Tax Havens:

Tax Fairness Action Plan

THE QUÉBEC ECONOMIC PLAN

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Québec

Tax Havens: Tax Fairness Action Plan
The Québec Economic Plan

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INTRODUCTION

Recovering all of the tax revenue it is owed is a priority for the Québec government.

It is a question of fairness to all taxpayers who regularly pay their taxes. Under the rule of law, compliance with democratically established tax rules is one of the fundamental principles for society to function.

It is also a key issue for governance, as fully collected tax revenues underpin the public services that benefit all citizens. In 2016–2017 tax revenue made up 77.5% of the Québec government's own-source revenue and nearly 62.3% of its consolidated revenue. It is therefore crucial to ensure compliance with the tax framework laws and rules that support the Québec government's financing.

❑ The government is stepping up its efforts and assuming its responsibilities

Taxpayers, both individuals and corporations, are sometimes able to avoid certain tax obligations by using "tax havens."

To counter the use of tax havens, the Québec government is stepping up its efforts and assuming its responsibilities by publishing and implementing the Tax Fairness Action Plan.

Under this action plan, the Québec government is announcing and implementing a set of measures and initiatives aimed at improving the collection of tax revenue.

- Those measures address the phenomenon of tax havens and their use as a way for both corporations and individuals to avoid income tax.
- The measures are also designed to adapt the fight against tax havens and tax evasion to the development of digital transactions, ensuring that the Québec government can collect all the revenue it is owed through sales tax.

❑ Tax havens, tax evasion and tax avoidance

"Tax havens" are jurisdictions in which legislation or operating rules enable tax avoidance strategies or shelter tax evasion profits.[1]

Tax havens are jurisdictions in which the tax rules and tax administration make it possible for delinquent taxpayers to implement initiatives aimed at avoiding tax in their jurisdictions of origin.

Tax loss, or the difference between tax revenue owed to the government under current laws and rules and the tax revenue that is actually collected, can result from either tax evasion or avoidance.

— The term "tax evasion" refers to all illegal ways of failing to report legal income, hiding illegal income or disobeying tax rules.

— Tax avoidance entails interpreting legislation that pushes the limits of the law. This includes aggressive tax planning that reduces income tax respecting the letter of the law, but not its purpose and spirit.

1 MINISTÈRE DES FINANCES DU QUÉBEC, *Le phénomène du recours aux paradis fiscaux* (The Tax Havens Phenomenon), Brief submitted to the Committee on Public Finance, [Online], September 29, 2015, p. 13, [http://www.finances.gouv.qc.ca/documents/Autres/fr/AUTFR_memoireparadisfiscaux.pdf].

❑ The new business context

The challenge of fighting tax havens, tax evasion and tax avoidance has taken on an additional dimension with the new business context, marked by the digital revolution and online marketing.

This new context calls current tax collection methods into question.

■ The fundamental rules of Québec's tax system

Québec's tax system relies on certain fundamental rules, which we have summarized below.

▪ Corporate income tax: the concept of establishment

With regard to corporate income tax, the fundamental rule is the concept of establishment. An establishment's presence in Québec determines whether it is required to pay tax.

This is a territorial approach that is aimed at preventing double taxation of a corporation's income, i.e. taxing the same income in two different jurisdictions.

Any corporation that has such an establishment at any time during the taxation year must pay tax on its taxable income during that taxation year.

Unlike the worldwide approach, the territorial approach results in corporations paying income tax tied to operations carried out within the territory. As a result, foreign income already subject to foreign taxes is not taxed.

▪ *A principle that is increasingly difficult to apply*

The complexity of the structures of multinationals and of the use of transfer pricing—the prices at which businesses within the same group sell goods and services to each other—are making it increasingly difficult to apply this principle.

The development of digital transactions is making it even more difficult. Enterprises that set up tax avoidance or tax evasion strategies use tax havens and rely on digital transactions to circumvent the concept of establishment and its implications, transferring taxable income to jurisdictions with lower tax rates.

- **Individual income tax: the concept of residence**

The concept of residence is the fundamental rule when it comes to income tax for individuals. Individuals residing in Québec at the end of the year are subject to Québec income tax.

Individuals must report all worldwide income earned during the year to the tax authorities. For individuals who operate businesses, their taxable income consists of their total income less any expenses incurred in order to earn that income.

- ***Tax havens and digital transactions***

Essentially, the strategies set up by individuals to use tax havens are similar to those used by businesses. They hide capital in jurisdictions with lower tax rates.

To accomplish this, individuals primarily rely on bank secrecy. This strategy generally constitutes tax evasion, as it entails deliberately ignoring the law.

The development of digital transactions has made it easier to implement this strategy.

- **Sales tax: based on the destination**

With regard to sales tax, the fundamental rule is that it is based on the destination. Sales tax is applicable to properties and services acquired in Québec, whether they come from Québec or are imported from another jurisdiction.

It is generally the supplier who collects this tax and remits it to Revenu Québec. If the supplier does not have a physical or significant presence in Québec, the consumer has the obligation to self-assess and remit the applicable tax.

In reality, this obligation is mainly theoretical. In the current context, consumers almost never pay such taxes on their own initiative if the supplier does not have a physical or significant presence in Québec and has not charged them sales tax.

- ***Emergence of digital transactions***

Sales of properties and services by suppliers without a physical or significant presence in Québec were relatively low before the emergence of digital transactions.

The emergence of digital transactions and their extremely rapid development is making it increasingly difficult to collect taxes if the supplier does not have a physical or significant presence in Québec.

■ Tax collection rules have become more difficult to enforce

For corporate income tax, individual income tax and sales tax, the new business context calls Québec's fundamental tax rules into question.

The digital economy and growth of online transactions have made the rules for collecting their resulting tax revenue more difficult to enforce.

New technologies are providing new ways for both enterprises and individuals to avoid and reduce taxes by diverting profits and transferring income to tax havens.

TABLE 1

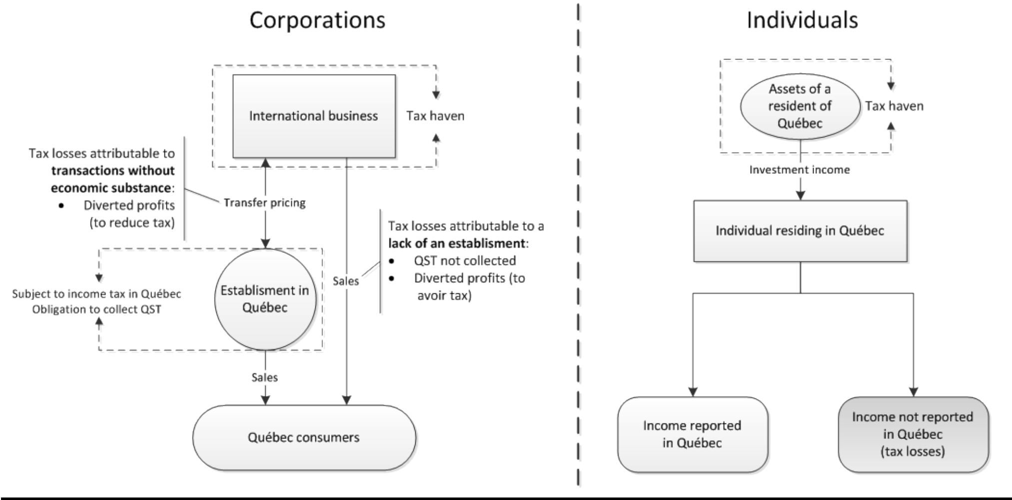
Main Québec taxation criteria applicable to individuals or corporations

Person	Tax legislation	Taxation criteria
Individual	Québec sales tax	– Purchaser of supplies in Québec – Purchaser of supplies imported to Québec (tangible properties, intangible properties and services)
	Income tax (Québec)	– Residence in Québec at the end of the year
Corporation	Québec sales tax	– Purchaser of supplies in Québec – Purchaser of supplies imported to Québec (tangible properties, intangible properties and services)
	Income tax (Québec)	– Establishment in Québec

Source: Ministère des Finances du Québec.

ILLUSTRATION 1

Rules of subjection of individuals and corporations to income tax and sales tax, and tax losses



❑ Tax loss due to tax havens and the development of the digital economy

The total tax loss for 2017 attributable to tax havens and the development of the digital economy is estimated at $686 million, broken down as follows:

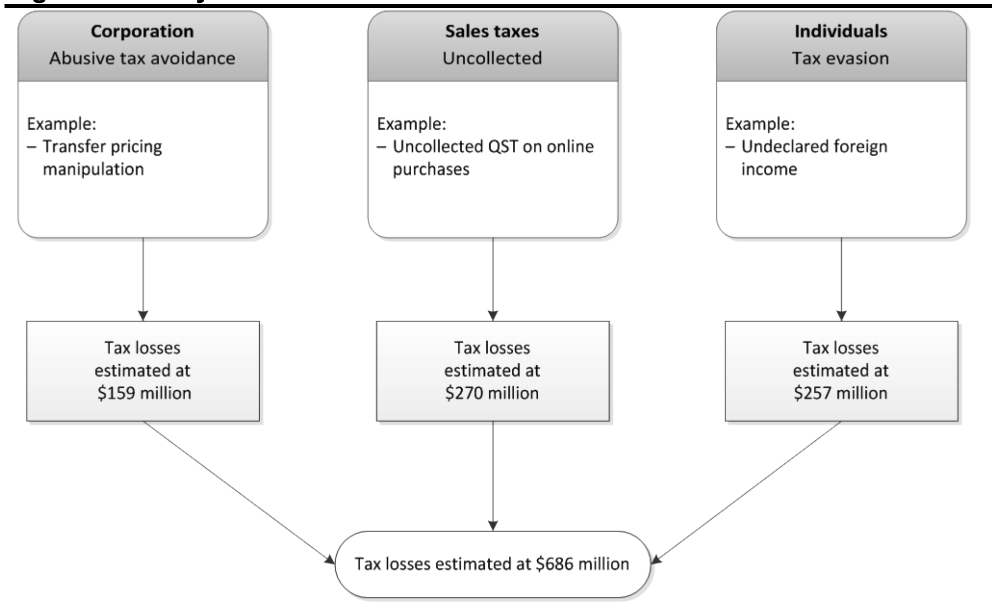
— $159 million due to abusive tax avoidance linked to corporate income tax, i.e. diverted profits resulting from aggressive tax planning;

— $270 million due to uncollected sales tax for online purchases in Québec;

— $257 million due to tax evasion by individuals through the use of tax havens.

ILLUSTRATION 2

Tax loss in Québec attributable to tax havens and the development of the digital economy



❑ The Tax Fairness Action Plan

The tax haven phenomenon and the development of digital transactions calls for swift, effective action by the Québec government, both for the sake of fairness and to protect the government's revenue.

The Tax Fairness Action Plan implements 14 measures targeting the following five major objectives:

— **recover the corporate income tax owed;**

— **collect sales tax in the context of the digital economy;**

— **recover the individual income tax owed;**

— **strengthen tax and corporate transparency;**

— **block access to government contracts for corporations and individuals that use abusive tax avoidance strategies, including abusive tax avoidance linked to tax havens.**

The Tax Fairness Action Plan has three appendices, which address the following topics:

— **issues** (Appendix 1);

— **actions** (Appendix 2);

— **follow-up on the recommendations of the Committee on Public Finance** (Appendix 3).

THE GOVERNMENT'S APPROACH

❑ The Committee on Public Finance's work

In February 2015, the National Assembly's Committee on Public Finance gave itself a self-initiated order to study the tax havens phenomenon.

The Ministère des Finances tabled a brief on September 29, 2015[2] during the Committee's consultation sessions. The Ministère des Finances highlights the reality and the complexity of the issue, namely the existence of tax havens and their use by individuals and corporations to avoid paying taxes. It also stresses the importance of actions that area already underway.

■ The Committee's report

After its consultations, the Committee on Public Finance tabled a report in April 2017[3] setting out its observations, conclusions and recommendations.

The report is a comprehensive report of the National Assembly, which was approved unanimously.

This report, based on proposals heard in the course of the Committee's work, contains recommendations addressed to the Québec government.[4] Many of those recommendations must be analyzed before being implemented; the responsibility of analyzing the feasibility of the recommendations and whether they should be implemented has been given to the Ministère des Finances and Revenu Québec.

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[2] See note 1.

[3] Committee on Public Finance, *The Tax Havens Phenomenon – Observations, Conclusions and Recommendations* (Committee report to the National Assembly), March 2017, 63 pages.

[4] See Appendix 3 for a complete list of the Committee's recommendations.

❑ Principles to follow

The fight against tax havens must take into account:

- impact on business investment, jobs and growth;
- agreements concluded by Québec, as well by Canada, whether bilateral or multilateral.

To contend with these essential elements without losing sight of the main goal – tax revenue recovery – the government adopted four principles to guide the selection of initiatives.

- First, tax integrity must be ensured, following the spirit of the OECD's actions in the fight against base erosion and profit shifting.

  The OECD has drawn up a plan to fight base erosion and profit shifting, which is known as the BEPS project. Initiatives undertaken by Québec fall directly within its framework.

- Second, the measures adopted must be fair to all enterprises that carry out activities in Québec. In particular, they must not penalize multinational enterprises operating in Québec against other multinational enterprises.
- Third, we must make sure that the measures cannot be circumvented by moving business currently carried out in Québec to another Canadian province.
- Fourth, the measures must be coordinated with the federal government as much as possible.

The government made a thorough analysis of the recommendations presented by the Committee on Public Finance, starting with those principles.

The actions to be taken are an extension of the government's existing efforts and also result from the new work carried out, based on the aforementioned principles and in light of the committee's recommendations.

Evolution of OECD actions since the submission of the Ministère des Finances du Québec brief to the Committee on Public Finance in September 2015[1]

Final version of the OECD Action Plan and commitment of the G20 member countries

At the request of the G20 countries, the OECD implemented an action plan to counter base erosion and profit shifting.

This plan—known as the BEPS[2] project—comprises fifteen actions. The OECD presented the final version of its report in October 2015.[3] The purpose of the last eight actions[4] is to reduce opportunities for multinationals to exploit differences in countries' tax regimes and update the international tax system.

In November 2015, G20 leaders confirmed that they wanted automatic information exchanges on financial accounts held by non-residents, pursuant to the common reporting standard drawn up by the OECD.

- More than 90 jurisdictions undertook to implement the new standard.

On March 22, 2016 the Government of Canada began implementing the OECD and G20 Action Plan as part of its 2016 budget.

OECD and G20 Action Plan on Base Erosion and Profit shifting (BEPS)

Action 1	Addressing the tax challenges of the digital economy.
Action 2	Neutralizing the effects of hybrid mismatch arrangements. Neutralizing the effects of hybrid instruments and entities that enable double non-taxation, double deductions or long-term deferral. - A hybrid instrument or entity is one whose legal status differs depending on the jurisdiction.
Action 3	Designing effective controlled foreign company rules.
Action 4	Limiting base erosion involving interest deductions and other financial payments.
Action 5	Countering harmful tax practices more effectively, taking into account transparency and substance. Improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes.
Action 6	Preventing the granting of treaty benefits in inappropriate circumstances. Designing rules to prevent the granting of treaty benefits in inappropriate circumstances.
Action 7	Preventing the artificial avoidance of permanent establishment status.

Evolution of OECD actions since the submission of the Ministère des Finances du Québec brief to the Committee on Public Finance in September 2015[1] (cont.)

Actions 8, 9 and 10	Aligning transfer pricing outcomes with value creation. Adopting a broad, clearly demarcated definition of intangibles (trademarks, patents, client list) and develop transfer pricing calculation rules or special measures applicable to the transfer of intangible assets. Preventing revenue from accruing to an entity solely because it has contractually assumed risks or has provided capital. Preventing common types of base eroding payments, such as management fees.
Action 11	Measuring and monitoring BEPS.
Action 12	Mandatory disclosure rules.
Action 13	Transfer pricing documentation and country-by-country reporting. Developing guidance on transfer pricing documentation to enhance transparency for tax administration.
Action 14	Making dispute resolution mechanisms more effective. Finding solutions to address obstacles that prevent countries from solving treaty-related disputes and enhancing current mechanisms.
Action 15	Multilateral convention to implement tax treaty related measures to prevent BEPS. Examining the issues of tax law and international public law raised by the development of a multilateral instrument to enable countries to implement the measures recommended upon completion of this action plan.

1 Ministère des Finances du Québec, Le phénomène du recours aux paradis fiscaux (The Tax Havens Phenomenon), brief submitted by the Ministère des Finances to the Committee on Public Finance, September 29, 2015, 72 pages.
2 Base Erosion and Profit Shifting.
3 OECD, OECD / G20 Base Erosion and Profit Shifting Project – Final Reports 2015.
4 The first seven recommendations had already been published in an interim report in September 2014.

1. RECOVERING THE CORPORATE INCOME TAX OWED

The government acts in three ways to recover the amounts owed as corporate income tax:

— the government coordinates with the federal government to obtain the country-by-country information from the OECD Base Erosion and Profit Shifting (BEPS) project;

— the government asks the federal government to send it the information obtained under tax treaties with other countries;

— the government sets up the Intervention Group specializing in international tax planning to use financial and tax data relating to businesses and strengthen cooperation with the Canada Revenue Agency.

In these three ways the government takes an approach that is an alternative to the tax on diverted profits, which would have more disadvantages than benefits.

The first thing is to spell out the issues involved and assess the tax losses that would ensue from tax schemes designed to evade corporate income tax.

1.1 Main issues and estimated tax losses

As stated above, Québec's corporate income tax is based on a fundamental rule, that of a permanent establishment.

Generally speaking, an enterprise has a permanent establishment in a jurisdiction if it has a fixed place of business there or if an employee or agent is in the country and acts on behalf of the enterprise and has the authority to conclude contracts on its behalf.

Taxable income is the portion of the corporation's worldwide income attributable to the Québec establishment.

The tax payable is based on profits. Income tax is based on the profit generated by a corporation during a financial year. Essentially, such profit or taxable income is equal to the total income minus the expenses incurred to earn that income.

❑ The two strategies used to "divert" profits

Multinational corporations can generally use two types of tax planning to "divert" profits, meaning shifting revenues to a lower tax jurisdiction.

■ Avoid having a permanent establishment in a jurisdiction

The first type of planning is to avoid having a permanent establishment in a jurisdiction.

Schemes are set up to separate the sale of goods and services from activities carried out to conclude contracts with clients in a given country. That way, revenues from the contracts are not attached to the country where the customers really are, and are accounted for in another country.

With this type of planning, profits are not declared in Québec. An example would be a multinational corporation located abroad that hires a Québec subcontractor to promote and manage the after-sales service of the products sold by the multinational in Québec.

This is particularly prevalent in the trading of intangibles and services that technological advances have made possible, without having a proper permanent establishment. This practice results in the multinational avoiding having a permanent establishment in Québec, where it sells goods and services.

■ Transfer profits to low tax jurisdictions

The second and most common type of planning is conducting transactions that do not reflect an actual economic activity (economically unsubstantiated) in order to transfer profits to lower tax jurisdictions. This planning can lead to transfer pricing manipulation.

Transfer prices are the prices at which enterprises in the same group sell goods or services to each other. The prices should be the same as the market prices between two non-related enterprises.

Transfer pricing abuses are designed to artificially inflate deductible expenses or reduce revenues in Canada and Québec, thereby reducing profits that are subject to federal and Québec tax. The expense deducted by the corporation in Canada becomes income for the foreign entity that is part of the same corporate group and is taxed elsewhere.

This scheme is easy for the tax authorities to spot when it comes to the sale of tangible goods, since they usually have market prices. It is more difficult to assess the appropriate cost of services and intangibles such as intellectual property rights.

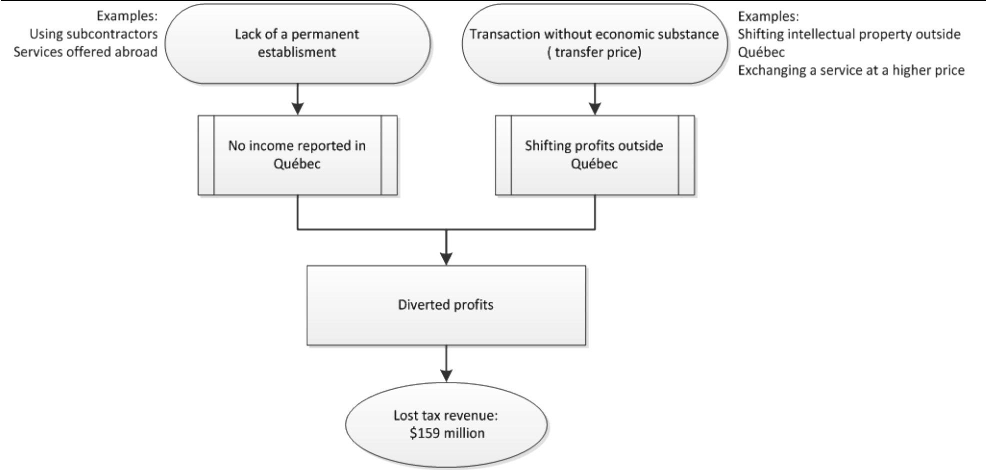
❑ Assessing tax losses

Overall, based on the OECD methodology, the Ministère des Finances estimates diverted profits to be $1.4 billion in Québec and the tax losses attributable to such tax schemes to be $159 million a year for the government of Québec.[5,6]

By way of comparison, tax revenues actually paid to Québec by the enterprises belonging to corporate groups that carry out activities in jurisdictions considered to be tax havens are assessed at $1.3 billion.[7]

ILLUSTRATION 3

Tax losses attributable to tax schemes designed to divert profits



[5] This estimate is detailed in Appendix 1.

[6] In its September 2015 brief on the use of tax havens, the Ministère des Finances, using a study from the International Monetary Fund, estimated that Québec's tax losses relating to the erosion of the tax base and profit shifting were probably lower than the worldwide average of 5% of corporate tax revenue estimated by the organization, i.e. less than $200 million annually. Note that, as opposed to the OECD model, the International Monetary Fund one does not distinguish between the share of total losses attributable to diverted profits and that linked to the use of disparities between tax regimes.

[7] The assessment of the economic and tax impacts of Québec corporations with links to tax havens is presented in Appendix 1.

❑ Québec's answer: collect the information and use it

In order to foil these schemes and fight profit shifting, Québec has decided to concentrate its efforts on collecting financial and tax information and putting it to use.

For the collection of financial and tax information, Québec intends to rely on the implementation of the OECD recommendations, in particular actions 7, 8, 9, 10 and 13 in relation to the BEPS project.

The information obtained from the OECD BEPS project and tax treaties between Canada and other countries will make it easier to spot both:

— schemes for locating a permanent establishment outside Québec;

— manipulations of transfer pricing.

OECD recommendations on schemes to divert profits

The OECD proposes that the countries introduce a number of changes to limit the use of the schemes implemented to divert profits.

Transfer pricing

The OECD proposes new rules on transfer pricing.

- The proposed amendments are designed to attribute the profits generated by business activities in a given country to the location of the value-creating economic activities that generated the profits.
- The rules for enforcing the “arm’s length” principle will be strengthened. For example, under certain circumstances:
  - the behaviour of the parties may replace the contract provisions;
  - the control of the investment risk will be tightened; enterprises that do not exercise such control should expect return rates commensurate with a risk-free investment;
  - the business rationale of a transaction between related parties will be assessed more in comparison with the business rationale of a similar transaction held in comparable economic situations (for example, the choice of price setting date is not compatible with the usual economic situation);
  - the value of a transaction between a parent corporation and a subsidiary will not always be defined by the written contract but by the behaviour of the parties, which includes the actual functions carried out, assets used and risks sustained.

Permanent establishment

The OECD proposes amending the concept of permanent establishment.

- The activities of an intermediary in a given country leading to contracts to be signed by a non-resident should be enough to give the said non-resident an actual link with the country in question, and therefore a permanent establishment. To the extent that the intermediary plays an “essential part” leading to the signature of contracts “commonly entered into” by the non-resident business in the given country, a presumption of permanent establishment will be applicable.
  - The contract “fragmentation” or “separation” activities should be targeted by new legislative provisions designed to better attribute profits to a permanent establishment.

Income subject to taxation by Québec and Canada

Corporations operating exclusively in Québec

In the simple case of a Canadian company with a single establishment located in Québec, the corporation will have to pay its taxes to Canada and Québec on all its income regardless of the final destination of its products (domestic market or export).

Corporations operating exclusively in Canada, but in more than one province

A Canadian corporation operating exclusively in Canada but in more than one province will have to pay federal tax on its worldwide income, but Québec tax only on that portion of its income which is attributable to its Québec establishment(s).

Multinational corporations that are not Canadian

A multinational corporation that is not Canadian will have to pay federal tax on the corporate income attributable to its permanent establishments located in Canada. Québec will tax the portion of said income attributable to establishments located in Québec.

Canadian multinational corporations

The case of a Canadian multinational is more complex. The multinational would usually have to pay federal tax on its global income.

In certain cases, however:

- the corporation may be able to set off tax paid abroad in countries where the corporation has a permanent establishment, in order to avoid double taxation;
- the corporation will not be taxed on some dividends paid by a foreign subsidiary located in a country that has a tax treaty with Canada.

Canadian multinationals will pay Québec tax on the share of their declared income which is attributable to their Québec establishments.

