

## FOREIGN SPECIALIST

In order to foster the recruiting outside of Canada of individuals with expertise in certain specialized sectors, Québec tax legislation makes provision for tax exemptions to encourage such individuals to settle in Québec to work. It is a tax holiday for a foreign specialist.

However, the 2003-2004 Budget Speech (June 12, 2003) eliminated this tax holiday except in the following situations:

- Tax holiday for foreign specialists working for a corporation benefiting from the CDB tax measure;
- Tax holiday for foreign specialists working for a corporation eligible for another tax measure but satisfying various conditions including having concluded an employment contract with such a corporation no later than June 12, 2003.

### Nature of Tax Assistance and Transitional Measures

#### NATURE OF THE TAX ASSISTANCE

Briefly, the assistance granted to a foreign specialist consists of a holiday from Québec tax on the salary received from his “eligible employer”. This tax holiday is available for five taxation years, provided the annual application was filed by the employer by the prescribed deadline and that Investissement Québec has approved the employee’s eligibility.

It consists of a deduction in the calculation of the employee’s taxable income of an amount equal to the “eligible income” paid **by such employer**.

Eligible income consists of all the items included in the calculation of employment income under the *Taxation Act*. If the five-year eligibility period ends during a taxation year of the employee, the income eligible for the holiday is that paid during the portion of the year included in the eligibility period.

Each year, the eligible employer must provide the employee with an employment statement certifying the amount of income eligible for the deduction.

#### CONTINUATION OF THE ASSISTANCE

The 2003-2004 Budget Speech (June 12, 2003) stipulated two situations in which the tax holiday for foreign specialists remains available:

- where the foreign specialist is employed by a corporation benefiting from the CDB tax measure;
- where the foreign specialist is employed by an “eligible employer” other than a corporation benefiting from the CDB tax measure, and satisfies the following transition provisions:
  - he concluded an employment contract with an “eligible employer” before April 13, 2003;
  - he started working for such employer before September 2, 2003;

- he did not change jobs after June 12, 2003 except where the new contract was concluded with an “eligible employer” that is:
  - a subsidiary controlled by the “eligible employer” or a corporation that controls the “eligible employer”;
  - a corporation that continues to carry on the business of the “eligible employer” because of the alienation by such employer of its assets in consideration for shares of the capital-stock of such corporation;
  - a corporation that continues to carry on the business of the “eligible employer” because of the attribution to such corporation of assets of the “eligible employer” or because of the winding-up of the “eligible employer”;
  - a corporation that continues to carry on the business of the “eligible employer” following the merger or the winding-up of the “eligible employer” that is wholly owned by such corporation.

In every case, the total eligibility period of the specialist for the holiday cannot exceed five years, considering all the jobs held with eligible employers.

#### **CHANGES TO THE ASSISTANCE**

In the case where the “eligible employer” is a corporation that benefits from the CDB tax measure as it stands since March 30, 2004, the tax holiday includes the following conditions:

- the five-year exemption period of the tax holidays is consecutive, and begins on the day when, for the first time, the employee commenced employment in a job that qualifies for one of the tax holidays granted to certain foreign employees;
- employee mobility continues to be allowed, but the periods of interruption between eligible jobs are henceforth counted in the five-year exemption period;
- the amount of tax assistance is gradually reduced during the five-year exemption period. In the latter regard, the amount that an individual may deduct, in computing his taxable income during the consecutive five-year exemption period will correspond to the following:
  - Years 1 and 2: 100% of his salary
  - Year 3: 75% of his salary
  - Year 4: 50% of his salary
  - Year 5: 25% of his salary.

However, these changes do not affect situations that already benefit from the transition rules and amendments to the tax legislation concerning tax holidays that were eliminated and those for which the level of tax assistance were reduced in the 2003-2004 Budget Speech (June 12, 2003).

#### **END OF ASSISTANCE**

If the employee does not satisfy the conditions stated above or if his employer no longer qualifies as an “eligible employer”, the foreign specialist ceases to be eligible for the tax holiday for foreign specialists such employee enjoyed.

#### **Eligible Employer**

To enjoy the tax holiday for a given taxation year, the employee must be employed by a corporation for which the ministère des Finances du Québec or Investissement Québec has issued an eligibility certificate or attestation to the effect that such corporation benefits from one of the following fiscal measures:

- *Biotechnology Development Centre (CDB)*
- *Information Technology Development Centres (CDTI)*
- *Cité du Multimédia de Montréal (CMM)*
- *New Economy Centre (CNE)*
- *Centre national des nouvelles technologies de Québec (CNNTQ)*
- *E-Commerce Place (CCE)*
- *Innovation Centres (CI)*
- *Refundable Tax Credit for Nutraceuticals and Functional Foods (NAF)*
- *Refundable Tax Credit for Biotechnology Development in Certain Designated Sites (CDDDB)*
- *Tax Credit for E-Business Activities (ZCE)*
- *Montréal Foreign Trade Zone at Mirabel (MFTZM)*

The information concerning these fiscal measures is given in the detailed fact sheets on each of these measures, available on the Investissement Québec website.

### **Tasks of the Foreign Specialist**

Generally speaking, to take advantage of the status of a “foreign specialist,” the employee’s tasks must consist in effecting almost exclusively, i.e. 90% or more of the time, one or more of the following activities:

- Training;
- Research and development;
- Specialized tasks related to the management of innovation, marketing, technology transfers or the financing of innovation

Where the eligible employer is a corporation benefiting from the CDB tax measure, the refundable tax credit for nutraceuticals and functional foods or the ZDB tax credit, an employee can carry out, in addition to the tasks mentioned above, other activities relating to the biotechnology sector.

