his or her time to carrying out, supervising or directly supporting the work relating to the execution of an eligible activity by the eligible corporation."

- An activity relating to the maintenance and evolution of information systems and technology infrastructures includes an activity (other than a hardware installation activity) that is required to ensure the proper operation of systems and infrastructures or to solve or prevent problems or incidents, provided that it consists of:
  - a technical, corrective or preventive intervention that modifies one or more technical aspects of the components, including computerized processes; or
  - a diagnostic activity, with remote control or intrusion of systems and technology infrastructures, leading, directly or indirectly, to such a technical intervention.

### **Excluded Activities**

- The operation of an e-business solution (for instance, processing of electronic transactions over a transactional web site);
- The management and operation of information systems, applications and infrastructures arising from e-business activities, i.e., one of the following activities:
  - management of processing centres relating to e-business;
  - remote management of operations centres;
  - management of networks and systems (including systems monitoring);
  - operation of business process outsourcing services related to the operation of an e-business solution (back office);
  - management of business processes associated with the internal operation of an e-business solution (internal back office).
- The operation of a customer contact centre (for instance, a customer relations management service arising from e-business activities);
- Installation and training activities;
- Activities not related to e-business.

Administrative duties such as management of operations, accounting, finance, legal affairs, public relations, communications, prospecting for mandates, and human and physical resources management will not be considered tasks relating to the execution of an eligible activity.

Without limitation, installation and training activities cannot be considered tasks relating to the execution of an eligible activity.

### **CHANGES ANNOUNCED IN INFORMATION BULLETIN 2010-7**

The operating activities of a customer contact centre, which are not eligible activities, have been re-designated as operating activities of a customer relations centre and are defined as one of the following activities:

- the operation of an existing customer relations management service, arising from e-business activities;
- the operation of a first-level administrative or technical assistance service to businesses and to customers related to the use of an e-business solution, for example:
  - taking calls or emails;
  - support for users in the use of systems, applications and features;
  - monitoring and recording of requests;
  - the initial diagnosis and advice given to resolve incidents or problems;
  - the referral of incidents or problems to more specialized persons for resolution;
  - resetting passwords.

It was also specified in the information bulletin that hardware installation and training activities are not eligible activities.

The activities considered to be activities relating to maintenance and evolution, according to the clarification made earlier, are deemed not to be ineligible activities.

## Definitions

The term “e-business” refers to a mode of operation that consists in changing the main commercial processes of a business by incorporating internet or any other network technologies into them.

According to the Office québécois de la langue française terminology data bank:

*“Companies use the internet to do business, i.e. to communicate with their partners, access their central information systems and carry out commercial transactions.*

*E-business precedes and extends the purely transactional exchanges relating to “e-commerce”. Its field of application is broader than e-commerce.*

*E-business concerns the organization of work in the company as much as how it communicates and exchanges data with its customers, subcontractors, suppliers and partners.*

*While e-commerce is associated with the company’s external processes, i.e. those affecting customers and suppliers, e-business covers both external and internal processes (human resources management, support systems, procurement and inventory management).” [TRANSLATION]*

## Eligible Salaries

The “eligible salaries” of an eligible corporation, for a taxation year, means the salary calculated according to the *Taxation Act* and incurred by the eligible corporation, in the year, for an “eligible employee” for that year.

The eligible salary is limited to \$66,667, calculated on an annual basis, i.e., according to the number of days in the taxation year of the eligible corporation employing an employee that qualifies as eligible. Accordingly, the amount of the tax credit, for a taxation year, may not exceed \$20,000 per eligible employee.

The eligible salary incurred for an eligible employee must have been paid when the eligible corporation files its claim for the tax credit with Revenu Québec.

## Tax Credit Eligibility Period

The refundable tax credit for the development of e-business may be granted to an eligible corporation for eligible salaries incurred by it and paid to its eligible employees between March 14, 2008 and December 31, 2015.