1.2 Coordinating with the federal government to get “country-by-country” information from the OECD BEPS project

Measure 1: Québec supports the measures proposed by the OECD, and coordinates with the federal government to obtain the “country-by-country” information from the Base Erosion and Profit Shifting (BEPS) project

Québec gets the information at source by coordinating with the federal government to apply the OECD BEPS project.

This information will provide clues that can be used to fight both types of fiscal planning used to divert profits, i.e. the avoidance of a permanent establishment in Québec and “transfer pricing” strategies.

❑ “Country-by-country” reporting

Measure 1 of the Tax Fairness Action Plan forms part of a multilateral approach of information exchange known as “country-by-country” reporting.

Country-by-country reporting is one of the measures proposed by the OECD as part of the BEPS project. It uses a form designed by the OECD, in which the multinationals must report important information on their business activities worldwide, country by country, to the tax authorities of the parent entity’s country of residence.

This information includes revenues, profits, tax paid, stated capital, accumulated earnings, number of employees and tangible assets, as well as the main activities of each subsidiary of the multinational.

The benefit of this approach lies mainly in the exchange of information among countries based on these reports. When a jurisdiction receives a country-by-country report from a member of a multinational, it automatically exchanges the report with the other jurisdictions where the multinational carries out its activities, under certain conditions (see box below).

❑ The implementation of country-by-country reporting in Canada

In keeping with the BEPS project recommendations that were published in the fall of 2015, country-by-country reporting is required in Canada for tax years that begin after the year 2015. The first exchange of country-by-country reporting between jurisdictions should take place by June 2018.

— Canada Revenue Agency will forward to Revenu Québec the country-by-country reports it receives from Canadian multinationals when a member of the group is located in Québec.

— The same will apply to U.S. multinationals under the bilateral tax agreement between Canada and the United States, which allows tax returns to be shared between provinces.

— As for other countries, the Multilateral Agreement among competent authorities regarding the exchange of country-by-country reports does not allow for the transfer of information to another order of government. Québec has obtained assurance from the Canada Revenue Agency that it will ask the jurisdictions concerned to give the same access to Québec.

Country-by-country reporting

The country-by-country report is a form that multinational enterprises must fill out for the tax administration of the country in which their ultimate parent company resides.

- More specifically, this measure applies to multinationals with an annual total consolidated income of at least €750 million.

A report on the worldwide allocation of material corporate data

The country-by-country report includes the worldwide allocation by country of data material to the multinational, such as revenue, profit, tax paid, stated capital, accumulated earnings, number of employees and tangible assets, as well as the main activities of each subsidiary.

Projected exchange of information

Upon receipt of a country-by-country report from a member of a multinational, the jurisdiction will automatically exchange the report with the other jurisdictions where the multinational carries out its activities, provided that in each case:

- the other jurisdiction has implemented country-by-country reporting;
- both jurisdictions have a legal framework in place for the automatic exchange of information (such as a bilateral tax treaty or the Convention on Mutual Administrative Assistance in Tax Matters).

Country-by-country reporting (cont.)

If the jurisdiction in which a subsidiary resides cannot obtain the country-by-country report from the parent company's jurisdiction as part of the automatic exchange of information, the tax authority in the subsidiary's jurisdiction may, in some cases, ask the subsidiary to produce the country-by-country report.

A multinational can avoid having to generate reports for multiple subsidiaries in multiple jurisdictions by designating one of its subsidiaries as its "surrogate" for reporting purposes. The surrogate then produces all country-by-country reports on behalf of the multinational, providing it is located in a jurisdiction that has implemented this type of reporting.

Application in Canada

According to the *Income Tax Act* (R.S.C. (1985), c. 1, (5th suppl.)), the ultimate parent entity of a Canadian resident multinational is required to file a country-by-country report with the Canada Revenue Agency in the year following the end of the financial year covered by that report. The same applies to a Canadian subsidiary of a multinational whose ultimate parent entity is not subject to the *Income Tax Act* and resides in a jurisdiction which does not have an agreement with Canada regarding the automatic exchange of returns.

In keeping with the BEPS project recommendations published in the fall of 2015, country-by-country reporting is required in Canada for tax years that begin after the year 2015.

The first country-by-country reporting exchanges between jurisdictions should take place by June 2018.

1 *A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016, and other measures*, assented to on December 15, 2016 (Bill C-29).

1.3 Receiving information obtained under bilateral tax treaties with other countries from the federal government

Measure 2: Québec asks the federal government to send it the information obtained under bilateral tax treaties with other countries

Québec intends to rely on a second source of information to fight schemes for diverting profits: information obtained under tax treaties (and tax information exchange agreements) between Canada and other countries.

As is the case with information obtained from country-by-country reports, the information accessible through tax treaties will help identify schemes for locating permanent establishments outside Québec and manipulating transfer pricing.

❑ A bilateral measure

Measure 2 of the Tax Fairness Action Plan is designed to obtain more information that could provide clues on the schemes being fought. Unlike Measure 1, Measure 2 of the Action Plan is not multilateral but bilateral: it is directly linked to tax treaties between Canada and certain countries.

Québec wants to take advantage of the upstream tax agreements signed by Canada by asking the federal government to ensure that it will be able to forward to Québec the tax information available under such treaties. Revenu Québec has already obtained such access to information under the existing tax treaty between Canada and the United States.

❑ Tax treaties: access to tax information

Both the Canadian and Québec tax systems for income earned by corporations follow the policy that profits from active business operations abroad are tax exempt when such profits are repatriated in the form of dividends by the Canadian parent company, if they were earned in a country that has a tax treaty or tax information exchange agreement with Canada.

The surpluses that have been repatriated to Canada and Québec have to come from countries where corporations actively operated a business, one that has transparency due to the exchange of tax information or cooperation between government tax bodies.

That transparency or cooperation enables Canada to fight more effectively against the use of tax havens. Without those agreements no information would be available.

Several countries, such as Canada, apply such a repatriation system with no or almost no taxation of dividends. However, the form may vary from country to country.[8]

❑ The United States' choice

Other countries, such as the United States, apply a different system. U.S. tax legislation provides for a 35% tax on dividends received from some foreign subsidiaries.

This approach has led to a considerable drop in the profits repatriated to the United States by American companies. According to a study released by Audit Analytics[9] in August 2017, American corporations hold more than $2 800 billion abroad in order to reduce their tax burden in the United States.

That approach means that not only are higher taxes not collected, but also that the capital returning to the country is limited.

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8 Among the 35 OECD member countries, 29 applied such a system in 2012.

9 Don Whalen, Jessica McKeon, Chris McCoy, *Indefinitely Reinvested Foreign Earnings – Balances Held By the Russell 1000: A 9-Year Snapshot*, Audit Analytics, August 2017.

❑ Québec's policy: respect tax treaties and take advantage of them to obtain information

Québec respects the tax treaties signed by the Canadian government even though the province itself is not a signatory.

The non-recognition of tax treaties by Québec could have significant economic and tax impacts on the economy of the province.[10]

Currently, with the exception of the Convention Between Canada and the United States of America with Respect to Taxes on Income and on Capital, bilateral or multilateral tax treaties and tax information exchange agreements signed by Canada do not allow information received by Canada to be provided to Québec. Québec is therefore in a situation where it cannot fully benefit from the information obtained under such agreements.

■ The request made to the federal government

The Québec government is asking the Canadian government to send it the information obtained under tax treaties with other countries. The Québec government has already received assurances on the matter.

Concretely, it is up to the federal government to contact the representatives of countries with which it has signed tax treaties to ensure that information available under such treaties can be provided to Québec.

[10] See Appendix 1.

1.4 Setting up the Special Task Force on International Tax Planning to study financial and tax data relating to enterprises and strengthening cooperation with the Canada Revenue Agency

Measure 3: In order to make full use of the information obtained through measures 1 and 2, Québec is setting up the Intervention Group specializing in international tax planning to use the financial and tax data

For Québec, it is essential to make full use of the information obtained under the two preceding measures by setting up the Special Task Force on International Tax Planning, dedicated to the use of financial and tax data on enterprises.

Increased use of tax havens, international tax planning, the rise of e-commerce and the advent of the sharing economy are all complicated issues requiring input from specialists with all the necessary know-how.

❑ Additional resources for Revenu Québec and the Ministère des Finances

The government is adding resources to Revenu Québec and the Ministère des Finances for the purpose.

- The government is assigning 30 additional resources to Revenu Québec to strengthen its capacity to fight corporate tax evasion and avoidance by creating a special unit in ongoing cooperation with the Ministère des Finances.

- The government is adding fiveresources to the Ministère des Finances to boost its capacity to analyze and intervene in international taxation, the better to fight against multinationals' tax planning.

Revenu Québec will step up its cooperation with the Canada Revenue Agency in dealing with and analyzing aggressive international tax planning involving enterprises present in Québec.

■ Taking advantage of available information

Measure 3 of the Tax Fairness Action Plan must be a direct continuation of the two preceding measures; setting up the special unit will enable Québec to take full advantage of information made available through the OECD BEPS project and information obtained under Canada's tax treaties.

Strengthening cooperation between the two tax administrations in the fight against aggressive tax planning will allow Revenu Québec to become more involved with the Canada Revenue Agency in dealing with files regarding in particular with transfer pricing applied by companies located in Québec.

❑ The Forum on International and Emerging Tax Phenomena

Revenu Québec will create the Forum on International and Emerging Tax Phenomena with the participation of the Canada Revenue Agency, in order to develop knowledge, know-how and practices against tax evasion and avoidance as well as information on aggressive tax planning.

The forum will draw on the expertise found in the public, academic and private sectors and further advance knowledge about the fight against tax evasion, tax avoidance and aggressive tax planning.

The results of those efforts will be made public, which will:

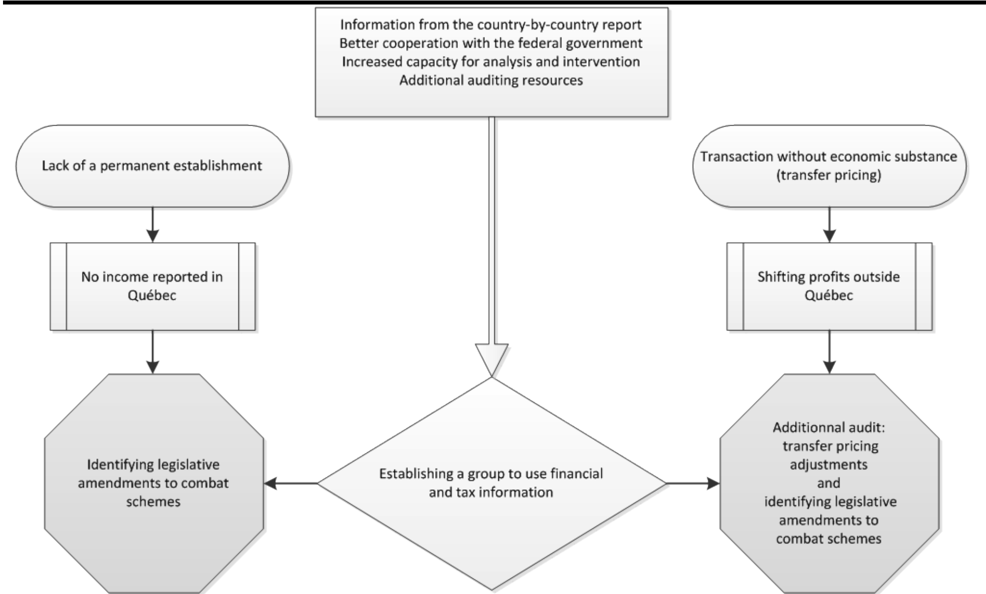
— inform the public about various non-eligible strategies to do with international and emerging tax phenomena;

— inform the public about the impact of those strategies on the Québec government's revenue and funding of public services;

— raise public awareness of the government's actions to discourage enterprises from using those strategies.

ILLUSTRATION 4

Measures taken by Québec to recover taxes owed on corporate income



1.5 An alternative to the tax on diverted profits

By collecting and using financial and tax information, Québec has chosen an alternative solution to the tax on diverted profits, which is sometimes known as “Google tax.”

The objective is the same: recover taxes owed by corporations. The government prefers an initiative that avoids the negative effects of taxing diverted profits.

The government believes that a unilateral tax on diverted profits—on profits measured otherwise than on the declared profits—would be counterproductive and would occasion more disadvantages than benefits.[11]

❑ Tax on diverted profits

The objective of a tax on diverted profits is to counter the use of aggressive tax planning by multinationals so that the taxation of enterprises in a jurisdiction is commensurate with their economic activity in that jurisdiction.

The best known and most complete example of such a tax is the United Kingdom’s diverted profits tax. A 25% tax on profits diverted from the United Kingdom is imposed on U.K. or foreign multinationals that have created business structures to divert their profits from that country.

This tax is an independent measure, applied over and above the rules of the general tax system currently in effect in the United Kingdom.

Australia has also implemented a similar tax.

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[11] See Appendix 1.

❑ The consequences of a unilateral tax on diverted profits

A unilateral tax on diverted profits is possible, but it has several consequences that we must be aware of.

■ Double taxation of diverted profits

If a tax on diverted profits were implemented, an enterprise's profits that had already been taxed in another jurisdiction but were considered to be diverted would be taxed a second time in Québec.

The consequences of this increase in the tax burden would be to:

— reduce the competitiveness of the Québec tax system, making Québec less attractive in relation to its competitors;

— cause some corporations to move their operations out of Québec.

The repercussions could be substantial, in view of the fact that those multinationals already have a major presence abroad.

■ Shifting activities outside Québec

If Québec introduced unilateral actions involving double taxation, some companies would likely relocate their activities to other Canadian provinces in order to:

— get around Québec's measures while preserving their access to tax havens;

— reduce their activities in Québec to lower their financial exposure to Québec's new measures.

Access to the Québec market by the enterprises of Québec's main trading partners is in any case usually covered by free-trade agreements. An enterprise that relocated its operations to another jurisdiction covered by a free-trade agreement would still have access to the Québec market.

That means that an enterprise could move its production elsewhere without reducing its sales to Québec consumers, which would have major repercussions on Québec's economy and public finances.

■ Unfair risk for enterprises that do comply with tax regulations

For an enterprise that has done nothing wrong, the uncertainty caused by the application of a tax on diverted profits would be an unfair risk.

■ The economic impact of introducing a tax on diverted profits

According to estimates from the Ministère des Finances du Québec, profits diverted by Québec multinational companies reached $1.4 billion in 2017. Implementing a tax on diverted profits would therefore tax those offshore-transferred profits at Québec's general corporate tax rate of 11.8%. Such a measure could represent an additional corporate tax burden of $159 million for the targeted corporations.

The unilateral introduction of a tax on diverted profits in Québec could lead to:

— a loss of some 68 000 jobs, most of which would be with Québec suppliers;

— a $7.5-billion decline in GDP;

— a $513-million loss in tax revenue, including $146 million due to the loss of direct jobs.

❑ Application may be impossible in the Canadian context

A Québec tax on diverted profits could raise interprovincial issues.

Québec would have to determine whether a Québec tax on diverted profits would apply only to tax planning designed to shift revenues from Québec to another country (like the United Kingdom and Australia's taxes on diverted profits) or if the diverted profits tax would also apply between provinces.

Not including income shifting to other provinces could open the door to multinationals moving their income between provincial entities, knowing that international income shifting would be investigated for diverted profits only in Québec.

On the other hand, including income shifting would create a double taxation situation within Canada, putting in questions the established rules.

❑ Québec's choice

There are so many issues surrounding a tax on diverted profits that Québec has decided not to take that road, and has instead chosen to work within the framework defined by G20 and OECD member countries.

Instead of a unilateral action like a tax on diverted profits, the government believes it will be more productive and more promising to fight diverted profits tax planning by obtaining more information under multilateral and bilateral agreements involving Canada and mobilizing the resources it needs to use such information.

■ Canada must join in Québec's effort

In both cases, it is crucial for the federal government to join in the effort undertaken by Québec.

— It is up to Canada to ask foreign jurisdictions for permission to send Revenu Québec the tax returns of enterprises located in Québec, whether in a country-by-country report or under tax agreements with certain jurisdictions.

— It is also up to Canada to follow up on the cooperation offer made by Québec, which includes setting up a special unit to study companies' financial and tax data.

2. COLLECTING SALES TAX IN THE DIGITAL ECONOMY

Québec acknowledges that the digital revolution in the economy raises difficult issues.

But the status quo is no longer possible. Both the Québec sales tax and the GST will have to adapt to the 21st century. The fairness and legitimacy of both tax systems is at stake.

❑ A three-pronged approach

The government will take a three-pronged approach to collecting sales tax in the digital economy, enabling it to:

— collect the Québec sales tax on services and intangibles properties from abroad;

— collect the Québec sales tax on tangible properties from abroad;

— collect the Québec sales tax on properties (both tangible and intangible) and services from the elsewhere in Canada.

The government reiterates the approach it took toward the sharing economy issue.

The government points out the impracticality of collecting the Québec sales tax via payment card transactions.

As with corporate income tax, it is important at the outset to clearly identify the issues in play and assess the tax losses caused by the difficulty of collecting sales tax in the digital economy.

2.1 Main issues and estimated tax losses

The application and collection of the tax are based on principles that have to be re-examined in the light of emerging e-commerce.

❑ Fundamental principles of the sales tax

As stated earlier, the Québec sales tax is based on a fundamental rule: application depending on destination.

■ Properties and services used or consumed in Québec

This rule means that the Québec sales tax applies to properties and services acquired for use or consumption in Québec. The same destination rule applies to the GST/HST.

As a general rule, Québec sales tax applies to properties and services acquired in Québec—whether produced in Québec or imported from another jurisdiction in Canada or abroad. Conversely, the Québec sales tax does not generally apply to properties and services sold by Québec enterprises for use or consumption outside Québec.

The Québec sales tax is a value-added tax. This is the most widespread consumption tax model because it generally prevents taxing exports, while putting imports and domestic products on the same level.

■ Collecting the tax: the supplier

The Québec sales tax is payable by the purchaser—whether the acquisition of the good or service is for consumption or other purposes. The supplier is usually obliged to register, collect the tax paid and remit it to Revenu Québec.

Québec sales tax and GST: a major harmonization

When Québec introduced its sales tax in 1992, it recognized the importance of maintaining a high level of harmonization between the Québec sales tax and the GST, both as to their base (taxable properties and services) and their administrative rules.

- Harmonization makes it easier for Revenu Québec to collect both taxes and, above all, simplifies the administration of the GST and the Québec sales tax for enterprises.

The Comprehensive Integrated Tax Coordination Agreement

To achieve greater harmonization of the Québec sales tax and the GST from January 1, 2013 on, the Comprehensive Integrated Tax Coordination Agreement provided for:

- exclusion of the GST from the Québec sales tax base;
- gradual elimination of restrictions on input tax refunds for large enterprises;
- exemption of financial services (formerly zero-rated under the Québec sales tax), as it is the case with the GST/HST;
- replacement by Québec of the former mechanism that exempted purchases for the government and its agencies with a mechanism to recover the amounts of GST and Québec sales tax paid on such purchases.

In terms of Québec's margin for manoeuvre in taxation policy, the Comprehensive Integrated Tax Coordination Agreement provided for:

- a 5% limit on base differences between the Québec sales tax and the GST—the Agreement provided that all the differences then in place represented 3% of the base, leaving a 2% margin for manoeuvre;
  - The "base" consists of all taxable properties and services.
- prior agreement by both governments prior to any new administrative measures on the Québec sales tax being adopted.

❑ Main difficulties caused by the emergence of e-commerce

The Québec sales tax system does not have any particular rules on e-commerce, which means the general rules apply.

■ Taxable properties and services

Internet sales are generally subject to the Québec sales tax if the properties and services sold are for use or consumption in Québec, as is the case for properties and services sold under the traditional model (the destination principle).

Suppliers that have a physical (permanent establishment) or significant (carrying on a business) presence in Québec and that sell taxable properties or services in Québec through the Internet are generally required to register for the Québec sales tax, collect it and remit it to Revenu Québec.

■ The problem: suppliers with no physical or significant presence in Québec

The digital economy context raises difficulties of collection when it comes to suppliers who have no physical or significant presence in Québec.

Those suppliers are not required to register for, collect or remit the Québec sales tax, even when their supplies are taxable.

- For intangibles properties and services from outside Québec, Québec consumers are required to remit the taxes payable by self-assessment, which in practice happens only very rarely.
- For tangible properties imported from abroad, the Québec sales tax is in principle collected by the Canada Border Services Agency. In practice, with the advent of e-commerce, postal administrations are having to deal with a considerable increase in the number of parcels going through customs clearance centres, and sales taxes are collected on only a fraction of imported properties.
- For properties and services from other Canadian provinces, Québec consumers are required to remit the Québec sales tax payable by self-assessment, but this happens just as rarely as in the case of intangibles properties and services sold from abroad.

A radically changed context

When the Québec sales tax and the GST were first introduced (in 1992 and 1991 respectively), consumers purchased properties and services almost exclusively from suppliers who had places of business in Québec or elsewhere in Canada.

The basic rules worked very well at that time—the purchaser paid the Québec sales tax to a supplier with an establishment in Québec who registered for the Québec sales tax, collected the tax and remitted it to Revenu Québec.

- At that time, transactions involving suppliers with no physical or significant presence in Québec were rare. The issue was marginal.

However, the increase in online transactions in recent years now raises a substantial challenge to all countries that levy a value-added tax such as the Québec sales tax.

In addition to the loss of revenue for governments, the issue is one of fairness for the local enterprises that are obliged to collect and remit the tax.

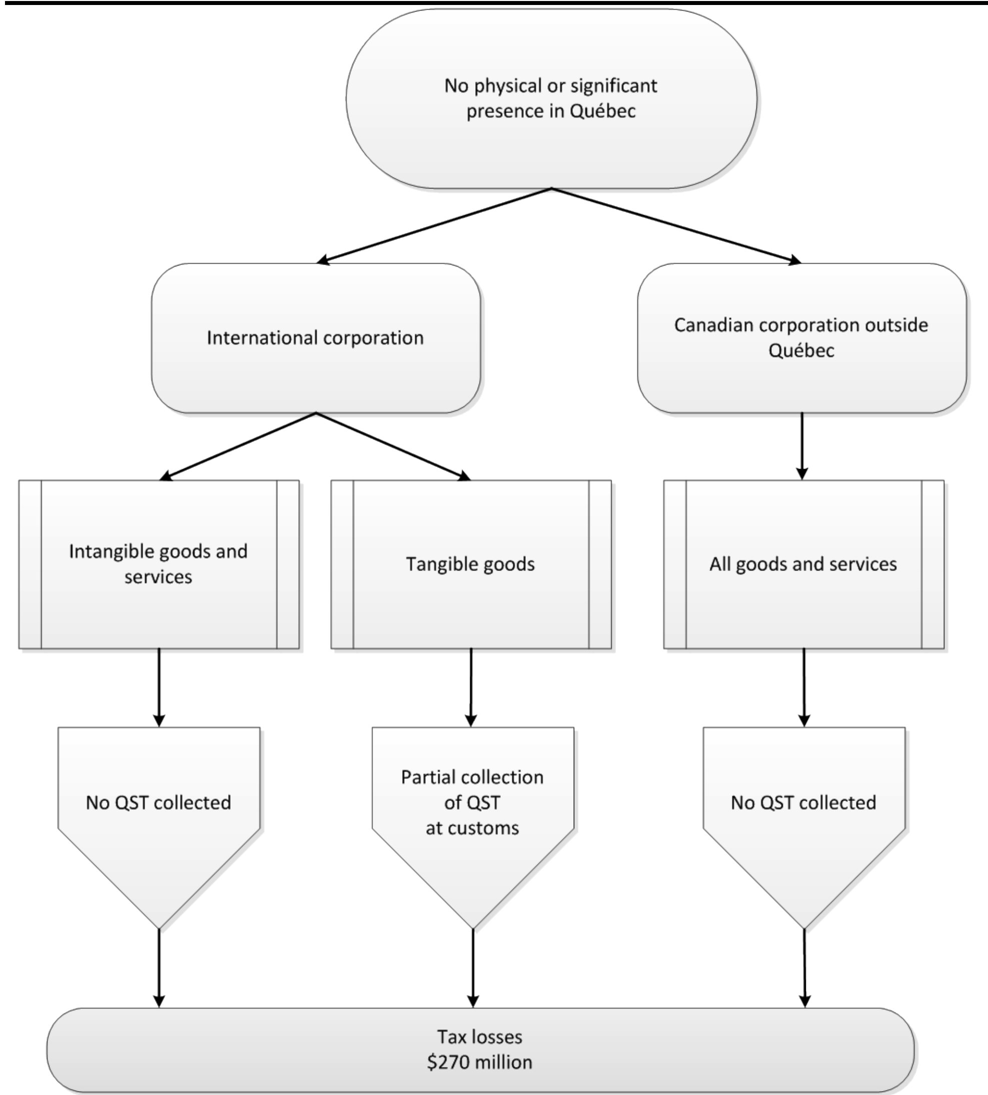
❑ Tax losses resulting from uncollected tax on properties and services purchased through the Internet

Tax losses resulting from uncollected Québec sales tax on properties and services purchased through the Internet amount to $270 million in 2017 according to Revenu Québec's estimates.