Where the eligible employer is a corporation benefiting from the IC, ECP or ZCE tax measures, an employee can carry out, in addition to the tasks mentioned above, technology infrastructure or systems operation or development tasks.

### **How to Apply for an Eligibility Certificate**

Firstly, when submitting an application to Investissement Québec, the employer must be deemed an “eligible employer”, for the purposes of the above explanations.

Secondly, the employer must fill out the application and submit it in writing to Investissement Québec by February 28 at the latest in the calendar year following the taxation year of the individual in respect of whom the tax holiday is requested.

Thirdly, the employer must submit the following documents with respect to the candidate for whom the status of a “foreign specialist” is being sought:

- The candidate’s complete curriculum vitae demonstrating his skills, especially in one of the following fields: the management of innovation stemming from a research project, marketing, financing, strategic alliances, transfers of leading-edge technology or any other activities related to the development of the results of the project and the business’s activities.
- An explanatory note specifying in what way the candidate is noteworthy as a “specialist” in the sector in respect of which he has been hired.
- An official attestation of the candidate’s university degree in the appropriate discipline;

- A foreign specialist eligibility certificate application (form available at Investissement Québec);
- A complete description of the tasks that the employee deemed to be a “foreign specialist” will effect during the year with respect to the corporation’s activities for a given taxation year;
- A copy of the employment contract.

If the requested diploma is not provided, additional documents will be required.

### **Other Important Criteria**

Otherwise, the foreign specialist must:

- be an individual who, within the meaning of the *Taxation Act*, is not a resident of Canada immediately prior to the conclusion of his employment contract or immediately prior to taking up employment with the eligible employer;
- work almost exclusively (90% or more) for the eligible employer once he commences employment;
- conclude an employment contract or take up employment with the corporation when his employer is an “eligible employer” and according to the parameters stated above in the section relating to transition provisions.

### **Maintenance of Eligibility**

After the first year of eligibility, in order for the employee to continue to take advantage of the tax holiday for the period stipulated by legislation, the eligible employer must, for each subsequent year, submit an application to Investissement Québec in respect of the employee concerned.

The annual application must be submitted in the form and within the deadlines specified in paragraph 5 above with the sole exception that only the last three items of the list in that paragraph must be submitted to Investissement Québec.

### **Administrative Responsibilities**

Investissement Québec and Revenu Québec jointly manage the fiscal measure. The employer must comply with certain administrative obligations pursuant to the tax legislation.

- *Investissement Québec’s responsibilities*

Investissement Québec alone is responsible for issuing various certificates and ensuring compliance with certain eligibility criteria. However, the issuing by Investissement Québec of a certificate is not an absolute guarantee that the employee may take advantage of the tax measure covered by the certificate. This certificate merely confirms that the corporation has complied with the administrative criteria for which Investissement Québec is responsible. Accordingly, for instance, Investissement Québec must annually verify whether the tasks of such employee with the employer are eligible and whether they are almost exclusively (90% or more of his time) attributable to eligible activities of the employer during the year. The other eligibility criteria stipulated in the *Taxation Act*, for which Revenu Québec is responsible, must also be satisfied in order for the employee to take advantage of the tax measure concerned.

- *Revenu Québec's responsibilities*

Revenu Québec is responsible for administering the Taxation Act and ensuring compliance with provisions in the Act. When an eligibility criterion respecting one of these tax measures is indicated in the *Taxation Act*, it is Revenu Québec that must ensure compliance with the criterion. This is true, in particular, of the criterion concerning non-residence in Canada for taxation purposes as regards the eligibility of an employee with the status of a "foreign specialist."

Legislative provisions stipulate, among other things, that the corporation must obtain an eligibility certificate issued by Investissement Québec. In this specific instance, Revenu Québec's responsibility in respect of any certificate is confined to verifying that the corporation does indeed possess such a certificate. The department is not responsible for verifying the factors underlying the issuing by Investissement Québec of this certificate.

However, Revenu Québec may submit to Investissement Québec information that makes it possible to ensure the integrity of a tax measure.

Revenu Québec may, at any time, by means of a special tax, recover an excess amount of tax holiday granted to a foreign specialist further to the issuing of an eligibility certificate revoked by Investissement Québec after April 21, 2005.

- *Employer's responsibilities*

In addition to the obligation to submit the initial application to Investissement Québec within the prescribed deadline, the employer must comply with the procedure respecting applications for annual attestations for each taxation year in respect of which the individual deemed to be a "foreign specialist" may be entitled to take advantage of the tax holiday.

Moreover, tax regulations require the employer to submit a photocopy of the annual attestation received in respect of the employee deemed to be a "foreign specialist" and copies of the Relevé 1 on which must appear the amount of income used to calculate the deduction that the employee may claim when he files his tax return.

## **Rate Schedule**

Since September 1, 2004, Investissement Québec has charged fees for the analysis of any application for eligibility relating to the tax measures it administers. For more information on this topic, please consult the rate schedule available on this Web site.

*The statements in this detailed fact sheet constitute 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 it may refer to certain provisions, of the Taxation Act in particular, this description is not an interpretation by Investissement Québec of the legislative provisions relating to the tax measure.*

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