## Other Application Details

The refundable tax credit for the development of e-business may be deducted from the quarterly income tax and capital tax instalments of an eligible corporation, according to the usual rules specified by the *Taxation Act*.

## **Election Relating to the Application of Another Tax Credit**

Various tax measures relating to the execution of activities at certain designated sites were eliminated in the June 12, 2003 Budget Speech. However, transition rules enable corporations eligible for these measures to continue to receive the tax assistance, according to the stipulated terms and conditions, until December 31, 2013.

A corporation eligible for any of these measures may thus receive a tax credit relating to salaries for an innovative project,<sup>5</sup> a tax credit relating to the execution of specified activities at a designated site,<sup>6</sup> a tax credit relating to the salaries of employees working at E-Commerce Place or the refundable credit for the employer contribution to the Health Services Fund.

Moreover, a corporation that carries out specified activities in the field of biotechnology at a biotechnology development centre (CDB) may claim a refundable tax credit regarding the salaries paid to specified employees, until December 31, 2013.

Lastly, an eligible corporation may claim a refundable tax credit for major employment generating projects regarding the eligible salaries paid to eligible employees in the context of an eligible contract, until December 31, 2016.

A corporation that is eligible for any of these tax credits or the refundable credit for the employer contribution to the Health Services Fund, hereunder called "other tax credit," and that is otherwise eligible for the tax credit for the development of e-business, may, for a taxation year ending after March 13, 2008, irrevocably elect to receive, in lieu of such other tax credit, the new tax credit for the development of e-business for such taxation year.

Making this election irrevocably withdraws the right to such other tax credit that the corporation could have claimed for such taxation year and subsequent taxation years. A corporation eligible for one of the other tax credits may continue to receive such other tax credit until it expires, if the corporation does not elect to claim the tax credit for the development of e-business.

In addition, if a corporation eligible for the tax credit for the development of e-business is associated, during a given taxation year, with another corporation that is eligible for another tax credit, the election to claim the tax credit for the development of e-business, for a taxation year ending after March 13, 2008, must be made jointly by the eligible corporation and any other corporation with which it is associated. Such election must be filed, for taxation years ending in the same calendar year, no later than the date that is the earliest of the filing deadlines for the member corporations of the group of associated corporations that are eligible for another tax credit or the tax credit for the development of e-business.

Making this election will irrevocably withdraw the right to the other tax credit that the member corporation of the group of associated corporations could have claimed for the taxation year of such corporation that ends in the same calendar year as the other taxation year in respect of which the election is made, as well as for subsequent taxation years. A member corporation of a group of associated corporations already eligible for one of the other tax credits may continue to receive such other tax credit until it expires, if no other member corporation of such group elects to take advantage of the tax credit for the development of e-business.

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<sup>5</sup> Such a project may be carried out in the field of information and communications technologies at an information technology development centre (CDTI), a new economy centre (CNE) or, in the biotechnology field, at a biotechnology development centre.

<sup>6</sup> That is, CNEs, CDTIs, the Cité du multimedia and the CNNTQ

## Date of Application of Changes Announced in Information Bulletin 2010-7

The changes announced in Information Bulletin 2010-7, published by the Ministère des Finances du Québec, apply to a taxation year commencing after October 29, 2010. However, the changes may also apply if a corporation submits an **election to Investissement Québec**, provided that the corporation satisfies the following conditions:

- its taxation year begins in 2010 (no later than October 29, 2010) or ends in 2010;
- the corporation submits such election to Investissement Québec before the end of the 15th month following the end of its taxation year.

To submit this election, the corporation must fill out the form “Election to take advantage of the rules in information bulletin 2010-7,” available on Investissement Québec’s web site. This form may also be obtained by contacting an Investissement Québec advisor.