Of this amount, tax losses arising out of online purchases made in Canada outside Québec are estimated at $43.1 million. For comparison purposes, the total Quebec sales tax revenue collected is $17 billion per year.

ILLUSTRATION 5

Tax losses attributable to QST collection – 2017



OECD recommendations on the collection of sales taxes on e-commerce purchases

While acknowledging that this solution involves some obstacles, the OECD recommends in Action 1 of its BEPS project that foreign suppliers be required to register for the VAT regime and that they collect and remit the tax to the country of destination of the properties or services.

The OECD notes that the viability of this solution will depend on international coordination.

Among the main obstacles noted are the following:

- the difficulty of ensuring compliance with new obligations in a context where judgements may have to be enforced abroad;
- the difficulty that tax authorities will have in identifying foreign suppliers, controlling them and auditing them for compliance (risk of fraud);
- the difficulty of identifying purchasers;
- the potentially substantial administrative burden it will impose on foreign suppliers.

The OECD recommends setting up a simplified registration system that is sufficiently clear and accessible to allow foreign suppliers to comply with their tax obligations easily.

Source: Organisation for Economic Co-operation and Development, *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*, May 4, 2017, pp. 121-122.

2.2 Collecting the Québec sales tax on services and intangibles properties from abroad

Measure 4: Québec wishes to require sales tax to be collected on services and intangibles properties sold from abroad by enterprises without a physical or significant presence in Québec; it is proposing concerted action to the federal government

The government intends to collect Québec sales tax on services and intangibles properties from abroad.

To this end, the government wishes to require sales tax to be collected on services and intangibles properties sold from abroad by enterprises without a physical or significant presence in Québec. The government is proposing concerted action to the federal government.

❑ Acting on OECD recommendations

With Measure 4, the government is acting on the OECD's recommendations.

Foreign suppliers without a physical or significant presence in Québec will be obliged to register with Revenu Québec and remit sales taxes collected to it (both Québec sales tax and GST/HST).

There will be a simplified registration system to make compliance with tax obligations easier while ensuring the integrity of the tax systems.

■ Maintaining harmonization with the federal government

Enforcing this requirement in a coordinated way with the federal government will ensure that the current harmonization between the two tax systems is maintained.

Harmonization makes it easier for Revenu Québec to collect both the GST and the Québec sales tax. It also simplifies administration for enterprises.

■ Already taxable services and intangibles properties

Services and intangibles properties sold by those enterprises are already subject to sales tax. The measure announced by Québec would not entail any new taxes. Its purpose is to ensure that the tax applicable to services or intangibles properties that are already taxable is collected.

■ The status quo is no longer possible

The government recognizes how hard it will be to make foreign suppliers comply with this obligation if they have no physical or significant presence in Canada or Québec and sell through the Internet.

But the status quo is no longer possible. The rules governing the collection of the GST and the Québec sales tax must be adapted to the realities of the digital economy: the fairness and legitimacy of both systems is at stake.

The government will use all the levers at its disposal to obtain compliance with the new obligation, claiming from the enterprises concerned the amounts owed. There are models in other countries.

Australia, Norway, Switzerland and the European Union countries have set up systems that require foreign suppliers to register for and collect applicable sales taxes when supplying digital products or services via e-commerce to consumers who reside in their jurisdictions.

The Netflix case

Over the last few months, there has been a lot of confusion regarding the question of the tax system applicable to services offered by Netflix to Québec consumers. It is important to clarify the situation.

Application of GST/HST and Québec sales tax

The services offered by Netflix to Québec consumers are taxable supplies, for both the GST/HST system and the Québec sales tax system.

It is not a new form of taxation. It is rather a conclusion that results from the application of sales tax systems such as the existing ones.

According to current legislation, since Netflix does not have a physical or significant presence in Québec, this corporation is not obligated to register with the GST/HST and Québec sales tax systems, and collect the applicable taxes from its consumers in Québec.

It is therefore the responsibility of Québec consumers to pay the GST/HST and Québec sales tax by self-assessment.

2.3 Collecting Québec sales tax on tangible properties from abroad

Measure 5: Québec will support the Canada Border Services Agency to ensure collection of Quebec sales tax on tangible properties from abroad and sold by companies without a physical or significant presence in Québec

For tangible properties purchased online from foreign suppliers, an agreement already stipulates that the Canada Border Services Agency will collect, on behalf of the Québec government, the Québec sales tax applicable to non-commercial imports of properties to Québec, that is properties imported by individuals (consumers) who reside here.

A recent study by Copenhagen Economics[12] shows that, in fact, sales tax is charged only on a fraction of the properties imported. Revenu Québec has estimated that the uncollected amounts on packages at the border total $158 million per year for Québec sales tax, in line with the assessments made for all of Canada in the study.

❑ Québec will support improvement of tax collection at borders

Québec informed the federal government that it was ready to contribute financially to improve collection of taxes at the border by the Canada Border Services Agency.

Exploratory work is underway in this regard. Québec is confident that changes and solutions can be implemented in a coordinated manner in the short term.

This work is part of a process undertaken by Revenu Québec in conjunction with the Canada Border Services Agency and the Canada Revenue Agency to improve collection of taxes at the border. This improvement will specifically be noticeable when Canada Post, in collaboration with the Canada Border Services Agency, completes, like it already has in Vancouver, the modernization of its processing centres in Montréal and Toronto.

Until such modernization takes place and gives the expected results, the discussions underway are designed to implement temporary measures to strengthen the Canada Border Services Agency's package processing capacity at the current facilities.

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[12] Dr. Bruno Basalisco, Jimmy Gårdebrink, Martina Facino and Dr. Henrik Okholm – Copenhagen Economics, *E-Commerce Imports into Canada: Sales Tax and Customs Treatment*, [Online], March 2017, [https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/9/379/1488463673/copenhagen-economics-2017-e-commerce-imports-into-canada-sales-tax-and-customs-treatment.pdf].

2.4 Collecting Québec sales tax on properties (tangible and intangible) and services from elsewhere in Canada

Measure 6: For properties and services from elsewhere in Canada and sold by suppliers that do not have a physical or significant presence in Québec, Québec plans to require these suppliers to register with the Québec sales tax system, collect the tax and remit it according to special rules

Registration with the Québec sales tax system by suppliers from elsewhere in Canada that do not have a physical or significant presence in Québec but that sell properties or services in Québec constitutes the only possible solution. This is true for intangible properties and services as well as tangible properties because, in the case of the latter, no border control allows packages originating from elsewhere in Canada to be intercepted.

This measure is aimed at restoring equity in the collection of the Québec sales tax. It is also a matter of following through, on a Canadian level, with the OECD recommendations regarding the application of sales taxes.

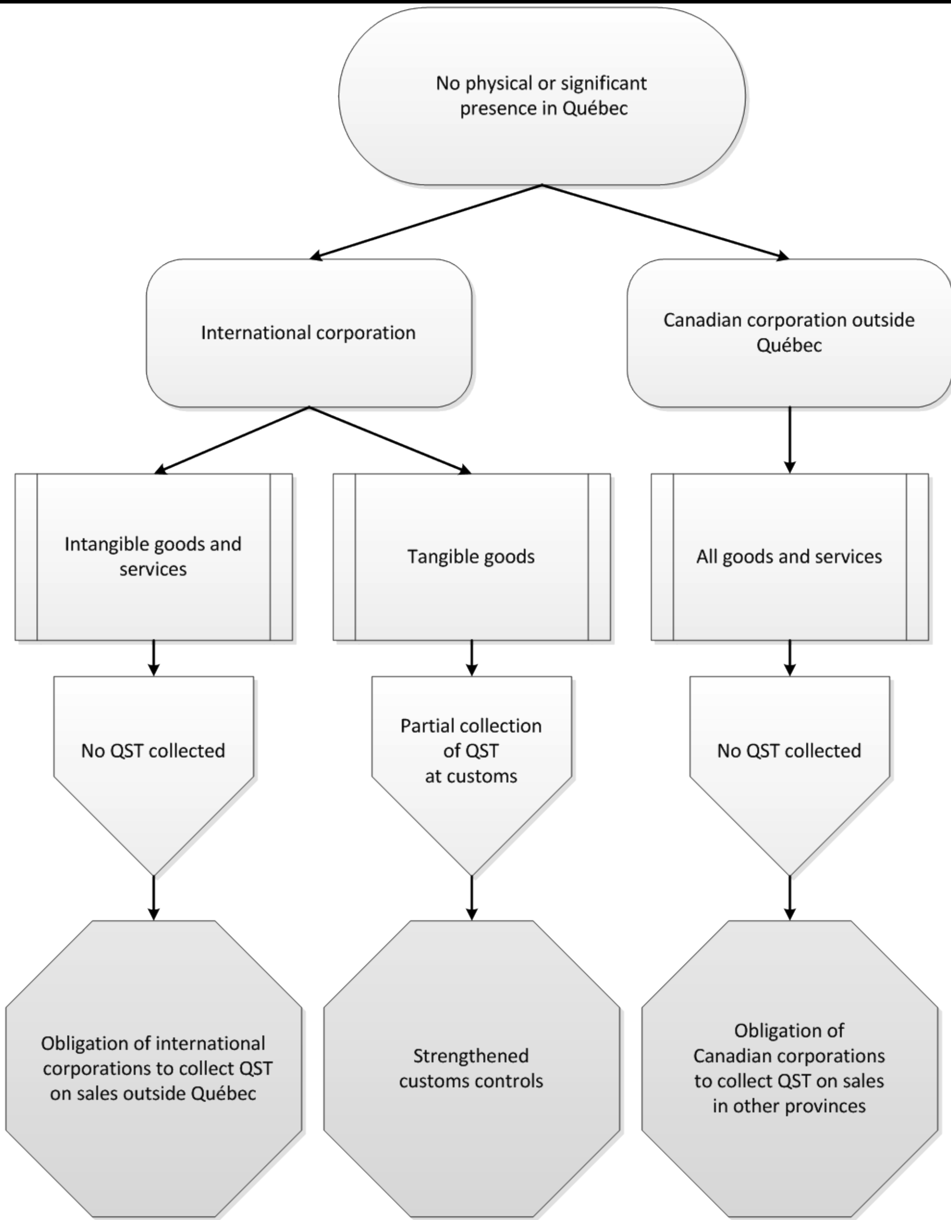
❑ A coordinated approach with the federal government and the other provinces

Because of the Canadian economy's high level of integration, a coordinated approach with the federal government and the other provincial governments is essential.

To this end, Québec must among others reach an agreement with the federal government to that effect. Discussions will have to take place with the federal government and the other provincial and territorial governments.

ILLUSTRATION 6

Solutions established by Québec to collect the Québec sales tax in the context of the digital economy



2.5 Québec's approach to the challenges of the sharing economy

The Québec government's strategy consists in ensuring that initiatives associated with the new economy are governed by both regulations and legislation that keep innovation, security and fairness in balance.

The OECD underscores the importance of implementing a regulatory and tax framework that takes the new economy into account and stimulates innovation, while preserving fairness. Québec agrees with this approach. The government wants to encourage the sharing economy as long as it complies with tax legislation and workers' rights.

❑ An open-minded approach

The Québec government thus has adopted an open-minded approach regarding activities associated with the new economy.

— The government plans to offer the sharing economy appropriate and fair supervision, while taking into account traditional trade activities.

— This supervision must be flexible to be able to adapt to future models.

❑ Two examples of enforcement

The government has implemented this approach concretely, by defining the regulations governing Uber and Airbnb activities in Québec.

■ The example of Uber in the paid passenger transportation industry

The paid passenger transportation industry is particularly confronted with challenges resulting from the new economy.

In September 2016, the Ministère des Transports, de la Mobilité durable et de l'Électrification des transports and Uber signed an agreement to implement a pilot project.

▪ The agreement signed between Revenu Québec and Uber

An agreement was also signed between Revenu Québec and Uber to ensure that sales taxes are collected on rides offered by Uber partner-drivers in the context of this project, in a manner that is fair to the taxi industry.

This agreement specifically stipulates that Uber will ensure that all of its partner-drivers register with the GST and Québec sales tax systems and that it will make quarterly remittances.

Just as for the traditional taxi industry, all rides are subject to GST and the Québec sales tax. The rates shown on the Uber platform include GST and the Québec sales tax. Thus, the government has ensured not only that taxes are collected and remitted, but that all of the driver-partners' income is reported.

It is an agreement with the company regarding administrative terms and conditions. It is the drivers who must register with the GST/HST and Québec sales tax systems, and not the company itself. Uber acts as an intermediary to ensure compliance with this obligation by partner-drivers.

Measures to ensure fairness within the paid passenger transportation industry

To ensure healthy competition and foster tax equity in the paid passenger transportation industry, the government announced, in Budget 2017-2018, that a technological solution using sales-recording modules will be implemented starting at the end of 2019 in vehicles offering taxi services, including traditional taxis.

- Providing customers with an invoice will also be mandatory.
- This technological solution will specifically ensure:
  - that information regarding the operation of a vehicle is collected and recorded for each driver;
  - that this information is sent confidentially and securely to Revenu Québec in real time.
- Moreover, inspection and audit activities will be carried out by Revenu Québec to validate that an invoice is issued.

■ The example of Airbnb in the tourist accommodation industry

The rapid growth of the sharing economy has had major impacts on the tourist accommodation industry as numerous sharing economy platforms have been created over the last few years.

To ensure customer safety and foster equity among tourist accommodation establishments, the government amended the *Act respecting tourist accommodation establishments*[13] in October 2015.

These amendments specifically simplified procedures to which operators are subject in order to be issued classifications and increased the Ministère du Tourisme's investigation and inspection powers to ensure compliance with the said act. The purpose of these amendments was specifically to make compliance by persons offering tourist accommodations[14] through sharing economy platforms easier.

▪ The agreement with Airbnb, Revenu Québec and the Ministère du Tourisme

An agreement with Airbnb, Revenu Québec and the Ministère du Tourisme was made public in August 2017.

This agreement stipulates that Airbnb will collect and remit the tax on accommodation fees[15] to Revenu Québec for the accommodation services offered in Québec through its platform.

In addition, under existing regulations, people offering accommodation through the platform may or may not be obligated to collect Québec sales tax depending on their total income.

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13 CQLR, chapter E-14.2.

14 A person who operates a tourist accommodation establishment located in a tourist region where this tax is applicable must register with the accommodation tax system and collect this tax on each accommodation unit rented to a customer, even if the said person is not registered in the Québec sales tax and GST systems as deemed a small supplier. The expression "tourist accommodation establishment" is defined in the *Regulation respecting tourist accommodation establishments* (CQLR, chapter E-14.2., r.1.); it refers to any establishment in which at least one accommodation unit is offered for rent to tourists, in return for payment, for a period not exceeding 31 days, on a regular basis and for which the unit's availability is made public.

15 Accommodation fees are the amounts charged by the hosts to customers for accommodation only and specifically exclude parking and housekeeping fees charged by the hosts, if applicable.

❑ A challenge that goes beyond sales tax

Expansion of the sharing economy not only raises issues concerning taxes but income reporting as well.

Foreign experiences are particularly interesting, specifically those in France: income above a given threshold is taxed and the platform has information obligations to both users and tax authorities.

Québec will continue its surveillance activity regarding initiatives undertaken abroad in terms of tax controls for the sharing economy.

Moreover, the Québec government plans to meet with other businesses active in the sharing economy in order, as the case may be, to reach agreements like those entered into with Uber and Airbnb.

Tax obligations by persons offering tourist accommodations through sharing economy platforms

Québec sales tax and GST

A person who rents tourist accommodation units to customers through a sharing economy platform must register and collect the Québec sales tax and GST, unless they are a small supplier.

− For a person to qualify as a "small supplier", the total income from the taxable properties and services they supply during a 12-month period must not exceed $30 000.

Accommodation tax

A person who operates a tourist accommodation establishment located in a tourist region where this tax is applicable must register with the accommodation tax system and collect the said tax on each accommodation unit rented to a customer, even if the said person is not registered in the Québec sales tax and GST systems as deemed a small supplier.

− The expression "tourist accommodation establishment" is defined in the *Regulation respecting tourist accommodation establishments*[1]; it refers to any establishment in which at least one accommodation unit is offered for rent to tourists, in return for payment, for a period not exceeding 31 days, on a regular basis and for which the unit's availability is made public.

Income tax

A person who rents accommodation units to customers through a sharing economy platform must include the income from the said rent in their tax return.

By virtue of the self-assessment principle, the person subject to tax, whether an individual or a corporation, is required to report all income, calculate the tax due on the said income and remit it to the tax authorities.

In the calculation of tax payable, a person subject to tax may deduct all expenses incurred to earn the taxable income.

1 CQLR, chapter E-14.2, r.1.

2.6 Impracticality of collecting the Québec sales tax via credit card transactions

The vast majority of online purchases are paid with payment cards, including credit cards. According to a survey carried out in 2014-2015[16], in Québec, 94.8% of online purchases outside Québec and outside Canada were paid for using credit cards, debit cards, Interac and PayPal.

❑ Proposed solution

This reality led to the consideration of collecting the Québec sales tax through the institutions that issue the credit cards.

It has been proposed to compel the institutions that issue the credit cards to collect the Québec sales tax on online purchases made by Québec consumers from suppliers outside Québec.

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16 2014-2015 survey of the Centre facilitating research and innovation in organizations, weighted percentage based on amount.

❑ An impractical solution

This solution is impractical, in fact, essentially for three reasons.

■ The necessary information is not available

Firstly, the payment intermediaries involved do not have all the information necessary to adequately collect the Québec sales tax.

The Québec sales tax does not apply to all properties and services, and it applies only if the properties or services are provided within Québec, or acquired for consumption or use in Québec. The information gathered by payment intermediaries does not enable to determine the nature of the properties or services invoiced, the location of the consumer at the time the transaction is made, or the location where the properties or services are provided to the consumer.

The only information known by payment intermediaries are the total transaction amount, payment currency and the supplier’s identity.

■ Double taxation, requiring reimbursement measures

Secondly, collection of the Québec sales tax by payment intermediaries would result in double taxation for tangible properties from abroad and sold by businesses that do not have any physical or significant presence in Québec.

As seen previously, in that case, collection of the Québec sales tax is done by the Canada Border Services Agency and Québec is seeking to make collection systematic.

Collection of the Québec sales tax by payment intermediaries on tangible properties from abroad and sold by businesses that do not have a physical or significant presence in Québec would result in double taxation of the Québec sales tax.

Thus, it would involve the implementation of reimbursement measures for consumers.

■ Tax avoidance risks

Thirdly, collection of the Québec sales tax through the institutions that issue the credit cards would probably result in a significant number of consumers from Québec using foreign credit cards or certain alternative methods of payment, such as bitcoin-type virtual currencies.

These consumers would thus use tax avoidance strategies to circumvent sales tax.

❑ The approach selected

For these various reasons, it is understandable that the government chose the following approach instead:

— require that foreign suppliers collect Québec sales tax for intangible properties and services sold in Québec;

— improve the effectiveness of Québec sales tax collection on imports on tangible properties from abroad;

— ensure collection of Québec sales tax on properties (tangible and intangible) and services from elsewhere in Canada.

This approach is the same one recommended by the OECD in its final report on Action 1 of the BEPS project.

3. RECOVERING THE PERSONAL INCOME TAX OWED

The government acts in three ways to recover the personal income tax owed:

- reaching an agreement with the federal government to receive the information obtained as a result of the detection, prevention and deterrence of money laundering and the financing of terrorist activities (international money transfers), as well as the information obtained in application of the Standard for Automatic Exchange of Information introduced by the OECD;

- allocating additional resources to Revenu Québec to use the financial and tax information to take action in the area of personal income tax;

- maintaining the voluntary disclosure program.

The first thing is to clearly specify the issues involved and assess the tax losses attributable to tax evasion actions by individuals.

3.1 Main issues and estimated tax losses

As was previously mentioned, for personal income tax, the fundamental rule is the concept of residence.

❑ Fundamental rule: concept of residence

Individuals residing in Québec on December 31 of the tax year are subject to Québec income tax.

In Québec, an individual's place of residence is established by taking into account a set of factors:

— factual residence—the location where the individual regularly, normally or usually lives, or the location where the individual maintains important residential ties (spouse, children, dwelling, etc.);

— deemed residence—if an individual lives in Québec for at least 183 days during a given year.

■ Tax base: total worldwide income

From this fundamental rule, the tax base for individuals is their total worldwide income. Québec residents must report all of their worldwide income for the year to tax authorities.

For individuals who are in business, taxable income is made up of total income after deducting expenses incurred to earn the said income.

❑ Main schemes associated with tax havens

Since individuals must report all of their wroldwide income, the schemes developed to avoid paying taxes consist mainly in concealing income from tax authorities.

It is perfectly legal for individuals to invest their money abroad, even in countries with low tax rates. The income earned from these investments must, however, be reported to tax authorities.

Frequently, the capital invested abroad was itself not reported the year it was earned in the country. It may be income from illegal or criminal activities, or income from legal activities that was not reported (e.g. “undeclared work”).

❑ Assessing tax losses

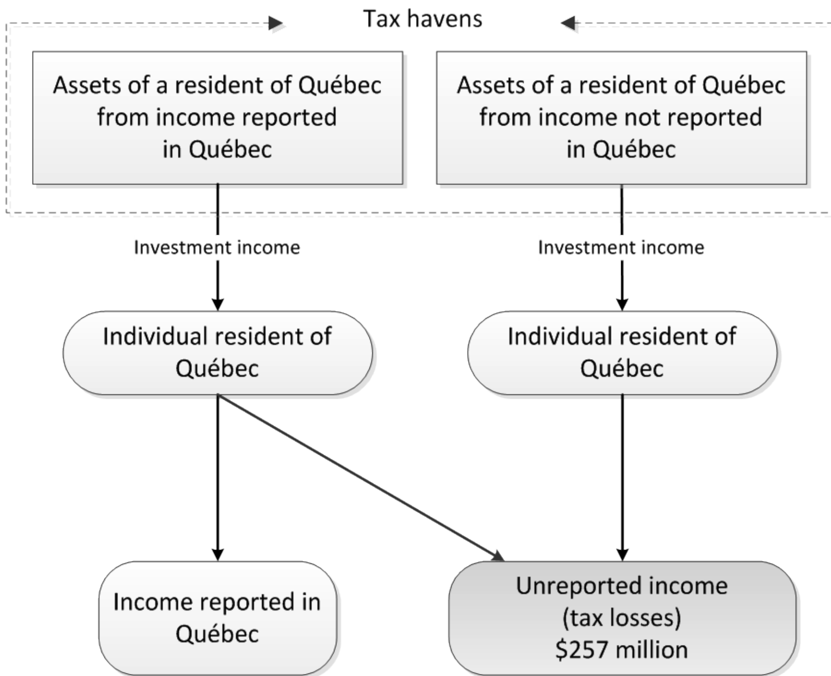
The Ministère des Finances du Québec bases its calculations partly on a study by Alstadsæter, Johannesen and Zucman (2017)[17] to estimate the total amount of Québec's offshore financial wealth.

To this end, the Ministère des Finances evaluates the offshore wealth of Canadians and divides this amount by the weighting of Québec's wealth in Canada for individual with an annual income of $150 000 or more. Québec's offshore financial wealth is approximately $13 billion.

As a result, the tax loss attributable to these tax schemes amounts to $257 million annually for the Québec government.[18]

ILLUSTRATION 7

Tax losses attributable to unreported income on offshore investments



Source: Ministère des Finances du Québec.

17 Annette Alstadsæter, Niels Johannesen and Gabriel Zucman, *Who Owns the Wealth in Tax Havens? Macro Evidence and Implications for Global Inequality*, [Online], 2017, 32 p. [http://www.nber.org/papers/w23805.pdf] (consulted on October 24, 2017).

18 The assumption is made that the rate of return on foreign investments is 7% and the taxation rate on this income would have been 25.75% if it had been reported in Québec.

❑ The government's response

Leaks from HSBC files, *Panama Papers* and more recently *Paradise Papers* illustrate well that numerous taxpayers have amounts elsewhere in the world that are sometimes illicit.

For tax authorities, there are two major difficulties in fighting against the schemes that have thus been brought to light:

- the taxpayers involved must be identified, which is not always easy;
- tax evasion cases must be detected and verified, using the tools that are available.

■ Obtaining more information, using it and maintaining the voluntary disclosure program

The government acts in both directions with the first two measures regarding the recovery of personal income tax owed.

- The government relies on the new standards established by OECD, which considerably limit the scope of bank secrecy, to obtain more information regarding tax evasion by individuals, which involves collaboration by the federal government.
- The government grants Revenu Québec additional resources to take advantage of this information.

In addition, the government is continuing the voluntary disclosure program, which has already produced major results.

3.2 Receiving information obtained by the federal government as a result of new international standards

Measure 7: Québec has agreed with the federal government to receive the tax information obtained as a result of the detection, prevention and deterrence of money laundering and the financing of terrorist activities (international electronic funds transfers), as well as the information obtained in application of the Standard for Automatic Exchange of Information introduced by the OECD

Over the last few years, new international standards were implemented dealing respectively with money laundering and automatic exchange of information. The purpose of these new standards is to end bank secrecy or to at least considerably limit their scope, by identifying taxpayers who participate in tax evasion.

Québec plans to rely on these new standards to obtain information that would allow it to recover personal income tax owed by taxpayers using tax havens.

❑ The new international standards

At the international level, two sets of standards have been instituted in recent years, helping substantially limit the scope of bank secrecy.

■ Fighting money laundering and terrorist financing

Effective January 1, 2015, some financial intermediaries, such as banks, must report incoming and outgoing international transfers of $10 000 or more to the Canada Revenue Agency.

The requirement applies to:

— financial entities (banks, credit unions, caisses populaires, financial services cooperatives, trust and loan companies, and deposit-taking Crown corporations);

— money services businesses and securities dealers;

— casinos.

The information to be reported includes the transmission of instructions for a transfer of funds made at the request of the client through any electronic, magnetic or optical device, telephone instrument or computer.

Standard for the automatic exchange of financial account information in tax matters

On June 2, 2015, the Canadian government signed the Multilateral Competent Authority Agreement arising from the Convention on Mutual Administrative Assistance in Tax Matters, and the protocol amending this convention, which implements the Standard for Automatic Exchange.

The Standard for Automatic Exchange of Financial Account Information in Tax Matters was introduced by the OECD and the G20 in 2014 and has been adopted by 95 jurisdictions.

Commitment of signatories

Countries that signed the agreement have pledged to support the international efforts made to strengthen cooperation against extra-territorial tax fraud.

Two or more countries can or will be able to automatically exchange financial information that is pertinent to the administration and application of their domestic tax legislation.

Requirements financial institutions must fulfil

The Multilateral Agreement requires financial institutions in Canada to identify accounts held by non-residents and report certain information on those accounts to the Canada Revenue Agency.

Under the Standard for Automatic Exchange, foreign tax authorities will provide the Canada Revenue Agency with information on accounts held in their jurisdictions by Canadian residents. On a reciprocal basis, the Agency will provide foreign tax authorities similar information on accounts held in Canada by residents of their jurisdictions.

The first information exchange is slated for 2018.

❑ Identifying the taxpayers concerned

Québec intends to use the new international standards to identify taxpayers who are engaging in tax evasion through tax havens.

The federal government has initiated talks in this regard.

- Revenu Québec and the Canada Revenue Agency have signed the Agreement Respecting the Exchange of Information Regarding Taxes and Other Duties. Revenu Québec and the Canada Revenue Agency are currently revising the agreement. Québec has obtained access to information arising from standards related to electronic funds transfers.

- Regarding the Standard for Automatic Exchange of Financial Account Information in Tax Matters, the Canada Revenue Agency has agreed to share that information with Revenu Québec.

The two organizations are working together to make these commitments operational.

3.3 Allocating additional resources to Revenu Québec to use the financial and tax information to take action in the area of personal income tax

Measure 8: In order to capitalize fully on the information received under Measure 7, Québec is mandating the Special Task Force on International Tax Planning to act in the area of personal income tax and allocating additional resources for that purpose

To capitalize fully on the information received under the new international standards and through the federal government's collaboration, Québec is allocating additional resources to Revenu Québec.

❑ Additional resources for Revenu Québec and the Ministère des Finances du Québec

Québec is strengthening Revenu Québec's capacity to combat tax evasion and tax avoidance phenomena by giving it 45 additional resources.

These resources, dedicated to using financial and fiscal data in order to take action in the area of personal income tax, will join Revenu Québec's Special Task Force on International Tax Planning, set up to expand its capacity to combat tax evasion and tax avoidance phenomena.

As stated in Measure 3, the Special Task Force will work with the Ministère des Finances du Québec on a constant basis.

It will work even more closely with the Canada Revenue Agency in processing and analyzing the information provided thanks to the new international standards implemented to combat money laundering and terrorist financing, as well as to ensure the automatic exchange of information.

❑ Obtaining and using information

The new international standards considerably restrict the scope of bank secrecy, which is the basis of tax evasion procedures that rely on tax havens.

For personal income tax, Québec is using an approach similar to the approach it uses for corporate tax, i.e. using the new OECD rules to get the necessary information, then using this information with a special team recruited for that purpose.

Both obtaining and using the information require federal government support in the effort.

3.4 Maintaining the voluntary disclosure program

Measure 9: Québec is continuing the voluntary disclosure program

Québec plans to continue the voluntary disclosure program through which Revenu Québec receives information essential to combating tax evasion.

❑ Revenu Québec's voluntary disclosure program

Revenu Québec's voluntary disclosure program is directly in line with its mission, which is to ensure that all taxpayers pay their fair share toward the funding of public services; its goal is tax fairness for all.

■ Paying the full amount of taxes owed to the State

Taxpayers who use the voluntary disclosure program are obligated to pay the taxes owed to the Québec government in full.

A voluntary disclosure must be complete, and requires full payment of duties payable with respect to periods of non-compliance: this means that the voluntary disclosure program requires full payment of the taxes owed. Unless a taxpayer cooperates and provides satisfactory explanations, Revenu Québec makes an estimated assessment to distribute the tax on the capital accrued over the enrichment and non-compliance period.

The initial capital is established as at a specific date and is presumed to be made up of the taxpayer's total untaxed income for one or more taxation years prior to that date, insofar as the source of the income and non-taxable nature are not otherwise explained.

The essence of the approach and method involves staggering taxation of the enrichment over the entire period of non-compliance and enrichment.

■ A very effective tool

The voluntary disclosure program is a very effective tool for encouraging people who have not met their tax obligations to report and pay unpaid amounts, or face heavy penalties.

Essentially, the voluntary disclosure program allows taxpayers to rectify their tax situation by, among other things, disclosing omissions or false statements made to Revenu Québec, thereby avoiding penalties.

■ A tool that complies with OECD prescriptions

As the OECD points out, a carefully administered voluntary disclosure system is beneficial not only for taxpayers who decide to take part, but also for the government and all other taxpayers who honour their tax obligations.[19]

Revenu Québec's voluntary disclosure program is not a process that accommodates and benefits taxpayers who are not fulfilling their obligations.

■ An essential source of information

In the end, abolishing the voluntary disclosure program would deprive Revenu Québec of a source of essential information for collecting personal income tax owed.

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19 Organisation for Economic Co-operation and Development, *Update on Voluntary Disclosure Programmes: A Pathway To Tax Compliance*, 7 August 2015, p. 9.

■ A program that delivers results

The voluntary disclosure program is delivering results, and the number of voluntary disclosures is rising steadily.

Between April 1, 2009 and March 31, 2017, through the program, $592.8 million in tax and interest has been recovered, including $320.6 million with respect to income earned in tax havens, and over $1.6 billion held in tax havens has been reported, amounts which are taxed as additional income. Without the program, these amounts would not have been recovered.

In all, 5 739 taxpayers were able to rectify their tax situations.

TABLE 2

Tax recovery resulting from processing voluntary disclosures – 2009-2010 to 2016-2017
(millions of dollars)

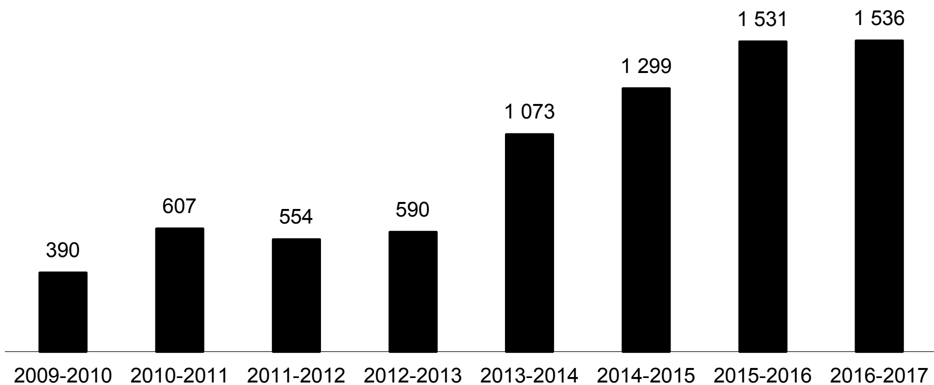
	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	Total
Tax recovery	39.2	31.0	51.2	56.0	53.5	63.2	92.1	206.6	**592.8**

Source: Revenu Québec.

The number of voluntary disclosure files has also been growing steadily since 2009-2010. In all, 7 580 files qualified for the program between 2009-2010 and 2016-2017. In 2016-2017, 1 536 taxpayers or agents sent disclosures to Revenu Québec.

CHART 1

Influx of voluntary disclosure files – 2009-2010 to 2016-2017



Source: Revenu Québec.

Strict conditions for eligibility for the voluntary disclosure program

Essential conditions must be met for a taxpayer to have access to the voluntary disclosure program.

To be eligible for the relief provided by the program, voluntary disclosure is subject to strict conditions: it must be spontaneous, complete and verifiable, and the fiscal debt must be paid.

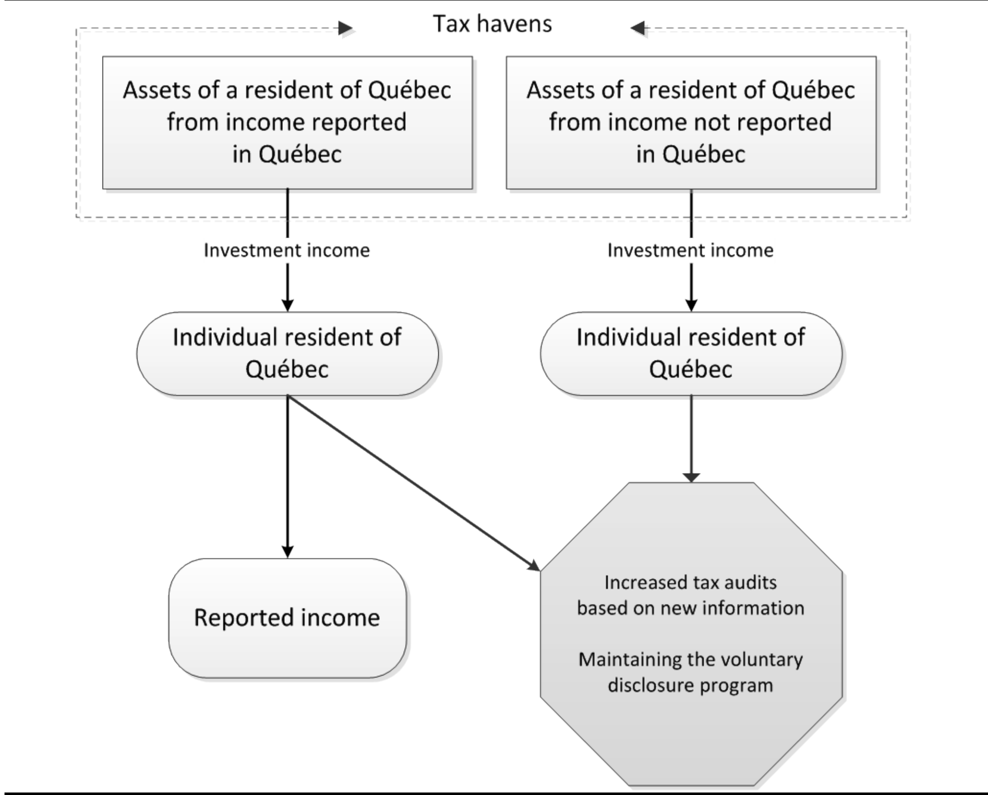
- The disclosure must be spontaneous.
  - A disclosure is not spontaneous where, on the date of the request, it is reasonable to believe, in light of an objectively demonstrable fact, that the person was aware that Revenu Québec or a body of another government that administers fiscal laws was about to undertake an examination, audit or investigation (control measure) regarding that person, or that such actions had already been taken. The same applies where, on that date, the person is being investigated for tax fraud by another body or authority (e.g. a police force).
- The disclosure must be complete.
  - A disclosure is complete where the person discloses, for all the fiscal laws, taxation years and periods in which the person's tax situation does not comply with the fiscal laws administered by Revenu Québec, all instances where they failed to meet their fiscal obligations.
  - For example, in a case involving amounts invested or accrued in a foreign country, the disclosure must result in taxation of all unreported amounts for all the years in question.
  - Likewise, foreign investments may be subject to income tax unless their tax-exempt status can be proven.
- The disclosure must be verifiable.
  - A disclosure is verifiable where the person provides Revenu Québec with all of the information, records and documents required to determine the accuracy of the facts submitted and the estimated duties.
- The fiscal debt must be paid.
  - A person making a voluntary disclosure must pay the related fiscal debt in its entirety.
  - In order for Revenu Québec to process the file, the estimated duties and interest must be paid.

Strict conditions for eligibility for the voluntary disclosure program (cont.)

- Disallowance of voluntary disclosure.
  - If any of the terms listed in interpretation bulletin ADM.4/R7 concerning the filing of a disclosure, the eligibility of a disclosure and the deadlines are not met, Revenu Québec may, at any point in the processing of a disclosure, notify the person that the disclosure has been disallowed.
  - In the event that a voluntary disclosure is disallowed, Revenu Québec may redetermine the amount of duties, interest and penalties payable by the person for the taxation years and periods in question and issue the person a notice of assessment in that regard. Revenu Québec may also institute legal proceedings.
- If the conditions listed above are met, Revenu Québec will not impose the penalties stipulated in the fiscal laws and will not institute legal proceedings.
- Revenu Québec's voluntary disclosure program includes a partial waiver of interest in some circumstances.
- Note also that this program cannot, under any circumstances, be used to avoid the penalties applied for late production of a return in relation to the statutory reporting dates, nor be used in circumstances in which it can be reasonably concluded that the disclosure is being made essentially for retroactive tax planning purposes.

ILLUSTRATION 8

Measures taken by Québec to recover personal income tax owed



4. STRENGTHENING TAX AND CORPORATE TRANSPARENCY

The government is acting in three ways to strengthen tax and corporate transparency by:

— making the information in Québec’s enterprise register more accessible;

— increasing the requirements for trust identification;

— strengthening the fight against aggressive tax planning.

4.1 Making the information in Québec's enterprise register more accessible

Measure 10: Québec is making the information in the Québec enterprise register more accessible

With its enterprise register, Québec set up one of the best business registration systems in Canada.

Registering with Québec's enterprise register is the gateway to the legitimate economy and the primary condition for doing business in Québec. Any enterprise that does business in Québec is required to register with the Registraire des entreprises, with some exceptions. Among other things, the enterprise register is a public database that is available to all citizens.

One function of the Registraire des entreprises is to keep the enterprise register and make it available to the public.

❑ Measures introduced to improve access

The Registraire will implement new measures in order to enhance the register data's accessibility and reliability, so as to:

- allow the public, under some conditions, to search the register using an individual's name;
- expand the list of government bodies that can obtain information from the register;
- enhance public protection and the reliability of register data;
- publicize the register.

❑ Allow the public to search the register using an individual's name

Currently, the public can consult the enterprise register to obtain personal information on individuals who have an interest in a given business using the business's number or name. However, because of the current provisions of the *Act respecting the legal publicity of enterprises*, it is not possible to search using an individual's name.

To make the economic environment more transparent and strengthen public protection, the act will be amended to allow the public to search using an individual's name.

Access methods designed to limit the impact on the privacy of people associated with businesses, such as a prohibition on using register data for commercial purposes or downloading it all, will be included in the bill that will implement this measure.

❑ Expand the list of organizations which can obtain information from the register

Currently, the Registraire des entreprises can transmit some or all of the information in the register to a government department, body or organization (requester) subsequent to an agreement with the Minister of Labour, Employment and Social Solidarity. Such an agreement allows the requester to access the information in the enterprise register and, in particular, to be notified when an enterprise changes its information.

These agreements also empower some departments and bodies, such as Revenu Québec, to use the information in the register to aggregate data based on individuals' names and home addresses. However, the law stipulates that only certain organizations can be characterized as government bodies and thus empowered to enter into such agreements.

■ Access for a greater number of government entities

At a time when government efforts are converging to wage a stronger fight against fraud and corruption, laws will be amended to expand the opportunity of making such agreements to a larger number of government entities.

Among other things, the expansion will help make the bodies more efficient in in their investigative and record-keeping work.

Moreover, in collaboration with the departments and bodies involved, including Revenu Québec, the Registraire des entreprises will develop an IT solution to streamline the use of register data by investigative bodies and thus increase their investigative capacity.

❑ Enhance public protection and the reliability of register data

Various measures will be introduced, in particular to ensure the data's quality and enhance public protection.

— To ensure the data in the register is reliable, the Act will be amended to give the Registraire des entreprises the express power to require the documents or information needed to verify the accuracy of the information declared by businesses. Moreover, the Registraire will be allowed to refuse a declaration of registration if the enterprise does not comply with the request.

— The government will amend the *Act respecting the legal publicity of enterprises* and applicable regulations to require enterprises to declare certain additional information in the framework of a declaration of registration or annual update.

— For the purposes of dissuasion, and to protect the public and enterprises, the application of penal sanctions for producing false, incomplete or misleading declarations will be expanded to anyone who does so, rather than solely those directly concerned in the enterprise.

— The prescriptive period for a penal infraction of the *Act respecting the legal publicity of enterprise*s, currently one year from the date the infraction was committed, will be extended.

❑ Publicize the register

The register is a public database available to all citizens. However, some misunderstanding of the enterprise register seems to persist.

To promote the register and the services offered, an information campaign will be launched to raise awareness of the existence of this highly accessible central public register.

4.2 Increasing the requirements for trust identification

Measure 11: Québec enables better identification of trusts subject to Québec tax, and trusts that could have major ties to Québec

To enhance transparency and ensure the integrity of the tax system, the government is announcing that it is continuing the initiatives undertaken with respect to the tax system for trusts.

❑ Stronger rules

The government will strengthen the rules on identifying trusts by formulating requirements for obtaining a tax identification number.

The new rules will, among other things, give Revenu Québec a better knowledge of the trusts, their key actors, assets and activities, and validate compliance with tax legislation.

The measures will also allow Revenu Québec to make sure that the trusts are not being used as an instrument for tax evasion or abusive tax avoidance.

❑ Federal government efforts

The Québec government will pay close attention to the efforts initiated by the federal government in this area, to improve data gathering on beneficial ownership, and information on potentially adopting new measures on trust reporting requirements.

Enhanced transparency

Background

Both the Québec and federal governments are currently striving to enhance transparency in tax matters. It is also essential to understand corporate ownership and control to protect the integrity of the tax and financial systems.

March 2017 federal government announcements

When it submitted its 2017 budget, the federal government announced a firm intention to implement strong standards ensuring transparency regarding beneficial ownership and corporations, so as to protect against tax evasion and avoidance, while continuing to facilitate business in Canada. It is also looking at how to increase the requirements for tax reporting by trusts to enhance data collection on beneficial ownership.

The federal government thus announced that it will work with the provinces and territories to set up a national plan to enhance the transparency of corporations and legal arrangements, and improve the availability of information on beneficial ownership.

Québec is participating actively in the work

Further to the federal government's announcement, the Québec government is participating in joint initiatives with the federal government, provinces and territories aimed at enhancing the transparency of corporations and legal arrangements.

4.3 Stronger battle against aggressive tax planning

Measure 12: Québec is waging a stronger battle against aggressive tax planning

The government is announcing that it is intensifying the battle against aggressive tax planning.

❑ Mandatory disclosure

One of the tools Revenu Québec has to combat aggressive tax planning is the mandatory disclosure mechanism.

Under this rule, any taxpayer or partnership the taxpayer is a member of that, in a taxation year, carries out a transaction for which the advisor's remuneration is conditional on the occurrence of certain events (including getting a tax advantage), or a transaction for which the advisor requires confidentiality from the taxpayer, must report the transaction to Revenu Québec if it results in a tax advantage for the taxpayer of $25 000 or more, or an impact on income of $100 000 or more.

This mechanism was enhanced with the March 2015 budget. Revenu Québec monitors the application of these rules closely.

❑ Three measures to foster the integrity of the tax system

To wage a stronger fight against aggressive tax planning, three additional measures will be taken.

Tax legislation will therefore be amended to:

- increase the current penalty of 25% to 50% when an assessment is issued based on the general anti-avoidance rule;
- increase the penalty currently set out for a promoter of a transaction or a series of transactions for which an assessment is issued based on the general anti-avoidance rule from 12.5% to 100% of the fees paid to the promoter;
- suspend the prescription period for issuing a new assessment when it is issued in the context of a transaction made by a taxpayer who is subject to a formal demand concerning unnamed persons and involves the application of the general anti-avoidance rule.

5. BLOCKING ACCESS TO GOVERNMENT CONTRACTS FOR CORPORATIONS AND INDIVIDUALS THAT USE ABUSIVE TAX AVOIDANCE STRATEGIES, INCLUDING ABUSIVE TAX AVOIDANCE USING TAX HAVENS

To block access to government contracts for businesses and individuals that use abusive tax avoidance strategies, the government is acting in two ways by:

— expanding the bars to contracting with the State to include abusive tax avoidance, including abusive tax avoidance using tax havens;

— implementing a whistleblower program.

5.1 Expanding the bars to contracting with the State to include abusive tax avoidance, including abusive tax avoidance using tax havens

Measure 13: Québec is expanding the bars to contracting with the State set out by the Autorité des marchés financiers to include abusive tax avoidance, including abusive tax avoidance using tax havens

The government is announcing additional measures to establish different business relations between the Québec government and some of its suppliers that practise abusive tax avoidance.

These measures will make it possible to:

— remove from the roster of government suppliers those that practice abusive tax avoidance, including abusive tax avoidance using tax havens;

— deprive professional firms that aided in the practice of abusive tax avoidance of government contracts.

❑ The government cuts off suppliers who have practised abusive tax avoidance

Enterprises or individuals that have evaded tax have already been forbidden from signing contracts with the Québec government.

The government will add new exclusion criteria for issuing authorizations to contract by the Autorité des marchés financiers.

In short, taxpayers who have carried out a transaction or series of transactions resulting in final assessments based on the general anti-avoidance rule will be unable to obtain authorization from the Autorité des marchés financiers to bid for public contracts and will be listed in the Register of Enterprises Ineligible for Public Contracts.

This will also apply to partnerships where one of the members has received such an assessment.

The promoter of a transaction or series of transactions leading to the issuance of a final return based on the General anti-avoidance rule, shall no longer be able to obtain from the Autorité des marchés financiers the authorization to bid on public contracts.

Actions already taken to ensure the probity of Québec government suppliers

Several actions have already been taken to ensure the probity of suppliers bidding for public contracts.

- For contracts over $25 000, bidders must attach an Attestation from Revenu Québec to their tenders.
  - The attestation confirms that the enterprise filed the returns and reports required under Québec tax legislation, has no outstanding debts to the Minister of Revenue, and has not made a payment agreement or had its debt recovery legally suspended.
  - Bidders in default can regularize their situations in order to obtain an attestation.
- Since this measure was implemented in 2010, 417 865 attestations have been issued.
- The measure resulted in a settlement of the accounts receivable of 13 963 enterprises for a total amount of $223.1 million in revenue.

In 2016 the attestation requirement was extended to construction and employment agency contracts.

- Since this measure was implemented, 102 973 attestations have been authenticated by private sector stakeholders.
- Total revenues of $45.9 million were recorded, from 5 443 non-compliant enterprises.

Attestation-related measures for public contracts were extended with the introduction of the register of enterprises ineligible for public contracts.

- The names of businesses that have committed certain offences are recorded in the Register. Once an enterprise's name has been entered, it will not be awarded a public contract or subcontract or allowed to continue carrying out an existing one.

The probity requirements for enterprises wishing to work with the government have been further strengthened: enterprises must obtain authorization to contract from the Autorité des marchés financiers in order to bid on public contracts with expenses exceeding certain thresholds.

- Authorization is granted following an examination of several automatic exclusion criteria, which are set out in the Act respecting contracting by public bodies. Two of these criteria are that the business does not appear in the register of enterprises ineligible for public contracts and that it has an attestation from Revenu Québec.

Even if there is no reason for an automatic exclusion, a certain number of elements can be considered with regard to the past and present behaviour of the business and its officers to exclude it.

5.2 Implementing a whistleblower program

Measure 14: Québec implements a tax informant program

Revenu Québec has an informant program through which anyone who believe that a person or enterprise is not meeting its tax obligations can inform Revenu Québec accordingly, either anonymously or not.

However, this program does not offer a “reward.” There are situations where delivering the information will entail a significant personal, social or professional cost for the informant.

❑ The federal government program: for information of an international nature

In 2014 the Canada Revenue Agency launched the “Offshore Tax Informant Program.” This program includes a reward for informants.

Revenu Québec is reaping the benefits of the program under the Agreement Concerning the Exchange of Information Regarding Taxes and Other Duties with the Canada Revenue Agency.

The federal whistleblower program expressly targets tax information on overseas activities.

❑ Québec adopts an approach complementing the federal program

Québec has decided to adopt an approach complementing this program by targeting abusive tax planning activities taking place in Québec.

Offering a reward as the Canada Revenue Agency does may encourage people who are aware of transactions aimed at avoiding the payment of Québec income tax or other duties payable under Québec tax legislation to inform Revenu Québec accordingly.

❑ The Québec program

Quebec will therefore implement a tax informant program that is complementary to the Canada Revenue Agency program.

The Québec tax informant program will basically target information that may not be easily accessed by Revenu Québec, specifically smokescreen transactions.

It will also target operations leading to application of the general anti-avoidance rule.

Informants will be required to provide information leading to the recovery of at least $100 000 under Québec tax legislation to be eligible for an award.