## Nature of Tax Credit and Claim

This tax credit is refundable. It enables a corporation whose credit exceeds the tax payable to obtain a refund of the excess. The tax credit is calculated and claimed at the end of the taxation year when the corporation files its tax return. The tax credit obtained is taxable.

Any eligible corporation may claim, on its annual tax return, the refundable tax credit regarding the salaries paid eligible employees.

However, to receive this tax credit for a taxation year, an eligible corporation must enclose with its tax return:

- the form prescribed by Revenu Québec;
- the annual eligibility certificate issued by Investissement Québec regarding the eligible corporation;
- the annual eligibility certificate issued by Investissement Québec regarding eligible employees.

To apply for an annual certificate, the corporation must complete the appropriate forms, which are available on Investissement Québec’s web site. These forms may also be obtained from Investissement Québec’s Tax Department.

In addition, for the corporation to ensure that it does not lose its entitlement to the tax credit, annual certificate applications must be filed with Investissement Québec **before the end of the fifteenth (15th) month following the end of the corporation’s fiscal year**.

In general, Investissement Québec does not give priority to processing a file if the application is filed **after the end of the fifteenth (15th) month following the end of the corporation’s fiscal year**. Thus, Investissement Québec cannot guarantee that the corporation will obtain its eligibility certificates before the end of the eighteenth (18th) month following its fiscal year. If the certificates are issued after the end of the eighteenth (18th) month, there is no guarantee that the corporation will obtain the tax credit. Such a decision lies solely with Revenu Québec.

If the annual application is filed with Investissement Québec after the end of the eighteenth (18th) month following the end of the corporation’s fiscal year, no extension of the deadline will be granted by Revenu Québec.

Investissement Québec will consider an annual application admissible if it is duly completed, signed and accompanied by all the required documents, including the power of attorney, if applicable.

## **Application for a Letter of Interest (optional)**

The letter of interest allows the company to get an advance opinion on its own eligibility and that of its employees. This letter is not required for filing the annual eligibility applications and obtaining the certificates. To ask for a letter of interest, the company must fill out the Application for a Letter of Interest – Company and Employees available on our web site.

## **On-Site Visit**

Investissement Québec reserves the right to visit the eligible corporation's facilities at any time during the eligibility period. The corporation must thus give Investissement Québec representatives access to the facilities and provide the information that may be required during the visit.

## **Interim Financing of Tax Credit**

Investissement Québec may offer, in certain cases, a loan guarantee to ensure interim financing of the tax credit.

## **Special Tax**

If eligible salaries for which a tax credit has been granted are refunded to an eligible corporation, in whole or in part, the tax credit granted for the amount thus refunded will be recaptured by means of a special tax.

## **Interaction with Other Tax Credits, Assistance or Benefits**

The tax legislation contains rules designed to prevent the aggregation of tax assistance regarding an expenditure that may give rise to more than one tax credit for more than one taxpayer or for the same taxpayer. These rules also apply to the corporations eligible for the refundable tax credit for the development of e-business.

When the activities of an eligible corporation are covered by both this tax credit and by a tax holiday, a similar rule applies to ensure that the eligible activities that may give rise to a tax credit may not constitute eligible activities for the purpose of such a tax holiday.

In addition, the amount of salaries incurred by an eligible corporation, during a given taxation year, must be reduced by the amount of any government or non-government assistance and any benefit or advantage attributable to these salaries, according to the usual rules.

## **Rates Schedule**

Since September 1, 2004, Investissement Québec has charged fees for the analysis of any eligibility or letter of interest application relating to the tax measures it administers. For more information, please contact an Investissement Québec advisor or see the [rates schedule](#) on this Web site.

*This detailed fact sheet provides a summary of the fiscal policy taken from various publications of the ministère des Finances du Québec and the Taxation Act. Other conditions may apply in certain cases.*

*While this fact sheet refers to certain provisions, including those of the Taxation Act, it does not constitute an interpretation by Investissement Québec of the legislative provisions relating to this tax measure.*

November 2010