■ Exclusions

Information related to any transaction or series of transactions already brought to the attention of Revenu Québec, whether following voluntary disclosure, preventive disclosure, mandatory disclosure or any other manner of disclosure, will be excluded from the Québec tax informant program.

Information related to an international tax avoidance activity targeted by the Canada Revenue Agency's Offshore Tax Informant Program will also be excluded from application of the Québec tax informant program.

The same will apply to information about a transaction or series of transactions already brought to the attention of the Canada Revenue Agency, whether such information has been gathered following voluntary disclosure, presentation of a Reportable Transaction Information Return or in any other manner.

■ Reward amount

Revenu Québec will sign a contract with the informant.

The reward may be as much as 15% of the duties, not including penalties and interest, recovered by Revenu Québec under Québec tax legislation following receipt of the information.

The rate of reward will be based on the quality, relevance and value of the information conveyed to Revenu Québec.

The contract will also take into consideration the informant's cooperation throughout the information review process.

❑ A program open to all natural persons

Any natural person may be an informant under the Québec tax informant program, unless:

- that person benefited directly or indirectly from one or more reported transactions (unless he/she can demonstrate to Revenu Québec's satisfaction that he/she did not participate);

- that person proposed the operation or was paid for the completion or planning of a transaction or a series of reported transactions;

- that person is an employee of Revenu Québec, the Canada Revenue Agency or another tax authority, or in certain cases is a former employee of one of those authorities.

CONCLUSION

Faced with the tax haven phenomenon, the government is stepping up its efforts and assuming responsibility by making public and implementing the Tax Fairness Action Plan. With this action plan, the government is more proactive than ever to recover sums that escape the Public Treasury. The government is implementing a set of measures and initiatives for better tax revenue collection.

These measures constitute a series of additional responses to the challenge of tax havens and the difficulties of collecting taxes caused by new technologies.

❑ Stringent monitoring

These measures will be monitored in the budget, as well as in the annual management reports of the Ministère des Finances and Revenu Québec.

The objective of collecting tax owing to the Québec government in the new business context will be expressly included in the strategic planning of the Ministère des Finances and Revenu Québec.

❑ Respected principles and clear objectives

These measures respect the principles endorsed by the government to strike a balance between the fight against tax havens and the requirements of economic development, namely:

— ensuring tax integrity by following the spirit of the OECD's actions in the fight against base erosion and profit shifting;

— being fair to all enterprises carrying out activities in Québec, but also to individuals;

— ensuring that measures cannot be circumvented by moving a place of business from Québec to another province in Canada;

— consulting as much as possible with the federal government.

With this set of measures, the government is supporting international tax cooperation to fight tax evasion and abusive tax avoidance. For the government, it is essential to both strengthen the legitimate confidence of all citizens in the fairness of tax laws and regulations and ensure that public services are fully funded.

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APPENDIX 1: ISSUES

1.1 Revenue collection by the Québec government

1.1.1 The Québec government's revenue sources

In 2016-2017 the Québec government's consolidated revenue stood at $102.9 billion, broken down as follows:

— consolidated own-source revenue ($82.7 billion);

— federal transfers ($20.2 billion).

Consolidated own-source revenue is composed primarily of tax revenue, the change in which is closely tied to economic activity in Québec and to changes in the tax systems.

— It also includes revenue from other sources, namely, duties and permits, revenue from government enterprises and miscellaneous revenue such as interest, the sale of goods and services and fines, forfeitures and recoveries.

In 2016-2017, tax revenue alone reached $64.1 billion—77.5% of own-source revenue and 62.3% of its consolidated revenue. Tax revenue therefore plays a crucial role in the funding of government services.

The following revenue sources are generally included in tax revenue:

— personal income tax ($29.2 billion);

— consumption taxes ($19.3 billion);

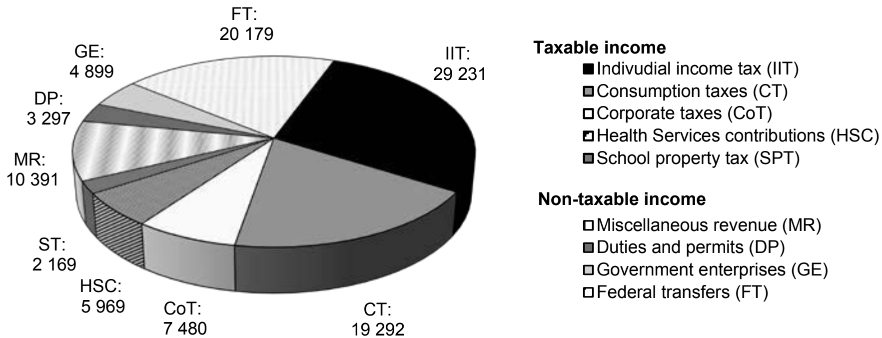
— corporate taxes ($7.5 billion);

— contributions for health services ($6.0 billion);

— school property tax ($2.2 billion).

CHART 1

Breakdown of the government's consolidated revenue – 2016-2017
(millions of dollars)



Source: Ministère des Finances du Québec.

1.1.2 Revenue collection is generally effective

The collection of tax revenue owed to the government by law is a major issue for its efficiency. Collection of such revenue is generally effective.

— The long-term trend in the government's consolidated own-source revenue as a percentage of GDP shows relative stability.

— As well, further analysis of the taxable income of individuals and corporations—the tax bases most likely to be affected by taxpayer initiatives seeking to avoid paying income tax—does not reveal erosion of the tax base. In Québec the opposite has occurred. The income of both individuals and corporations has risen relative to GDP in the last 20 years.

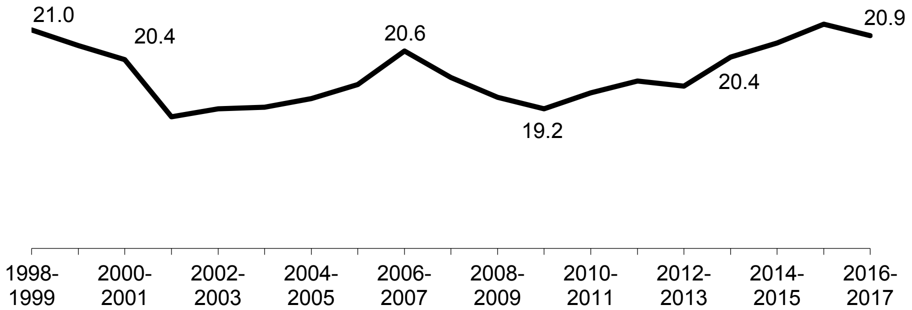
❑ Stable revenue relative to GDP

In 2016-2017 consolidated own-source revenue collected by the government—consolidated revenue not including federal transfers—accounted for 20.9% of nominal GDP, established at almost $396 billion. That percentage has remained fairly stable for nearly 20 years.

The share of consolidated revenue in the economy averaged 20% between 1998-1999 and 2016-2017.

CHART 2

Change in consolidated own-source revenue in the economy
(percentage of nominal GDP)



1998-1999 2000-2001 2002-2003 2004-2005 2006-2007 2008-2009 2010-2011 2012-2013 2014-2015 2016-2017

Source: Ministère des Finances du Québec.

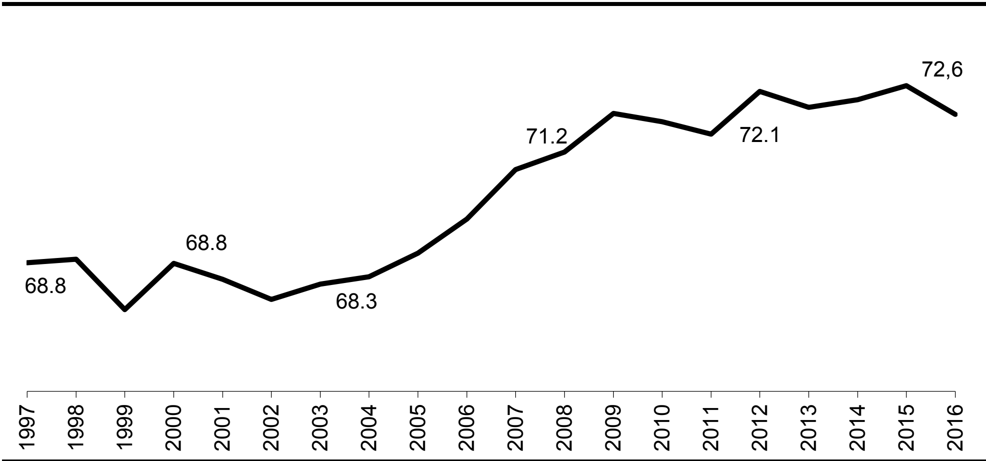
Taxation of income: the principle of self-assessment
In Québec, like in Canada and a large number of developed countries, the principle of self-assessment underpins the income tax system. All taxpayers are required to report their contributions as defined by law, and remit them to the tax authorities. Revenu Québec is responsible for administering taxation; it does audits to ensure that tax returns are accurate and that the amounts owing are paid. It is impossible to audit all taxpayers, so Revenu Québec proceeds on a sample basis, using criteria for determining the risk of non-compliance with the law.

❑ Total income of individuals

From 1997 to 2016 the total income of individuals rose from 68.8% to 72.6% of GDP. In 2016 the total income of individuals reached almost $285 billion, compared to GDP of $392 billion. During that time the total income of individuals increased an average of 4.1% a year, while GDP growth averaged 3.8%.

CHART 3

Change in weight of total income of individuals in the economy
(percentage of nominal GDP)



Source: Ministère des Finances du Québec.

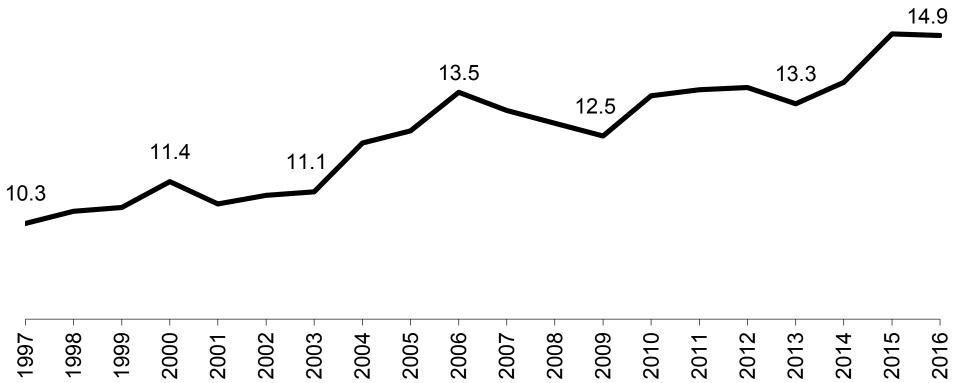
Definition of total income of individuals
The total income of individuals as a whole corresponds to employment income, business and professional income (e.g. net business income), taxable capital gains, investment income, employment insurance benefits, social assistance benefits (e.g. last resort financial assistance), retirement and other income (e.g. parental insurance benefits).

❑ Taxable income of corporations

The same phenomenon has been noted for the taxable income of corporations. From 1997 to 2016 the taxable income of corporations in Québec increased from 10.3% to 14.9% of GDP. The taxable income of corporations reached $58 billion, compared to GDP of $392 billion. During the time period observed, the taxable income of corporations increased an average of 5.8% a year, while GDP grew 3.8% a year.

CHART 4

Change in taxable corporate income in the economy
(percentage of nominal GDP)



Source: Ministère des Finances du Québec.

Definition of taxable income of corporations
In Québec the taxable income of Canadian corporations as a whole is obtained by applying the proportion of business carried on in Québec to the worldwide taxable income reported. In general, the proportion of business carried on in Québec represents the average of income realized and wages paid in Québec, compared to the corporation's total income realized and total wages paid. A corporation's worldwide taxable income is obtained by subtracting actual deductions (gifts, deductible taxable dividends, losses carried over) from net income for income tax calculation purposes. Net income corresponds to net earnings, as indicated in the financial statements, adjusted for capital cost allowance, provisions and reserves.

❑ A good indicator of the ability to collect revenue

Change in taxable income is a good indicator of the government's ability to collect revenue owed to it, because only trends affecting the taxable base are taken into account, irrespective of any changes made to the tax rate during the period. The growth in the share of taxable income reported relative to GDP is partly due to the tax audit measures that were introduced.

TABLE 1

Total taxable personal and corporate income
(millions of dollars)

	2016
Nominal GDP	392 173
Personal income tax	
Total income	284 811
(% of nominal GDP)	*72.6*
Corporate taxes	
Taxable income	58 487
(% of nominal GDP)	*14.9*

Source: Ministère des Finances du Québec.

1.2 Sources and magnitude of tax loss in Québec

Because some taxpayers (individuals and businesses) do not comply with tax rules, not all the tax revenues owed to the government are collected in order to fund public services. Non-compliance takes various forms.

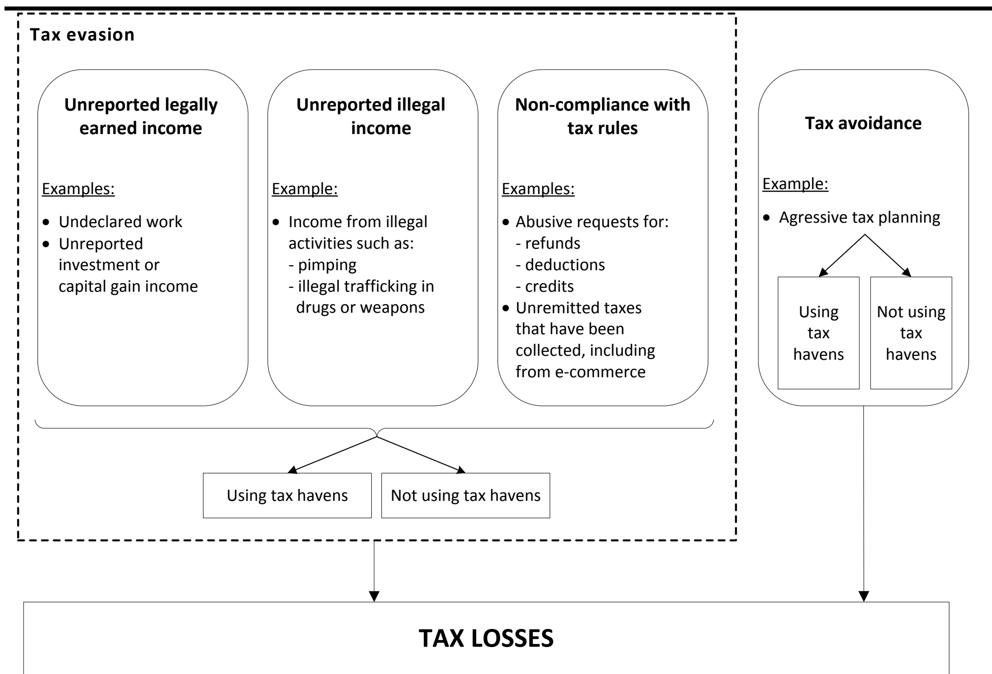
1.2.1 Sources of tax loss

The tax regime is governed by various laws and regulations based on which the government expects to collect a certain amount of tax revenue. When taxpayers intentionally or unintentionally fail to comply with these laws and regulations, the government does not collect all the tax revenue to which it is entitled. The gap is referred to as tax loss.

Tax loss stems from four sources, all of which might involve tax havens. The first three are the result of illegal acts. When we speak of a tax evasion, we are specifically referring to one or more of these three sources. The fourth source refers to tax avoidance.

ILLUSTRATION 1

Origin of tax loss



Source: Ministère des Finances du Québec.

Description of tax loss sources

Unreported legally earned income

The first source of tax loss is legally earned income that is either totally or partially unreported by taxpayers.

The means of earning this income is legal but failing to report all or part of it for income tax purposes is not.

When the unreported income is earned from employment, it is considered undeclared work. For companies, it is considered concealed profits. In both cases, it can also come from unreported investments or capital gains.

Unreported illegal income

The second source of tax loss is unreported illegal income.

Income from illegal and criminal activities is taxable under tax legislation. Given its nature, the income generated by this type of activity is rarely reported, leading to tax loss.

Non-compliance with tax rules

The third source is non-compliance with tax rules.

This happens when taxpayers fraudulently request refunds, deductions or credits based on, for example, false invoices, or do not remit the taxes normally collected in the course of their activities.

Tax avoidance

The fourth source is tax avoidance. This category of tax loss involves interpreting tax legislation in a manner that pushes the limits of the law by operating within the letter but not the spirit of the law.

This source includes aggressive tax planning that reduces income tax through often complex transactions that obscure the fact that the tax reduction arrangement is not consistent with the spirit of the law.

❑ Tax havens

The revenue lost through these four sources is sometimes hidden in tax havens, which shield profits earned as a result of tax evasion or avoidance by making them difficult to detect. Tax havens are usually jurisdictions with:

— a lack of transparency in the operation of their tax system and either very low or no tax rates;

— strict bank secrecy legislation; and

— a lack of effective exchange of information with other countries.

Individuals typically use tax havens to defraud the tax authorities or to launder money. Companies use them mainly to reduce or not pay tax on their profits through tax avoidance.

1.2.2 **Estimating the magnitude of the tax loss in Québec**

The Ministère des Finances du Québec, in collaboration with Revenu Québec, regularly estimates the tax loss due to unreported legally earned income. However, major obstacles make it difficult to estimate the tax loss due to the concealment of illegally earned income, non-compliance with tax rules and tax avoidance.

❑ Tax loss due to unreported legally earned income

The tax loss attributable to legally earned income not reported by taxpayers are regularly estimated by the Ministère des Finances du Québec in order to pinpoint sectors with a higher risk of tax evasion and to detect trends so as to allow the government to fine tune its counter-measures in the fight against tax evasion.

Tax loss estimation method
The Ministère des Finances du Québec estimates the tax loss by breaking down the GDP by sector. A tax evasion rate is then determined and applied to each one. The result of this calculation shows the magnitude of the underground economy by sector. To calculate the tax loss, the corresponding average sales tax and taxation rates are applied to the estimated underground economy for each sector.

Results

In 2015, the underground economy accounted for 3.4% of Québec's GDP, less than the estimates for previous years: 3.8% in 2013, 4.2% in 2008 and 4.0% in 2002.

TABLE 2

Estimated tax loss due to unreported legally earned income
(billions of dollars, unless otherwise indicated)

	Tax evasion rate (% of GDP)	Underground economy	Tax loss
2002	4.0	9.7	2.5
2008	4.2	12.8	3.5
2013	3.8	13.7	3.9
2015	3.4	13.1	3.8

Sources: Statistics Canada, Revenu Québec and the Ministère des Finances du Québec.

Unreported legally earned wealth (underground economy) was $13.1 billion. Consequently, the tax loss due to unreported legally earned income was $3.8 billion in 2015 or approximately 6% of the government's tax revenue.

Calculation of the magnitude of tax evasion and avoidance by the Government of Canada

So far, the federal government has not disclosed the magnitude of tax evasion and avoidance in Canada. In other words, there is no national figure on tax losses attributable to tax evasion or avoidance due to, in particular, the use of tax havens.

The federal government has, however, begun the task of estimating the tax gap in Canada, which is defined as the difference between the tax that would be paid if all obligations were fully met in all instances, and the tax actually paid and collected.

The first study to that end is on the tax gap related to the goods and services tax/harmonized sales tax (GST/HST). An analysis by the Canada Revenue Agency found that the average estimated GST/HST gap over the 2000 to 2014 period was 5.6%. This percentage represents the potential tax revenue loss due to taxpayer non-compliance.

Another study analyzed the tax gap due to unreported taxable income by estimating assessed taxes not collected and unreported income earned in the underground economy. For 2014, the Canada Revenue Agency estimates the tax gap at $8.7 billion or 6.4% of personal income tax revenues.

The next study, which will look at the international component of the tax gap, will be published in 2018 according to the Canada Revenue Agency.

1.3 Tax loss attributable to tax havens

Estimating the tax loss arising from the use of tax havens is constrained by the lack of data on its prevalence and impact in terms of tax loss for the countries affected. The data is also scarce for Canada and almost non-existent for Québec.

Any attempt to estimate the tax loss in Québec due to tax havens is hindered by lack of data. Consequently, other methods were developed.

Thus, the government has been able to estimate, for 2017, the tax loss attributable to individual and corporate use of tax havens. The amount is approximately $686 million:

— $159 million attributable to profit shifting by multinationals;

— $270 million attributable to the non-collection of sales tax on online purchases of properties and services;

— $257 million attributable to the use of tax havens by individuals.

TABLE 3

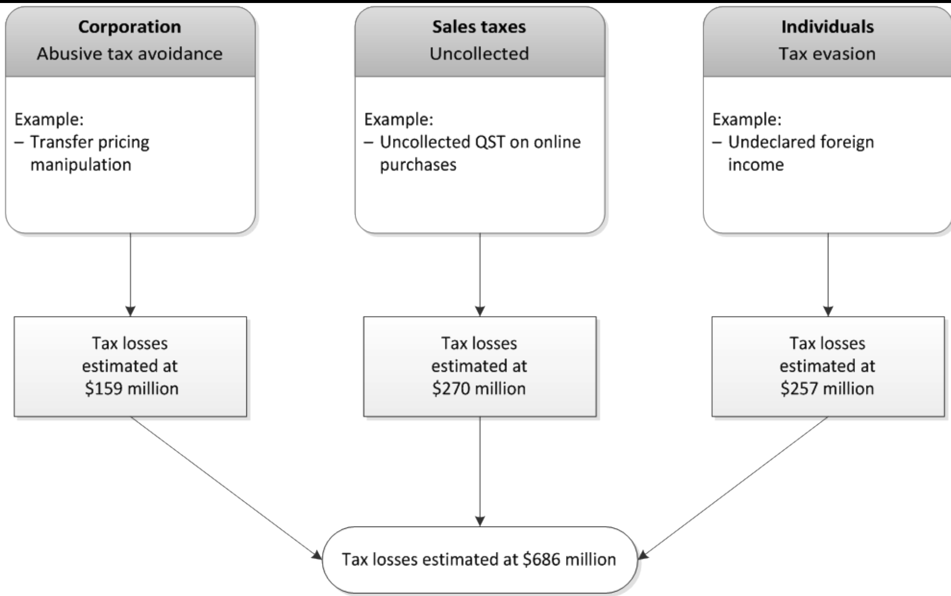
Origin of international tax loss in Québec – 2017
(millions of dollars)

	Tax loss
Tax avoidance due to profit shifting	159
E-commerce	270
Unreported personal offshore investments	257
TOTAL	**686**

Sources: Revenu Québec and the Ministère des Finances du Québec.

ILLUSTRATION 2

Tax loss attributable to tax havens



Sources: Revenu Québec and the Ministère des Finances du Québec.

1.3.1 Magnitude of tax loss due to profit shifting

Corporate tax avoidance entails tax planning aimed at reducing taxes by interpreting the law in a manner bordering on the illegal.

- Tax avoidance planning operates within the letter but not the spirit of the law.
- This type of planning involves complex transactions comprising several steps and using sophisticated mechanisms that make it impossible to immediately detect whether they respect the spirit of the law.

One tax avoidance method used by multinationals to reduce their tax burden is to shift profits to low-tax rate jurisdictions.

- This practice entails tax losses for the governments concerned.

❑ OECD estimations of worldwide tax loss due to profit shifting

In its report *Measuring and Monitoring BEPS*[21] published in 2015, the OECD presents a methodology for estimating the impact of base erosion and profit shifting on global corporate tax revenues.

— The analysis is based on the financial statements of 1.2 million multinationals in 46 mostly OECD and G20 countries.

The OECD model distinguishes between two tax planning channels involving base erosion and profit shifting:

— profit shifting, that is, diverting profits to jurisdictions with lower tax rates, namely by optimizing transfer pricing and the location of intangible assets and debt;

— exploiting differences in different countries' tax systems, which allow multinationals to take advantage of tax rate differentials, preferential tax treatment and negotiated rates.

Transfer pricing
Transfer pricing and arm's length A transfer price is the price agreed upon by a supplier and a recipient for given supplies. Supplies may include goods, services, fees, interest, security, management fees and fees for the use of intellectual property such as trademarks and patents. Both federal and Québec laws have rules on transfer pricing. They are designed to protect the tax base and encourage taxpayers to comply with the arm's length principle. Cross-border transactions undertaken between a Canadian taxpayer and a related non-resident must be comparable to those undertaken between parties dealing at arm's length. When the conditions of such cross-border transactions fail to comply with the arm's length principle, corrections can be made to the income of the Canadian taxpayer. Corrections correspond to the value or nature of amounts that would have been determined if the terms concluded or taxed between the participants in a transaction or series of transactions had been those that would have applied between non-related parties.

[21] Organisation for Economic Co-operation and Development, *Measuring and Monitoring BEPS, Action 11 – 2015 Final Report*, October 5, 2015.

■ Results of the OECD estimation

To estimate the tax loss due to profit shifting, the OECD uses a model that isolates the effect of tax rate differentials on the reported profits of members of a corporate group residing in various jurisdictions.

Assuming direct proportionality between shifted profits and corporate income tax paid by multinationals, the OECD estimates that two thirds of worldwide tax losses associated with base erosion and profit shifting are attributable to profit shifting, averaging 3.4% of corporate tax revenue in 2014 (US$97 billion).

❑ Estimation method for Québec

Although there is abundant literature on profit shifting, the problem is difficult to quantify in Québec due to, among other things, conceptual challenges and lack of data.

— There is no exhaustive information on the organizational structures of multinationals with operations in Québec or any data bank on their tax returns in other jurisdictions where they conduct business.

■ Adapting the OECD model for Québec

The approach selected for estimating the profits shifted from Québec involves adapting the OECD methodology to actual data on multinationals with operations in Québec.

Rather than simply extrapolating from the OECD results, using actual data lends to a more accurate analysis that reflects Québec's reality, in particular as regards estimating the tax base that could be subject to tax schemes.

■ Data used

The Ministère des Finances du Québec created a sample of 230 corporate groups active in Québec and abroad.

— The sample was used to calculate the tax rate differentials between Québec and countries where Québec multinationals have the opportunity to shift profits, based on the place of residence of their partner companies.

In addition, together with Revenu Québec, the Ministère des Finances du Québec created a tax database of multinationals in Québec in order to, in particular:

— evaluate their reported worldwide taxable income, that is, profits that may be shifted from Québec;

— assess their propensity to report profits in Québec based on the value of their assets.

Estimation method

The equation proposed by the OECD to calculate the tax loss associated with profit shifting was adapted for Québec in the following manner to estimate the profits shifted by Québec multinationals:

Profits shifted from Québec = Global responsiveness of profit-asset ratio to tax rate differentials
× average asset-profit ratio
× average tax rate differential
× multinationals' total taxable income

Québec's estimated tax loss is calculated using the following equation:

Québec tax loss = Profits shifted from Québec
× corporate tax rate

The parameter used by the OECD to quantify the propensity of multinationals to transfer profits to other members of a given corporate group in lower-tax rate jurisdictions is the worldwide responsiveness of the profit-asset ratio to tax rate differentials.

— Since this parameter is only estimated on a worldwide basis, the estimate of the Ministère des Finances du Québec is based on the assumption that Québec multinationals behave in the same way as other multinationals in the world.

The asset-profit ratio is the ratio of total assets to net income based on the financial statements of multinationals operating in Québec, taken from corporate tax returns.

— This data was also used to determine the total taxable income of multinationals operating in Québec.

Lastly, the average tax rate differential is estimated by taking the difference between the combined statutory rate in Québec for the sample of multinational corporate groups and the average statutory rate in the jurisdictions of residence of members of the same group.

❑ Estimates for Québec

■ Profit shifting estimated at $1.4 billion for Québec

On this basis, profit shifting by multinationals in Québec is estimated at close to $1.4 billion in 2017, representing:

— 0.4% of their sales in Québec;

— 7.3% of their reported taxable income in Québec.

Overall, this amount represents 2.4% of the profits reported in Québec by all corporations operating in Québec.

TABLE 4

Calculation of profits shifted from Québec – 2017
(in millions of dollars, unless otherwise indicated)

Global responsiveness of profit-asset ratio to tax rate differentials	–0.1
x average asset-profit ratio	18.1
x average tax rate differential (in percentage points)	0.9
× multinationals' total taxable income	82 935
= PROFITS SHIFTED FROM QUÉBEC	**−1 351**
As a percentage of total profits reported in Québec	*–2.4%*

Source: Ministère des Finances du Québec.

■ Québec tax loss estimated at $159 million

Using the assumption that all profits shifted from Québec by multinationals are taxed at the general tax rate, the tax loss is estimated at $159 million.

— This amount represents 2.5% of the total corporate income tax revenue in Québec.

TABLE 5

Calculation of tax loss due to profit shifting from Québec – 2017
(millions of dollars)

Profits shifted from Québec	–1 351
x general corporate income tax rate	11.8%
= TAX LOSS DUE TO PROFIT SHIFTING FROM QUÉBEC	**–159**
Percentage of total corporate income tax revenue	*−2.5%*

Source: Ministère des Finances du Québec.

■ Comparison with worldwide tax losses

At 2.5% of total corporate income tax revenue, Québec's tax loss due to profit shifting is slightly below the OECD's estimated worldwide average of 3.4%.

— This difference can be explained in particular by the smaller tax rate differential within corporate groups in Québec (0.9 percentage point) than the worldwide average (3.6 percentage points).

TABLE 6

Calculation of tax loss due to profit shifting – Québec and the world

	Québec (2017)	World (2014) [1]
Global responsiveness of profit-asset ratio to tax rate differentials	−0.1	−0.1
× average asset-profit ratio	18.1	16.1
× average tax rate differential (in percentage points)	0.9	3.6
× income tax paid by multinationals	\$9 786 million [3]	\$1 669 billion [2],[4]
= TAX LOSS DUE TO PROFIT SHIFTING	**−\$159 million**	**−\$97 billion** [2]
As a percentage of total corporate income tax revenue	*−2.5%*	*−3.4%*

(1) Estimation based on the average parameters of the OECD model.
(2) In U.S. dollars.
(3) Total taxable corporate income multiplied by the overall income tax rate (\$82 935 million x 11.8% = \$9 786 million).
(4) Share of total multinational profits multiplied by the estimated worldwide corporate income tax revenue before tax credits (59% x \$2 300 billion x 1.23 = \$1 669 billion).
Sources: OECD and the Ministère des Finances du Québec.

1.3.2 Magnitude of tax loss stemming from the digital economy

The rise of the digital economy is dramatically transforming the way transactions are carried out. The transformation is essentially taking two forms:

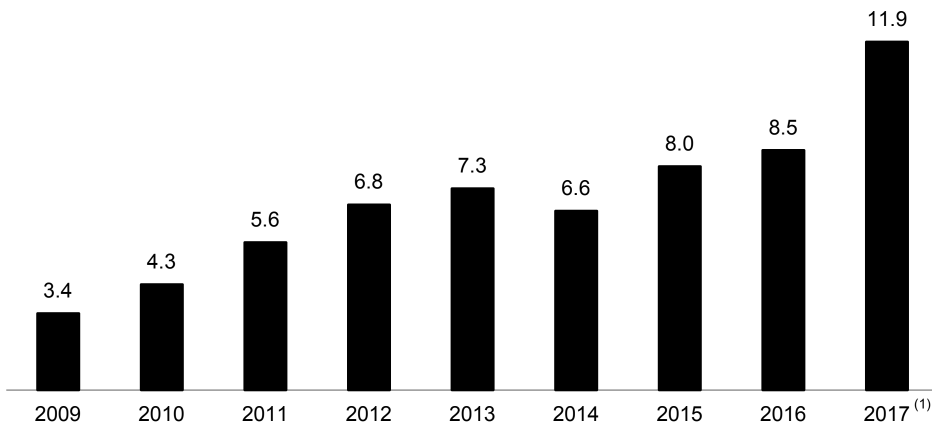
— e-commerce, which involves buying or selling goods and services, paying for them and having them delivered either physically or electronically;

— the sharing economy, in which individuals buy or rent goods and services from each other by way of a platform.

These two forms of the digital economy have grown by leaps and bounds in recent years. As such, it is estimated that online purchases by Quebecers grew from $3.4 billion in 2009 to $11.9 billion in 2017.

CHART 5

Value of online purchases in Québec
(billions of dollars)



(1) Forecast based on the first four months of the year.
Sources: Centre facilitant la recherche et l'innovation dans les organisations - NetTendance survey and Revenu Québec.

Sharing economy sites that connect vendors with consumers have sprung up in many different areas. The best known offer passenger transportation for remuneration and accommodation sharing, but they also extend to space rentals, crowdfunding, the sale of used goods, and others.

Tax losses are being recorded in both forms of the digital economy due to:

- the presence of foreign companies acting as online intermediaries (with no physical or significant presence in Québec);
- user anonymity because it is difficult for the tax authorities to identify them and ensure they meet their tax obligations;
- ignorance of or non-compliance with tax laws by those who participate in this economy.

This tax loss represents additional tax revenue that would be collected by the Québec government if all digital economy participants met their obligations.

❑ Tax loss attributable to e-commerce

The tax loss attributable to e-commerce is estimated at $269.9 million and stems mostly from cross-border shopping, which amounts to $226.8 million. Québec e-merchants are registered with Revenu Québec for the sales taxes, as are most e-merchants elsewhere in Canada dealing in Québec. However, the tax loss is more than 90% for purchases made outside Canada.

TABLE 7

Breakdown of online purchases, QST collected and tax loss by origin

	Purchases ($billion)	**Tax base** ($billion)[1]	**QST collected** ($million)	**Tax loss**	
				($million)	*(in %)*[2]
Purchases in Québec	3.7	2.2	224.7	—	—
Purchases in Canada but outside Québec	4.1	2.6	220.6	43.1	*16.3*
Purchases outside Canada	4.1	2.5	24.2	226.8	*90.4*
TOTAL	**11.9**	**7.3**	**469.5**	**269.9**	***35.2***

(1) Tax base at a rate of 10% corresponding to the taxes collected and the tax loss.
(2) Tax loss / (tax loss + QST collected).
Source: Revenu Québec.

Current legislation

Purchases in Canada but outside Québec

Canadian companies with no physical or significant presence in Québec do not need to register for the QST.

- Québec consumers are responsible for self-assessing and remitting the QST to Revenu Québec when purchasing properties or services from a vendor located in Canada but outside Québec if it did not collect the QST.[1]

Purchases outside Canada

Companies with no physical or significant presence in Canada do not have to register for the GST/HST or the QST or collect such taxes.

- The Canada Border Services Agency is responsible for collecting taxes on tangible property.[2,3]
  - When the QST is not collected, consumers must self-assess and remit the tax to Revenu Québec.
- Consumers must also self-assess when they purchase properties or services and remit the QST to Revenu Québec.

1 A Québec consumer does not have to self-assess when the QST to be remitted to Revenu Québec is less than $35 in a calendar month.
2 Packages valued at $20 or less and gifts valued at $60 or less are exempt from QST.
3 The Canada Border Services Agency collects the GST/HST and, if applicable, the QST under the Entente relative à la perception et au remboursement par le Canada de certaines taxes à la consommation du Québec.

TABLE 8

Tax loss attributable to e-commerce by item category – 2017
(millions of dollars)

	In Canada but outside Québec	Outside Canada	Total - Outside Québec
Taxes due			
Electronics	23.8	78.1	**101.9**
Music, films and video games[(1)]	0.9	67.5	**68.4**
Clothing	2.9	34.9	**37.8**
Decor and household items	4.1	16.1	**20.2**
Automotive and motorsports	0.5	9.2	**9.7**
Sports	0.2	9.3	**9.5**
Food, health and beauty	2.2	6.7	**8.9**
Software and mobile applications	0.2	2.3	**2.5**
Books, magazines and newspapers	0.3	1.8	**2.1**
Travel and transportation / Entertainment, outings and restaurants	—	—	**—**
Others	8.0	25.1	**33.1**
Total – Taxes due	**43.1**	**251.0**	**294.1**
Taxes collected	—	–24.2	**–24.2**
TOTAL TAX LOSS	**43.1**	**226.8**	**269.9**

(1) The *Music, movies and video game*s category includes both tangible and intangible properties and services. The assessment also takes into account the value of online subscriptions.
Source: Revenu Québec.

These amounts do not include exemptions already granted:

— for packages with a value of less than $20 and gifts under $60 at the border;

— for purchases in Canada but outside Québec, if the QST due is less than $35 in a given month.

■ Results for Québec

The QST tax loss associated with online purchases in Canada but outside Québec is estimated at $43.1 million.

For online purchases outside Canada, the QST tax loss is estimated at $226.8 million, broken down as follows:

— tangible properties: $158.4 million;

— intangible properties and services: $68.4 million.

TABLE 9

Estimated tax loss attributable to e-commerce – 2017
(millions of dollars)

	Tax loss
In Canada but outside Québec	
Tangible properties	42.0
Intangible properties and services	1.1
Subtotal	**43.1**
Outside Canada	
Tangible properties	158.4
Intangible properties and services	68.4
Subtotal	**226.8**
TOTAL	**269.9**

Source: Revenu Québec.

Methodology

The source data used to estimate the QST tax loss associated with e-commerce were taken from the survey of the Indice du commerce électronique au Québec, conducted monthly from January to December 2017. Each month during this period, 500 adult Quebecers who made online purchases in the previous month were polled by phone or online.

In order to estimate the tax losses, Revenu Québec:

- determined whether the items purchased were taxable;
- checked over 600 sites representing about 90% of the purchases to determine whether the owners were registered with Revenu Québec for the QST;
- checked whether the QST was collected at the time of purchase;
- factored in the QST that was actually collected at borders.

❑ Tax loss arising from the sharing economy

The advent of the sharing economy not only raises issues concerning the collection and payment of taxes but income reporting as well.

The tax loss associated with the sharing economy is harder to quantify due to:

— the fact that deductible expenses are difficult to estimate since only net income is taxable;

— the threshold for small suppliers who do not usually have to collect taxes if their sales are under $30 000, with the notable exception of passenger transportation for which this threshold does not exist.

Still, it is clear that passenger transportation and accommodation sharing have had a tremendous impact in their respective industries. This is why the government has already taken action, signing tax collection agreements with companies such as Uber and Airbnb.

1.3.3 Magnitude of the tax loss due to non-reporting of offshore investments by individuals

Some individuals conceal their wealth offshore in order to pay less tax on their investment income.

The resulting tax loss corresponds to the tax revenue that Québec would have obtained had the investment income of Québec individuals been reported in Canada.

❑ Estimation method

To estimate the tax loss due to unreported offshore investments, the Ministère des Finances du Québec begins by calculating the wealth owned offshore by Canadians.

The total wealth owned by Canadians offshore is calculated by multiplying Canada's GDP by the percentage of Canadian wealth owned offshore, as established in a 2017 study carried out by a team that includes the economist Gabriel Zucman.[22]

[22] Annette Alstadsæter, Niels Johannesen and Gabriel Zucman, *Who Owns the Wealth in Tax Havens? Macro Evidence and Implications for Global Inequality*, [online], 2017, 32 p. [http://www.nber.org/papers/w23805.pdf].

Quebecers' total offshore wealth is calculated by multiplying the wealth held by Canadians offshore by Québec's share of Canadian taxable income on personal income of $150 000 or more.

— The proportion is estimated at 14.4%.

Lastly, the tax loss for the Québec government is calculated by multiplying Quebecers' offshore wealth by a 7% rate of return and a maximum marginal tax rate on investment income of 25.75%.

Study by Alstadsæter, Johannesen and Zucman (2017)

The study was conducted after Zucman's study (2013),[1] which estimated the total worldwide wealth held by individuals in offshore bank accounts. The 2017 study goes further, estimating offshore wealth country by country.

By applying the methodology used in the study, which is based on a number of assumptions, Canadian offshore wealth accounted for 4.6% of GDP in 2007. The corresponding percentage was on average 12.8% in Europe and 54.1% in the Gulf countries.

- The study's reference year is 2007, before the financial crisis and the proliferation of shell companies. The rising use of shell companies since 2007 has limited data accessibility and reliability.

The study analyzes Switzerland in depth given its importance as an offshore financial centre in 2007 and given the fact that this country, like some other financial centres, started disclosing bilateral data on the amount of bank deposits that foreigners own in their banks.

The study shows that, for this particular case, the use of tax havens in a jurisdiction is explained primarily by geographic proximity with Switzerland and political instability or the presence of such natural resources as oil in the jurisdiction.

The Alstadsæter, Johannesen and Zucman study is based on a rigorous methodology that will continue to be fine-tuned through, in particular, more detailed data.

1 Gabriel Zucman, "The Missing Wealth of Nations: Are Europe and the US Net Debtors or Net Creditors?", Quarterly Journal of Economics, vol. 128, no. 3, p. 1321-1364.

❑ Results for Québec

By applying this methodology, the tax loss resulting from the non-reporting of offshore investments by individuals would be approximately $257 million.

TABLE 10

Estimated tax loss due to Quebecers' wealth held offshore(1) – 2017
(billions of dollars, unless otherwise indicated)

			Estimate for Québec		
Wealth held offshore - Canada (% of GDP) (2)	**Canada GDP** F	**Wealth held offshore - Canada**	**Québec weighting in Canada**	**Wealth held offshore - Québec**	**Tax loss - Government of Québec**
4.6%	2 136	99	14.4%	14	0.257

F: Forecast.
(1) Assuming individuals do not report their offshore wealth to the tax authorities.
(2) Based on the findings of the study by Alstadsæter, Johannesen and Zucman (2017).
Sources: Alstadsæter, Johannesen and Zucman (2017) and the Ministère des Finances du Québec.

This estimate updates the figure in the brief on tax havens[23] submitted by the Ministère des Finances du Québec to the Québec National Assembly in fall 2015. At that time, the tax loss due to offshore investments was pegged at $800 million for fiscal 2013-2014. The estimate was based on the findings of a previous study by Zucman.

— The new estimate stems from the recent work of Alstadsæter, Johannesen and Zucman (2017), who refined the methodology, in particular thanks to new data sources.

[23] Ministère des Finances du Québec, *Le phénomène du recours aux paradis fiscaux*, brief presented to the Committee on Public Finance, [online] September 29, 2015, http://www.finances.gouv.qc.ca/documents/Autres/fr/AUTFR_memoireparadisfiscaux.pdf].

1.4 Brief description of taxation rules applicable to individuals or corporations

In Canada and in Québec, levying of income tax or sales tax is done according to the enabling tax legislation. Among other things, the said legislation describes the persons covered by the tax burden, the tax rules applicable to them, calculation parameters of the said burden and the tax collection or remittance methods.

In addition, the said legislation must stipulate provisions to harmonize the tax with other legislation or tax treaties that could, in turn, subject the individual or corporation involved to other taxes. For example, these situations occur in the case where a corporation exercises commercial activity in Québec as well as in another country. In these circumstances, tax legislation must stipulate appropriate rules preventing double taxation of income. Both the neutrality and competitiveness of the tax system on the whole depend on it.

The actions to be taken aimed at eliminating tax loss resulting from tax havens must simultaneously ensure compliance with the application of tax rules and prevent double taxation among jurisdictions.

❑ Applicable taxation criteria

In order to withhold income tax or sales tax from a person,[24] the enabling tax legislation must first determine the taxation rules. In Canada and in Québec, these rules are established from various criteria resulting from residence, place of business, place of use or place of consumption of a property or service.

In Canada, the concept of residence is the cornerstone of the income tax system for both corporations and individuals, while the place of use or consumption of a property or service acquired by a person constitutes the taxation criterion for the sales tax system.

In Québec, the criterion of residence is used only in the application of income tax for individuals. In regards to taxation rules for corporate income tax, tax legislation applies the taxation rate stipulated for the income from an establishment located in Québec. The Québec sales tax applies to properties and services acquired for use or consumption in Québec.

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[4] The concept of person includes, among others, an individual or a corporation.

TABLE 11

Main taxation criteria for individuals and corporations

Person	Tax legislation	Taxation criteria
Individual	Goods and services tax (Canada)	– Purchaser of supplies in Canada – Purchaser of supplies imported to Canada (tangible properties, intangible properties and services)
	Québec sales tax	– Purchaser of supplies in Québec – Purchaser of supplies imported to Québec (tangible properties, intangible properties and services)
	Income tax (Canada)	– Resident of Canada during the year
	Income tax (Québec)	– Resident of Québec at the end of the year
Corporation	Goods and services tax (Canada)	– Purchaser of supplies in Canada – Purchaser of supplies imported to Canada (tangible properties, intangible properties and services)
	Québec sales tax	– Purchaser of supplies in Québec. – Purchaser of supplies imported to Québec (tangible properties, intangible properties and services)
	Income tax (Canada)	– Resident of Canada
	Income tax (Québec)	– Establishment in Québec

Source: Ministère des Finances du Québec.

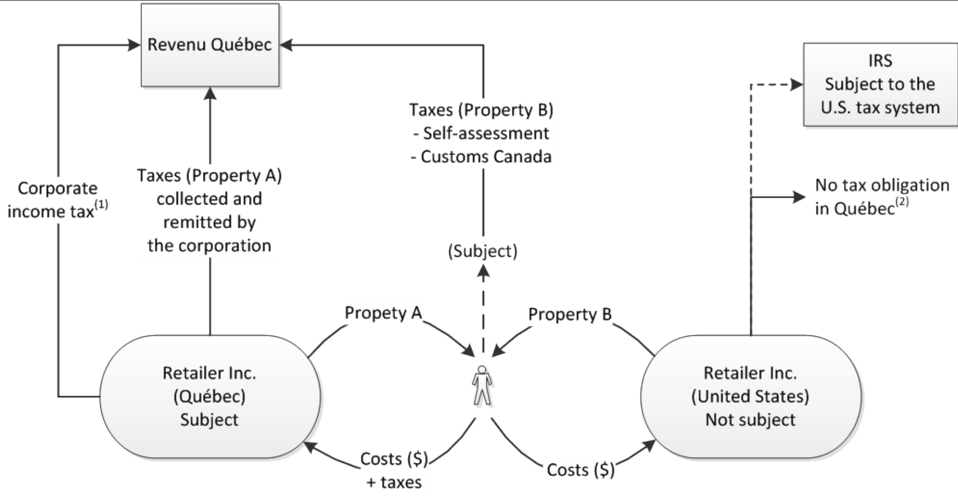
These taxation rules are of capital importance in determining tax obligations.

Thus, an individual in Québec who acquires property A from an incorporated retailer with a place of business in Québec will be subject to payment of GST and Québec sales tax while the retailer is liable for corporate income tax under both Québec and Canadian legislation, while complying with the applicable sales tax withholding and remittance rules.

This reality is different for the same individual who acquires property B online from a retailer that is a resident in another country. In that case, withholding and payment of sales tax fall under other mechanisms since the retailer does not have a physical or significant presence in the country and has no tax obligations to Québec. The said retailer is not subject to corporate income tax since no tax rules apply to its situation.

ILLUSTRATION 3

Taxation of individuals and corporations - income tax and sales tax



(1) The Québec retailer has a permanent establishment in Québec. Income tax is calculated for a fiscal year on all sales made by the corporation.

(2) The U.S. retailer does not have an establishment in Québec. It is not subject to Québec corporate income tax. Its income will be taxed in the United States. In addition, the retailer is not required to charge sales tax because it does not have a physical or significant presence in Québec.

1.4.1 Basic taxation principles governing Québec sales tax

❑ Destination

Just like GST/HST, the Québec sales tax is applicable if the properties or services are sold to be used or consumed in Québec by the purchaser (principle of destination).

Still in regards to the destination principle, sales over the Internet are generally subject to the Québec sales tax if the properties or services are sold for use or consumption in Québec, as is the case for store sales.

Thus, as a general rule, the Québec sales tax is applicable to properties and services acquired in Québec, whether or not the said properties and services are produced in Québec, imported from another Canadian jurisdiction or from abroad.

On the other hand, the Québec sales tax does not generally apply to properties and services sold by Québec businesses to be used or consumed outside Quebec.

The Québec sales tax is a value-added tax (VAT). It is the most widespread consumption tax model because it generally prevents taxing exports, while putting imports and local products on the same level.

❑ Payment, registration, collection and remittance

A supplier that provides taxable properties or services for use or consumption in Québec generally has an obligation to register with the system, collect the Québec sales tax paid by the purchaser and remit it to Revenu Québec.

As a general rule, suppliers that have a physical (permanent establishment) or significant (carrying on a business) presence in Québec and that sell taxable properties or services in Québec according to the traditional model or through the Internet are generally required to register with the system, collect the Québec sales tax and remit it to Revenu Québec.

Suppliers that do not have a physical or significant presence in Québec are not required to register, collect and remit the Québec sales tax, even if their supplies are taxable.

It is important to underscore that a supplier providing taxable supplies in Québec while carrying on business in Québec—without having a permanent establishment—would be required to register, collect and remit the Québec sales tax on the supply of properties and services destined for Québec.

If a supplier is not required to register for the Québec sales tax system, the following rules apply:

- For intangible properties and services, Québec's consumers have an obligation to pay the Québec sales tax due by self-assessment.

- For tangible properties, when imported from abroad, the Québec sales tax is collected in principle by the Canada Border Services Agency. For the acquisition of properties from another Canadian province, Québec's consumers have an obligation to pay the Québec sales tax due by self-assessment.

1.4.2 Basic taxation principles governing corporate income tax

Under the *Income Tax Act* of Canada, a corporation is subject to income tax on its income insofar as it resides in Canada. Residence is determined according to one of the following sources of law:

- residence criteria taken from case law;

- presumptions established in tax legislation;

- specific provisions stipulated in tax treaties signed by Canada.

A corporation that is a resident of Canada is subject to taxation on its income from all sources, which is its worldwide income.

A corporation that is not a resident of Canada can be subject to taxation on its income on a territorial basis.

— In that case, and subject to the provisions stipulated in a tax treaty, Canada could collect taxes on income from Canadian sources such as income resulting from carrying on a business in Canada.

Under the Québec *Taxation Act*, a corporation is subject to income tax on its income insofar as it has an establishment in the province.

❑ Residence criteria taken from case law

The courts have established the concept of residence based on the following principles:

— A corporation is a resident of the place where the centre of effective control is located and where the board of directors manages the corporation.

— A corporation's residence is a question of facts that can be determined by analysis of the corporation's business.

❑ Presumptions established in tax legislation

In certain situations, tax legislation intervenes to presume a corporation's place of residence. These presumptions take precedence over the principles listed above in determining residency status.

In general, according to Canadian tax legislation, the following corporations are deemed to be residents of Canada:

— a corporation incorporated in Canada after April 26, 1965 (no matter where it is managed or controlled);

— a corporation incorporated in Canada before April 27, 1965 that resided (according to the principles mentioned above) or carried on a business in Canada after April 26, 1965.

❑ Specific provisions stipulated in tax treaties

Taxation rules are subordinate to the provisions of the tax treaties that bind Canada.

— Since countries use various factors to determine a corporation's residence, certain entities could have dual residency.

The main objectives of these treaties are to prevent double taxation of corporations that could be subject to taxation on the same income in two different countries and to prevent taxpayers from evading payment of taxes.

Thus, the rules stipulated in Canadian tax legislation are sometimes not applicable because of provisions to the contrary in a tax treaty signed by Canada.

- Tax treaties provide rules used to establish a corporation's place of residency when it can be considered to be a corporation that is a resident of several countries by virtue of each government's internal laws.
- For example, a corporation incorporated in the United States, but whose management is done in Canada could be a resident of both countries.
- To regularize this situation, both countries have agreed in their tax treaty that the determining factor would be the location where the corporation was incorporated.

Canadian tax legislation rules must be understood in the light of tax treaty provisions for questions of business income.

- Taxation of such income arises from the presence of a permanent establishment.
- Tax treaties generally stipulate that Canada will not charge income tax on a non-resident corporation's business income except when the said income is attributable to a permanent establishment located within Canada.
  - The definition of permanent establishment that is found in tax treaties usually refers to a fixed place of business (a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry) through which a non-resident corporation carries on business.

❑ The concept of establishment for Québec legislation purposes

For purposes of calculating Québec income tax, a corporation must divide its income from Canadian sources between each province where it maintains an establishment.

The concept of establishment refers to a fixed place where a business operates or, in the absence of such a location, the principal place where the said business operates.

If a corporation also has one or more establishments outside Québec, the Québec income tax payable must be established according to the portion of the corporation's business that is realized in Québec.

In general, this portion is calculated by taking into account:

- the corporation's gross income that can reasonably be attributed to the establishment located in Québec in proportion to its total gross income;
- the wages and salaries paid to the employees of the establishment located in Québec in proportion to the total of all the wages and salaries paid to its employees by the corporation.

1.4.3 Basic taxation principles governing non-resident corporate income tax

In general, a corporation that is not resident in Canada is taxed on income derived from a business carried on in Canada. The taxation principle applied in Canada is based on income source (also called a territorial system).

If the non-resident corporation is tied to a country that has entered into a tax treaty with Canada, the income derived from the Canadian-operated business must be attributed to a permanent establishment in Canada operated by the non-resident corporation.

1.4.4 Basic taxation principles governing personal income tax

As with a corporation, under Canadian tax legislation, individuals are taxed on their income insofar as they reside in Canada. Like a corporation, a person's residence is established from criteria based on case law, presumptions set out in tax legislation, or specific provisions stipulated in tax treaties signed by Canada.

An individual who is resident in Canada is subject to taxation on income from all sources, i.e. worldwide income.

An individual who is not a Canadian resident may also be subject to income tax based on a territorial approach.

- Subject to tax treaty provisions, tax law stipulates that Canadian-source income be taxed, that is, income from employment in Canada, capital gains from the disposal of specific assets, and income directly earned by the individual from carrying on a business in Canada.

In general, under Québec's *Taxation Act*, individuals are taxed on their income insofar as they reside in Québec on the last day of a taxation year. Their worldwide income would then be taxable.

❑ Residence criteria taken from case law

The courts have established the concept of residence based on the following principles:

- an individual's residence is not tied to citizenship or place of domicile;
- rather, residence is established by facts that demonstrate material, family or economic ties of some permanence to a given territory.

❑ Presumptions established in tax legislation

In certain situations, tax legislation intervenes to presume an individual's place of residence. These presumptions take precedence over the principles listed above in determining place of residence.

The most important such presumption stipulates that an individual who, in a given year, lives in Canada for one or more periods that total more than 182 days is deemed to be a resident of Canada for that year.

The Québec tax system also contains this presumption.

❑ Specific provisions stipulated in tax treaties

Taxation rules are subordinate to the provisions of the tax treaties that bind Canada. Such provisions are intended to help determine an individual's residence in situations in which an individual may have dual residency.

The rules set out in a tax treaty take precedence over the rules in tax legislation.

— For example, even though Canadian tax law calls for a non-resident to be taxed on employment income earned in Canada, that individual will be governed by the provisions of a tax treaty.

1.4.5 Basic taxation principles governing non-resident personal income tax

In general, an individual who is a non-resident of Canada is subject to tax on income derived from employment in Canada, from a business the individual carries on or a capital gain from the sale of certain Canadian capital property.

Like the principles that apply to a corporation, Canada applies a taxation principle based on income source (also called a territorial tax system).

The basic taxation principles applicable to a non-resident individual also apply in the Québec taxation system.

1.5 Multilateral actions to curb the use of tax havens: the OECD and Québec

On September 29, 2015, the Ministère des Finances du Québec presented a brief on the tax haven phenomenon to the Committee on Public Finance.

Among other things, the brief described the actions taken by the Québec government, and their results, to combat the use of tax havens and protect Québec's tax base.

The brief also identified efforts initiated by the federal government and the OECD, to which the Québec government subscribes, to wage a determined fight against schemes using tax havens for tax evasion or avoidance purposes.

Since the Ministère des Finances du Québec presented its brief, the OECD has tabled the final version of its *Action Plan on Base Erosion and Profit Shifting*.

The work done by the OECD on this issue and the actions taken by Canada in response to the OECD Action Plan, are set out below, along with other measures the Canadian government has taken to combat tax evasion.

1.5.1 Final report on the OECD Action Plan

At the request of G20 member nations, the OECD developed an action plan to combat base erosion and profit shifting. The plan contains 15 actions. In September 2014, the OECD presented the first seven actions in an interim report.

In October 2015, the OECD presented the final version of its report, which included the last eight actions recommended to decrease multinationals' opportunities to exploit mismatches between national tax systems, and to modernize the international tax system.

The OECD and G20 Action Plan

Action 1	Addressing the tax challenges of the digital economy.
Action 2	Neutralizing the effects of hybrid mismatch arrangements. Neutralizing the effects of hybrid instruments and entities that enable double non-taxation or long-term deferral. – A hybrid instrument or entity is an instrument or an entity with a different legal status depending on the jurisdiction.
Action 3	Designing effective controlled foreign company rules.
Action 4	Limiting base erosion involving interest deductions and other financial payments.
Action 5	Countering harmful tax practises more effectively, taking into account transparency and substance. Improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes.
Action 6	Preventing the granting of treaty benefits in inappropriate circumstances. Designing rules to prevent the granting of treaty benefits in inappropriate circumstances.
Action 7	Preventing the artificial avoidance of permanent establishment status.
Actions 8, 9 and 10	Aligning transfer pricing outcomes with value creation. Adopting a broad, clearly demarcated definition of intangibles (trademarks, patents, client list) and develop transfer pricing calculation rules or special measures applicable to the transfer of intangibles. Preventing revenue from accruing to an entity solely because it has contractually assumed risks or has provided capital. Preventing common types of base eroding payments, such as management fees.
Action 11	Measuring and monitoring BEPS.
Action 12	Mandatory disclosure rules.
Action 13	Transfer pricing documentation and country-by-country reporting. Developing guidance on transfer pricing documentation to enhance transparency for tax administration.
Action 14	Making dispute resolution mechanisms more effective. Finding solutions to address obstacles that prevent countries from solving treaty-related disputes and enhancing current mechanisms.
Action 15	Multilateral convention to implement tax treaty related measures to prevent BEPS. Examining the issues of tax law and international public law raised by the development of a multilateral instrument to enable countries to implement the measures recommended upon completion of this action plan.

1.5.2 Government of Canada initiatives on international taxation and actions taken by Québec

In recent years, the Canadian government has taken several actions to combat international tax planning that contributes to eroding its tax base.

Several of the measures draw on work done by the OECD in the framework of the project to prevent base erosion and profit shifting (BEPS project), while other measures derive from efforts made by G20 nations to combat tax evasion and avoidance.

Of these initiatives, note the following:

- country-by-country reporting mechanism requiring large multinational corporations to produce financial results for each jurisdiction in which they have commercial operations. The various jurisdictions' tax authorities will exchange such financial information for the first time in 2018;
- new guidelines to streamline application of transfer pricing rules. The rules help better apply the principle of full competition in establishing the monetary consideration paid between corporations in the same group;
- specific rules applicable to interest expenses and other financial payments to, for example, curb abuse in the case of loans between non-arm's length entities;
- mechanism to combat abusive corporate use of tax treaties signed by various jurisdictions, for example, by treaty shopping;
- tax system for Canadian corporations' controlled affiliates, preventing them from avoiding the provisions of Canada's tax system by shifting passive income to their foreign subsidiaries;
- mandatory disclosure mechanism for aggressive tax planning;
- rules on international electronic funds transfers that require certain financial intermediaries, including banks, to report international electronic fund transfers above $10 000 by clients to the Canada Revenue Agency;
- process for the spontaneous exchange of information between the Canada Revenue Agency and tax administrations in other jurisdictions;
- process for automatically exchanging information on non-residents' financial accounts. This will provide tax authorities with information on residents' bank accounts with foreign financial institutions.

Several of these initiatives are still the subject of talks between participating countries; other measures set out in the OECD Action Plan require further study, given implementation difficulties. For example, Action 1, which deals with the digital economy, still constitutes a sizable challenge for all of the countries.

❑ Actions taken by Québec

The Québec government has put forward several initiatives to prompt compliance with tax rules and combat international tax evasion and avoidance. The Québec measures are, on one hand, in line with the action plan developed by the OECD in tandem with the work done on the BEPS project and, on the other, with the orientations defined by Canada and the other G20 nations to have more effective mechanisms for exchanging information, among other things.

— The purpose of the BEPS project is to review international tax rules to ensure they are in sync with changes in the international economy and that profits are taxed where the economic activity that generates them is carried out and where value is created.

To achieve these goals, Québec made several changes to its tax system to incorporate pertinent legislative provisions, and actively sought sustained collaboration with Canadian tax authorities to improve compliance with the tax system.

Québec's tax legislation has thus been amended to harmonize with the changes made to the Canadian tax system, while taking the features of Québec's tax system into account, along with the fact that Québec administers personal and corporate income tax. Among other components, these initiatives pertain to measures regarding:

— transfer pricing rules;

— the specific provisions applicable to interest expenses and other financial fees;

— the tax system applicable to controlled or non-controlled foreign affiliates.

As well, in 2009 Québec implemented mandatory disclosure mechanism.

1.5.3 Agreements signed by Canada to fight tax havens

Over the years, Canada has signed many agreements, including agreements to fight abusive tax avoidance by Canadian taxpayers.

❑ Tax treaties

Canada has signed 93 tax treaties with various countries to eliminate the double taxation that can result from corrections countries make to transfer pricing, as well as 22 tax information exchange agreements. Québec has signed only one agreement: the tax agreement between Québec and France.

The tax treaties Canada has signed are not binding on the provinces. However, Québec has elected to apply them.

With the exception of the Convention Between Canada and the United States of America With Respect to Taxes on Income and on Capital, bilateral or multilateral tax treaties and tax information exchange agreements signed by Canada do not allow information received by Canada to be provided to Québec.

❑ Agreements on the automatic exchange of information

Information exchange is automatic if it is systematic and periodic. The automatic exchange of information is an effective tool in the fight against the use of tax havens, since it increases taxpayer compliance.

To date, Canada has signed 39 automatic information exchange agreements with other jurisdictions within the framework of the BEPS project. These agreements give the Canada Revenue Agency information about the financial accounts of Canadians abroad.

TABLE 12

Jurisdictions with which Canada has an automatic information exchange agreement

Australia	Germany	Liechtenstein	Singapore
Austria	Guernsey	Luxembourg	Slovakia
Belgium	Iceland	Malaysia	Slovenia
Bermuda	Ireland	Mauritius	South Africa
Brazil	Isle of Man	Mexico	South Korea
Chile	Israel	Netherlands	Spain
Denmark	Italy	New Zealand	United Kingdom
Estonia	Japan	Norway	United States
Finland	Jersey	Poland	Uruguay
France	Latvia	Portugal	

Source: OECD.

1.6 Diverted profits tax

To maximize returns for their owners, multinationals engage in tax planning that minimizes their taxes worldwide, in particular by shifting profits to jurisdictions with low tax rates.

To fight tax planning by multinationals, some countries have introduced a diverted profits tax.

However, this solution would be difficult to apply in Québec given its economic and legislative environment.

Québec prefers a multilateral approach that coincides with OECD efforts to improve the consistency of international tax rules and create a more transparent tax environment.

— The implementation of the actions resulting from the BEPS project is intended to achieve the same objectives as a diverted profits tax.

1.6.1 Grounds for a diverted profits tax

In general, multinationals can use two types of tax planning to shift income to jurisdictions with lower tax rates:

— not recording gross income from sales made by the company in a country by avoiding having a permanent establishment there;

— reducing profits reported in a country by shifting them to another country through a transaction that does not reflect an actual economic activity.

The diverted profits tax applies to profits that have been shifted using one of those tax planning schemes.

❑ Planning aimed at avoiding having a permanent establishment

The first type of planning targeted by a diverted profits tax occurs when a multinational sets up the following tax structure:

— a non-resident multinational records Québec-generated sales revenue abroad while the sales-related activities are carried out by one or more Québec resident companies.

This planning makes it possible for the company to avoid being subject to income tax in Québec and to be taxed at a lower rate than the one in Québec.

Illustration of tax planning to avoid having a permanent establishment

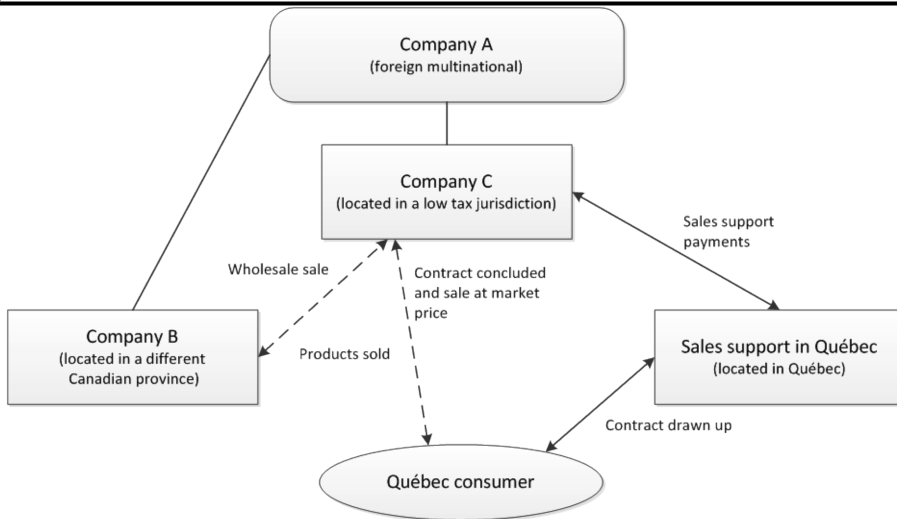
The following is an example of tax planning to avoid having a permanent establishment in Québec.

- Company A is a foreign multinational that produces and distributes goods.
- In Canada, but outside Québec, the multinational has a subsidiary that produces goods for the Canadian market, Company B.
- Sales made in Québec are recorded by a single company, Company C, which is located in a jurisdiction with a low tax rate, but services associated with the sales, such as negotiation and marketing, are provided by businesses located in Québec.

The profits are considered to have been shifted using tax planning due to the “artificial” separation between the final sales contract (Company C) and the sale-related activities in Québec.

- The sales transaction is closed by Company C to avoid Québec income tax, even though the sale-related activities (all but the conclusion of the final contract) take place in Québec.

Illustration of tax planning to avoid having a permanent establishment



❑ Planning involving transactions or entities that have insufficient economic value

The second type of planning targeted by the diverted profits tax occurs when a multinational conducts transactions or creates entities that are not based on an actual economic activity.

— The aim of this planning is to reduce the company's exposure to the taxes of a jurisdiction.

It occurs, for example, when a company transfers intellectual property to a company that is established in a jurisdiction with a low tax rate.

The foreign-controlled firm then sells a license to use the intellectual property at a price that exceeds the true economic value of the intellectual property.

— In this example, the sole purpose of the non-resident company is to hold the intellectual property.

This planning makes it possible for:

— the company that has transferred intellectual property to deduct the payment for the license from its calculation of taxable income;

— the non-resident corporation to be taxed on income resulting from payment for the license at a lower tax rate.

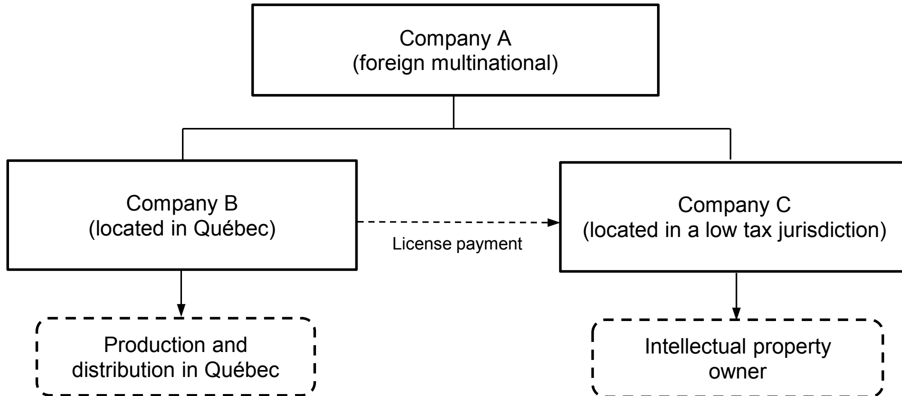
Illustration of tax planning involving transactions and entities without economic substance

Here is an example of tax planning aimed at a tax structure that involves transactions and an entity without economic substance.

- Company A is a foreign multinational that owns Company B, which is established in Québec, and Company C, which is located in a jurisdiction with a low tax rate.
- Most of the income from this group of companies comes from the sale of goods with related intellectual property rights. The intellectual property was developed by Company A.
- Company B is the Québec subsidiary that produces and distributes goods in Québec.
- Company C owns the intellectual property.
- Company C sells a license to Company B for the use of the intellectual property in the goods sold in Québec, at a cost higher than its actual value.
- Company C has no full-time employees. Its sole function is to hold the intellectual property and conduct administrative operations associated with license payments.

Profits are shifted through tax planning due to the lack of economic substance regarding the payment to Company C for the license, thereby reducing the tax paid in Québec by Company B.

Illustration of tax planning involving transactions or entities that have no economic substance



1.6.2 **Examples of application in the world**

Two countries have introduced taxes on profits shifted by multinationals in order to fight tax planning by multinationals.

- Companies have been subject to a diverted profits tax in the United Kingdom since April 1, 2015.
- In Australia the tax has been in effect since July 1, 2017.

❑ The diverted profits tax in the United Kingdom

In April 2015 the United Kingdom introduced a diverted profits tax that amounts to 25% of the profits shifted by multinationals.

- This rate is six percentage points higher than the regular tax rate of 19%.
- The diverted profits tax was implemented at a higher rate than the normal corporate tax rate to encourage companies to change their behaviour and pay the tax on their regular economic activities in the United Kingdom.

The diverted profits tax in the United Kingdom targets two types of tax planning used by multinationals to divert their revenue to a jurisdiction with a lower tax rate.

The United Kingdom's tax authorities have several criteria that must be met if a company is to be required to pay the diverted profits tax.

- They must be able to demonstrate that the company's tax planning was set up with the primary aim of reducing or avoiding taxation in the country.

When the United Kingdom implemented its diverted profits tax, the revenue forecast was some £300 million per year starting in 2016-2017, according to the Office for Budget Responsibility.[25]

For 2016-2017 the revenues were up to £281 million, including:

- £138 million directly from the payment of the diverted profits tax;
- £143 million in additional corporate tax revenue due to the changed tax structure of certain companies, which regularized their situations on their own.

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[25] The Office for Budget Responsibility is a United Kingdom organization which produces independent forecasts and analyses, in particular on the United Kingdom public finances, similar to what the Parliamentary Budget Officer does for the federal government.

■ Results of the application of the tax in the United Kingdom

Following the implementation of the diverted profits tax in April 2015, Amazon announced that sales to United Kingdom consumers would from then on be registered in the United Kingdom rather than in Luxembourg.

— With that change, Amazon should no longer have to pay the diverted profits tax and will pay income tax in the United Kingdom.

Facebook has also announced that it would change its tax planning after the diverted profits tax came into effect.

— Despite that announcement, the company is still being criticized for the low level of taxes it pays in the United Kingdom compared to its sales volume.

Some businesses may change their tax planning so that the tax on diverted profits does not apply to them, but without that change generating a significant increase in the tax paid.

In January 2016, following an investigation, Google signed an agreement with the British government to pay £130 million in taxes to cover tax recovery for the years 2005 to 2015.

— The recovery issue had to do with the transfer price for the value of the services offered by United Kingdom establishments on behalf of Google's head office.

The diverted profits tax should not apply to Google in the future, however, since the company was able to demonstrate the legitimacy of its tax structure, which involves bringing all its advertising revenues from the United Kingdom back to Ireland, where it carries on its activities.

❑ The diverted profits tax in Australia

As part of its 2016-2017 budget, the government of Australia announced the implementation of a diverted profits tax, in effect since July 1, 2017.

— The tax rate on shifted profits is 40%, compared to the corporate income tax of 30%.

The Australian diverted profits tax targets one of the two types of tax planning presented previously. One involves the shifting of profits through tax planning involving transactions or entities which do not represent sufficient economic value.

The other type of planning, designed to prevent all or part of the revenue from being attributed to a permanent establishment, is already covered by the *Multinational Anti-Avoidance Law* enacted in December 2015.

Parameters of the diverted profits tax in Australia

The diverted profits tax applies to multinationals that implement tax planning designed to shift profits abroad toward non-resident affiliated companies when the following three conditions are present:

- tax planning reduces the income tax by 80% compared with what would normally have been paid in Australia;
- it is a reasonable conclusion that the purpose of the fiscal structure is to reduce the company's tax load;
- the planning is not related to an actual economic activity.

The diverted profits tax applies to multinationals with total sales in excess of $1 billion (Australian), when the Australian companies that are members of the group have sales of more than $25 million (Australian).

According to the 2016-2017 Australian budget, the diverted profits tax should bring the government revenue in excess of $100 million (Australian) a year in 2018-2019 and 2019-2020.

Multinational Anti-Avoidance Law

The purpose of the *Multinational Anti-Avoidance Law* is to counter the reduction in Australian corporate income tax caused by tax planning. In addition, the companies at fault are subject to double the usual penalty applied by the government.

The *Multinational Anti-Avoidance Law* also applies only to multinationals with total sales in excess of $1 billion (Australian).

1.6.3 **Analysis of a diverted profits tax in Québec**

To address the issue of profit shifting by multinationals, two options could be considered by Québec:

- implementation of a unilateral diverted profits tax in Québec;
- Québec's continued participation in the OECD-led international efforts to fight the erosion of the tax base and profit shifting by multinationals.

The implementation of a diverted profits tax in Québec would require adapting models of this type of tax used worldwide to the context of Canada and Québec.

The analysis of the tax haven issue leads to the conclusion that this option is not viable due to the following reasons:

- Québec is currently following the same path as the BEPS project;
- the challenge of interprovincial application;
- the economic and financial risks associated with unilateral implementation.

❑ Québec is currently following the same path as the BEPS project

The actions arising from the BEPS project[26] have the same objectives as a diverted profits tax, in addition to striving for greater consistency of international tax rules and the creation of a more transparent fiscal environment.

- More than sixty countries have taken part in designing the fifteen BEPS actions to fight tax evasion in a coordinated manner and improve the consistency of international tax rules.

In this regard, the Québec government has harmonized its decisions with the various announcements made by the federal government for implementing the actions identified by the BEPS project.

- Implementation of these actions is underway, and the first country-by-country exchanges between reporting jurisdictions are expected to take place by June 2018.

The solution to the issues of collecting taxes in the current economic environment must be reached via a coordinated multilateral approach designed to improve the consistency of tax rules, especially international ones, and create a more transparent fiscal environment.

Québec intends to continue its involvement in the implementation, follow-up and analysis of the next actions that will be identified by the BEPS project.

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[26] See section 1.3 of this appendix.

❑ The challenge of interprovincial application

Up to now, the diverted profits taxes in effect in the world have been implemented by national jurisdictions. They do not target tax planning designed to shift profits from one sub-national jurisdiction to another, such as a province.

Québec would have to determine whether a diverted profits tax would apply only to tax planning designed to shift revenues from Québec to another country, or if the diverted profits tax would apply between provinces.

If shifting revenue to other provinces were not included, that could become an incentive for multinationals to shift their revenues between provincial entities before transferring them to jurisdictions with lower tax rates.

To address that problem, the Québec government would have to include interprovincial tax planning in the enforcement of a diverted profits tax, which would be just one more complexity in light of the rules that apply in Canada.

❑ Economic and financial risks associated with unilateral implementation

Beyond administrative complexities, implementing the diverted profits tax only in Québec would also entail some economic risks, including:

- a behavioural change by companies currently operating in Québec, and difficulty in attracting foreign investments;
- potential consequences for Québec's relationship with the other Canadian provinces.

■ Behavioural change by companies and difficulty attracting foreign investments

Unilateral introduction of a diverted profits tax would increase the tax burden of certain companies in Québec, since it would entail double taxation.

If a diverted profits tax is implemented, corporate profits that had already been taxed in another jurisdiction but that were considered shifted would end up being taxed a second time in Québec.

Companies already operating in Québec, especially those with branches in more than one jurisdiction, would therefore be motivated to move their activities from Québec to other regions to reduce the risk of double taxation.

- That could encourage some businesses to move their activities to other provinces.

This increase in the tax burden would make the Québec tax regime less competitive and would therefore make Québec less attractive for business investments.

■ Potential consequences for Québec's relationship with the other Canadian provinces

In Canada, as a rule, a company must have a permanent establishment in a province to be subject to corporate taxes in that province.

A company's taxable income is allocated between provinces using a business allocation method that takes into account:

- the salaries and revenues attributable to the activities of the permanent establishment in a given province;
- the salaries and revenues attributable to the activities of all permanent establishments in all Canadian provinces.

The purpose of this method is to assess the economic activity that takes place in each province where the company is present.

Applying a tax on profits shifted from Québec to another province would entail double taxation at the Canadian level, since the tax claimed would be on top of the tax due under the current system.

- Québec would claim tax from businesses without a permanent establishment in Québec, or an amount of tax higher than should be paid to Québec under the business allocation method.

That could harm Québec's relationships with the other provinces, since the negative economic impact of a diverted profits tax could affect them too.

Double taxation due to a legislative gap could not, however, be corrected by the Memorandum of understanding to avoid double taxing corporations.

Memorandum of understanding to prevent corporate double taxation
When a company operates in more than one Canadian province or territory, it must determine the tax payable in each province or territory as provided in the Income Tax Regulations and the applicable tax laws. It will have to spread its business between these various jurisdictions. When the laws or policies that apply vary from administration to administration, disputes may arise about the attribution of corporate revenue to each administration. In situations where such disputes are not settled, companies may get taxed twice. In 2009 Québec and the Canadian Revenue Agency signed the *Memorandum of understanding to avoid corporate double taxation* ("the MOU") in order to create a process for settling such disputes. Alberta also signed on because, like Québec, that province administers corporate taxes on its territory. The purpose of the MOU was to create a process for settling disputes related to the attribution of corporate revenue between provinces and territories, and thereby avoid double taxation. The MOU was possible due to the high degree of harmonization of the signatory jurisdictions' tax legislation.

1.7 Rules regarding dividends received from foreign corporations

In theory, a tax system can rely on a global tax basis or a territorial tax basis.

Under a global tax system, the foreign income of residents of a country is taxable, regardless of whether the income is repatriated to the country of origin. Under this type of system, resident taxpayers assume the same tax burden on their domestic income as on their foreign income.

In contrast, a territorial tax system exempts resident taxpayers from all taxes on foreign income.

In practice, no country has adopted a global or territorial tax system. The tax systems in place around the world are based on one of these types of systems, but they each have variations.

1.7.1 Québec and Canada's approaches to taxing corporations

Canadian tax legislation applies to the worldwide income of corporations residing in Canada, which includes income directly earned abroad, regardless of whether it is passive or active income, or whether it is earned through a permanent establishment.

If a corporation residing in Canada earns income abroad through a foreign affiliate, taxation may occur in Canada when a dividend is paid.

- Québec's tax system uses an approach that is more territorial than the federal tax system with regard to corporations. This approach is consistent with those of the other Canadian provinces, where similar rules apply for dividing the income of corporations that operate through several establishments.
- Québec's system stipulates that a corporation must pay taxes in Québec based on the proportion of business it does in Québec. This proportion means that income directly earned abroad by corporations through a permanent establishment located abroad is not taxable in Québec. As a result, Québec's system does not offer any tax relief to corporations to take into account foreign taxes paid on income directly earned abroad.[27]

[27] Under section 772.8 of the *Taxation Act*, only individuals can request a credit for foreign tax paid on business income. This is because it is individuals residing in Québec, rather than corporations, that are subject to tax on their worldwide income, which includes business income earned abroad.

❑ Hybrid exemption system for foreign affiliates

Canada's tax system relies on traditional international tax rules by applying a tax system that varies according to whether the foreign income earned through a foreign affiliate is active or passive.

— Québec's tax system is completely harmonized with the federal system with regard to foreign affiliates.

■ Active income

▪ Countries with which Canada has signed a tax treaty or a comprehensive tax information exchange agreement

Active income earned in a foreign jurisdiction through a foreign affiliate residing in a country with which Canada has a tax treaty or a comprehensive tax information exchange agreement is only taxable in that jurisdiction, not in Canada.

The tax system exempts dividend income received by a Canadian corporation from earnings by a corporation actively operated by a foreign affiliate residing in such a country.

This tax policy is based on the assumption that business income earned by a corporation that is actively carried on abroad is included in the exclusive tax base of the foreign country where the income was earned, regardless of the applicable tax rate in that country.

To achieve this objective, the tax system sets out a rule for the full exemption of such active income, which can be repatriated to Canada by way of tax-exempt dividends.

The existence of a tax treaty or a comprehensive tax information exchange agreement with a foreign jurisdiction provides useful information for ensuring that a foreign affiliate's income is actually related to an economic activity carried out in that jurisdiction.

Lastly, the fact that income from a business that is actively carried on abroad can result in tax-exempt dividends encourages the repatriation of capital, thereby spurring economic growth in Canada.

A number of jurisdictions have made similar observations. In 2017, 29 of the 35 OECD member countries had a tax system allowing the repatriation of earnings through tax-exempt dividends or provided some exemption for such dividends.

Québec's tax system
In the absence of consensus among the international community, adopting a tax policy that is not in line with most OECD countries could compromise Québec's tax competitiveness within Canada and around the world. It should also be pointed out that Québec does not tax Canadian corporations on income directly earned abroad through a permanent establishment. The fact that a corporation can, through a tax-exempt dividend, repatriate earnings from a business carried on abroad by a foreign affiliate is consistent with the fact that if the business income from which the dividend is paid was directly earned abroad by the Canadian corporation through a permanent established in that country, the business income would not have been taxable in Québec. As the corporation resides in Canada, and information can be obtained through the tax treaty or the comprehensive tax information exchange agreement, the Canada Revenue Agency can ensure that the income earned by the business is in fact active income and that the earnings are related to an economic activity that is actually carried out abroad.

▪ Countries with which Canada has not signed a tax treaty or a comprehensive tax information exchange agreement

Active income earned abroad by a foreign affiliate that does not reside in a country with which a tax treaty or comprehensive tax information exchange agreement has been signed is taxable in Canada when the income is repatriated by way of a dividend.

However, the tax system includes a mechanism to account for foreign taxes that have already been paid, particularly by foreign affiliates. This mechanism calls for calculating the income amount that in Canada would have been subject to a tax similar to the foreign income tax paid and the amount of foreign tax deducted at source on the dividend, that is, a "fictitious amount," such that only the portion of the foreign dividend exceeding the fictitious amount is taxed.

Therefore, if the tax rate on earnings in the foreign jurisdiction is very low, most of the foreign dividend will be taxed in Canada, as very little income would have been necessary in Canada to generate a comparable tax.

■ Passive income

Passive income is very mobile as the taxpayer can change the location from which the income ostensibly originates. For example, a resident taxpayer can purchase a bond issued by a foreign country – and the foreign interest income earned on that investment will be considered passive income.

Upon finding an advantageous return, the taxpayer can choose to make the investment through a foreign corporation, in a country with the lightest tax burden on that income. One cannot claim that such passive income is related to an economic activity that is actually carried out in the foreign jurisdiction.

For this reason, the hybrid exemption model used by Canada taxes passive income earned abroad through a foreign affiliate. The taxation occurs at various times depending on whether the foreign passive income is earned by a foreign affiliate controlled by the taxpayer or by a foreign affiliate that is not controlled by the taxpayer.

Mechanisms are in place to take into account any foreign tax paid. Therefore, if the tax rate on the foreign affiliate's earnings and the tax withholding rate on the dividends paid by the foreign affiliate are very low, most of the foreign dividend will be taxed in Canada.

TABLE 13

Dividends paid by a foreign affiliate to a Canadian corporation

	Type of Income	Tax Status
Country with a tax treaty	Active	Exempt
Country with a tax treaty	Passive	Taxable(1)
Country without a tax treaty	Active	Taxable(1)
Country without a tax treaty	Passive	Taxable(1)

(1) With a mechanism to take into account foreign taxes paid.

❑ Foreign income not earned through a foreign affiliate

Canadian taxpayers must also pay taxes on dividends received from foreign corporations other than foreign affiliates. However, they can request a foreign tax credit for foreign tax withheld at the source on such dividends.

In short, Canada does not reduce its tax beyond the Canadian tax that would have been calculated on these dividends.

No tax credit or relief is granted to take into account foreign tax on earnings that may have been paid by the foreign corporation on income repatriated by way of a dividend.

— Québec's tax system is harmonized with the federal system with regard to dividends received from a foreign corporation other than a foreign affiliate. However, Québec also grants a foreign tax credit, but only if the foreign tax paid by the Canadian corporation on the dividend was not offset by the federal foreign tax credit.

Glossary

Foreign affiliate

A foreign affiliate is a foreign corporation, at least 10% of whose shares are held directly or indirectly by a Canadian corporation and persons related to the corporation, and at least 1% of whose shares are held directly or indirectly by the Canadian corporation.

Active income

Active income is essentially income from foreign investments whose returns depend on the investor's entrepreneurial conduct in managing investments. For example, income from a retail business is considered active income.

Passive income

Passive income is normally associated with situations in which the a taxpayer "passively" benefits from returns on his or her investments in the form of royalties, interest, rental income and other types of passive income. It requires little intervention on the part of the taxpayer.

Transfer price

Transfer prices are the prices at which services, tangible goods and intangible goods are exchanged between related parties as part of cross-border transactions.

1.8 Tax agreements signed by Canada

As a rule, a tax treaty is an agreement between two countries providing different ways of preventing taxation of income earned by an individual or corporation in more than one jurisdiction.

More specifically, the agreement will specify how the tax residence of the individual or corporation, that is, the place where the income will be taxed, is determined, to ensure the income is taxable in only one jurisdiction. Tax agreements also contribute to fighting tax evasion, since they include ways of exchanging information.

Canada has signed many tax treaties with various countries over the years. Those tax treaties follow the parameters and characteristics of the Model Tax Convention on Income and Capital published by the OECD. The model helps solve the problems caused by double taxation situations in a consistent manner.

1.8.1 Québec's powers

Since Québec is not a signatory to the tax agreements entered into by Canada, it can decide not to apply them. Québec therefore has full powers to refrain from enforcing such agreements, and it could set up special rules to tax foreign dividends and allocate tax credits against tax paid in another jurisdiction.

1.8.2 Québec's position

Québec has long favoured all approaches that promote the development of its economy. If Quebec did not respect the tax treaties, it would jeopardize the international trade of goods and services carried out by Québec businesses and the cross-border movement of capital and technology.

Québec withdrawing from the tax treaties, in a context where the other Canadian provinces would continue to respect such treaties, would have a significant impact on foreign investments in the province, because foreign companies would consider shifting existing activities to or establishing new activities in another Canadian province.

It bears mentioning that tax treaties remove barriers to the development of economic relationships between countries by ensuring clarity and consistency in the tax situation of taxpayers who carry out activities in more than one country.

1.9 Economic impact assessment

Québec companies maintain trading links with jurisdictions that are considered tax havens.

In addition, some multinationals in Québec are members of a corporate group that conducts activities in tax havens.

A diverted profits tax or Québec's non-recognition of certain Canadian tax treaties could have impacts on:

- trade, particularly regarding Québec's access to international markets;
- economic activity in Québec, particularly because of the many jobs supported by multinationals and their substantial relationships with Québec suppliers.

❑ $3.0 billion in tax revenue for the Québec government

The Ministère des Finances du Québec has targeted 642 corporations in Québec whose corporate group includes entities established in tax havens. In 2013, the activities of these corporations:

- supported over 310 000 jobs in Québec;
- contributed close to $35 billion to Québec GDP;
- generated $3.0 billion in net tax revenue for the Québec government.

❑ 4.2% of all international exports of goods from Québec

In 2016, Québec's balance of trade with tax havens was positive. This situation reflects:

- $3.3 billion in exports—4.2% of all international exports of goods from Québec;
- $2.6 billion in imports—3.0% of international imports of goods into Québec.

List of jurisdictions considered tax havens

The list of jurisdictions considered tax havens in the analysis conducted by the Ministère des Finances du Québec combines the two lists of tax havens presented in the March 2017 report of the Committee on Public Finance on the use of tax havens.

Moreover, of the 52 jurisdictions considered tax havens, 13 have a tax treaty with Canada.

List of jurisdictions considered tax havens

With a tax treaty		
Barbados	Hong Kong	Malta
Belgium	Ireland	Singapore
City of London (United Kingdom)(1)	Jordan	Switzerland
Cyprus	Lebanon	
Delaware (United States)	Luxembourg	
Without a tax treaty		
Andorra	Channel Islands (Guernsey and Jersey)	Monaco
Anguilla	Cayman Islands	Montserrat
Antigua and Barbuda	Cook Islands	Nauru
Netherlands Antilles	Isle of Man(1)	Niue
Aruba	Marshall Islands	Panama
Bahamas	Turks and Caicos Islands	Saint Kitts and Nevis
Bahrain	United States Virgin Islands	Saint Lucia
Belize	British Virgin Islands	San Marino
Bermuda	Liberia	Saint Vincent and the Grenadines
Costa Rica	Liechtenstein	Samoa
Dominica	Macao	Seychelles
Gibraltar	Maldives	Tonga
Grenada	Mauritius	Vanuatu

(1) No information on these tax havens was available for the purpose of the economic impact assessment.
Sources: Committee on Public Finance, The Tax Havens Phenomenon: Observations, Conclusions and Recommendations, March 2017, and compilation by the Ministère des Finances du Québec.

1.9.1 **Trade between Québec and tax havens**

Québec companies engage in trade with many tax havens, as evidenced by Québec exports to and imports from these jurisdictions.

❑ Exports totalling $3.3 billion

In 2016, exports of Québec goods to tax havens amounted to $3.3 billion, or 4.2% of all international exports of goods from Québec.

— The main Québec products exported to tax havens were aerospace products, ore and pharmaceuticals.

❑ A $0.7-billion trade surplus

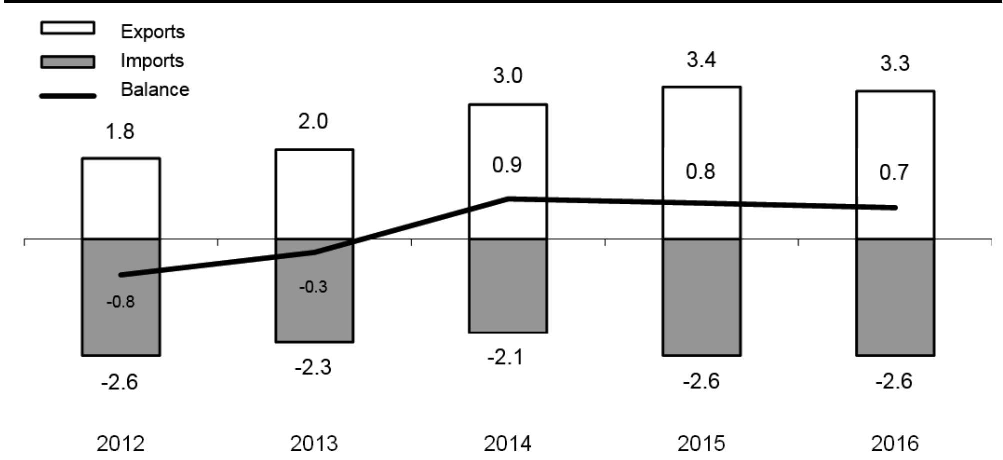
In the same year, imports into Québec of goods from tax havens amounted to $2.6 billion, or 3.0% of international imports of goods into Québec.

Québec's trade balance with tax havens thus showed a surplus of $0.7 billion in 2016.

— By comparison, Québec posted a $6.4-billion trade deficit in respect of international trade in goods with all its trade partners in 2016.

CHART 6

Trade in goods between Québec and tax havens
(billions of dollars)



Note: Totals may not add due to rounding.
Source: Institut de la statistique du Québec.

❑ Main tax havens with which Québec trades

The principal destinations among tax havens for exports of Québec goods are Malta, Belgium, Switzerland, Singapore and Hong Kong.

— In 2016, exports of goods to these five jurisdictions totalled $2.7 billion, or close to 80% of exports to tax havens.

Imports into Québec of goods from tax havens originated mainly from Switzerland, Ireland, Belgium, Singapore and Costa Rica.

— In 2016, Québec imports of goods from these five regions totalled $2.3 billion, or close to 90% of goods imported from tax havens.

TABLE 14

Trade in goods with Québec's main trading partners among tax havens – 2016
(millions of dollars, unless otherwise indicated)

	Value	*Share (%)*
Exports		
Malta	714.9	*21.4*
Belgium	693.6	*20.8*
Switzerland	508.2	*15.2*
Singapore	417.1	*12.5*
Hong Kong	324.7	*9.7*
Subtotal	**2 658.5**	***79.6***
Others	682.8	*20.4*
TOTAL – EXPORTS	**3 341.2**	***100.0***
Imports		
Switzerland	695.8	*26.4*
Ireland	652.6	*24.8*
Belgium	643.5	*24.5*
Singapore	224.4	*8.5*
Costa Rica	88.0	*3.3*
Subtotal	**2 304.3**	***87.6***
Others	327.0	*12.4*
TOTAL – IMPORTS	**2 631.3**	***100.0***

Note: Totals may not add due to rounding.
Source: Institut de la statistique du Québec.

1.9.2 Economic and fiscal benefits of Québec corporations with connections to tax havens

The Ministère des Finances du Québec, in collaboration with Revenu Québec, has identified 3 489 multinationals[28] among the 468 753 corporations active in Québec that filed a tax return in 2013.

Of these multinationals, 642 have at least one member of their corporate group residing in a tax haven or controlled by a company domiciled there.

— Of this total, 620 multinationals have connections to a tax haven with which Canada has a tax treaty.

Overall, the 642 multinationals with ties to a tax haven represent 18.4% of the total number of multinationals in Québec, and close to a quarter of their gross income and assets in Québec.

TABLE 15

Tax statistics on Québec multinationals – 2013
(millions of dollars, unless otherwise indicated)

	Multinationals with ties to a tax haven	Total multinationals	Total corporations
Number of corporations (units)	**642**	**3 489**	**468 753**
Share (%)	*0.1*	*0.7*	*100.0*
Proportion of business in Québec (%)	**25.7**	**27.8**	**48.0**
Gross income in Québec	**64 292**	**275 140**	**933 187**
Share (%)	*6.9*	*29.5*	*100.0*
Average gross income in Québec	100	79	2
Total assets in Québec	**257 973**	**1 173 700**	**2 723 600**
Share (%)	*9.5*	*43.1*	*100.0*
Average assets in Québec	402	335	6

[28] For the purposes of this analysis, a company is considered to be a multinational if it is of medium or large size, and has an establishment outside Canada that generates revenue or pays salaries, or has at least one associated company outside Canada.

❑ Companies with significant economic weight

Multinationals in Québec that have connections to tax havens carry considerable weight in the Québec economy.

In 2013, these companies supported over 310 000 jobs, with 117 000 people directly employed by them, while their activities in Québec supported over 195 000 jobs in their suppliers.

— These companies were thus the source of close to 8% of jobs in Québec.

Combining their direct activities and those of their suppliers, these companies contributed close to $35 billion to Québec's GDP.

— The economic impact of their activities thus represented over 9% of Québec GDP in 2013.

■ Companies in varied sectors of activity

Québec companies with connections to tax havens are not confined to any particular sector of activity.

— They operate in the primary, secondary and tertiary sectors.

TABLE 16

Sectoral breakdown of corporations with ties to tax havens

Sectors	Number of enterprises
Wholesale trade	126
Manufacturing	111
Finance and insurance	92
Management of companies and enterprises	64
Professional, scientific and technical services	49
Transportation and warehousing	29
Administrative and support, waste management and remediation services	27
Information and cultural industries	25
Real estate and rental and leasing	23
Retail trade	19
Mining, quarrying, and oil and gas extraction	11
Others(1)	66
TOTAL	**642**

(1) This category includes sectors where the few number of corporations raised confidentiality issues as well as enterprises whose sector was not known.

❑ Contribution to Québec's public finances

Companies in Québec that have connections to tax havens also have a major impact on Québec's public finances.

In 2013, these companies' activities in Québec generated $3.0 billion in net tax revenue for the government.

— Of this amount, $1.3 billion came from tax levies on these corporations.

The proportion of tax revenue from corporations (12.5%) was thus higher than their share of both employment (7.7%) and economic activity in general (9.5%).

TABLE 17

Economic and fiscal impact of Québec multinationals with ties to tax havens – 2013
(billions of dollars, unless otherwise indicated)

			Total	
	Direct	**Indirect**	Level	*(%)*
Jobs (number)	116 800	195 100	**311 900**	***7.7***
GDP	15.3	19.2	**34.6**	***9.5***
Tax revenue	1.3	1.7	**3.0**	***4.0***
including: corporate tax levies	*0.7*	*0.5*	***1.3***	***12.5***

Note: Totals may not add due to rounding.

1.9.3 Economic and fiscal impact of implementing a diverted profits tax or of withdrawing from certain Canadian tax treaties

Companies in Québec that have connections to tax havens are strongly integrated into the Québec economy. Consequently, the implementation of unilateral measures resulting in double taxation could have repercussions on economic activity and public finances in Québec.

❑ Double taxation of Québec companies

If a diverted profits tax were implemented, the profits of a company that had already been taxed in another jurisdiction but were considered to be diverted, would be taxed a second time in Québec.

If Québec were not to recognize certain tax treaties, the direct effect would be that Québec companies would no longer be able in particular to deduct from their income the entirety of a dividend from companies domiciled in a jurisdiction no longer covered by a tax treaty.

The consequences of this increase in the tax burden would be to:

- reduce the competitiveness of the Québec tax system, making Québec less attractive in relation to its competitors;
- cause some companies to move their operations out of Québec.

In that regard, the repercussions could be substantial, in view of the fact that these multinational companies are already established in other countries.

Moreover, access to the Québec market by companies of Québec's main trading partners is also covered by free-trade agreements.

- A company that relocated its operations to another jurisdiction covered by a free-trade agreement would still have access to the Québec market.

This means that a company could move its production elsewhere without reducing its sales to Québec consumers, which would have major repercussions on Québec's economy and public finances.

Illustration of double taxation resulting from the implementation of a diverted profits tax in Québec

Take as an example a manufacturing company based in Québec with a subsidiary in Ireland that owns intellectual property contained in goods sold by the Québec company.

- The Québec company pays the Irish subsidiary royalties of $1 million annually for the use of its intellectual property.
- The $1 million royalty is deductible in the calculation of Québec income tax since it is counted as a production cost and, in parallel, the amount is considered as taxable income in Ireland.

Assuming that this tax planning would be considered profit shifting, Québec would levy a diverted profits tax on the amount paid as royalties to the Irish subsidiary.

- Thus, income tax paid to the federal and provincial governments by the Québec corporation, including the diverted profits tax, would rise from $661 000 to $779 000—an 18% increase in its tax burden.
  - This rise in the tax burden is the result of double taxation of intellectual property royalty income in Ireland and Québec.

Illustration of double taxation resulting from the implementation of a diverted profits tax in Québec (continued)

Illustration of double taxation resulting from the implementation of a diverted profits tax in Québec
(dollars, unless otherwise indicated)

	Current situation	With a diverted profits tax
SUBSIDIARY IN IRELAND		
Taxable royalty income from the parent company in Québec	1 000 000	1 000 000
Tax rate	*12.5%*	*12.5%*
Tax payable	**125 000**	**125 000**
PARENT COMPANY IN QUÉBEC		
Québec income tax		
Net income	3 000 000	3 000 000
Royalty paid to the Irish subsidiary that owns intellectual property	−1 000 000	−1 000 000
Taxable income	2 000 000	2 000 000
Tax rate	*11.8%*	*11.8%*
Tax payable	**236 000**	**236 000**
Diverted profits tax		
Profits considered shifted	—	1 000 000
Tax rate	—	*11.8%*
Tax payable	**—**	**118 000**
Federal income tax		
Taxable income	2 000 000	2 000 000
Tax rate	*15%*	*15%*
Tax payable	**300 000**	**300 000**
TOTAL INCOME TAX	**661 000**	**779 000**
Differential from the current situation	—	*+18%*

❑ Analysis of the economic impact of introducing a diverted profits tax

According to estimates from the Ministère des Finances du Québec, profits shifted by Québec multinationals reached $1.4 billion in 2017.

Implementing a diverted profits tax would therefore tax those offshore-transferred profits at Québec's general corporate tax rate of 11.8%.

— Such a measure could represent an additional corporate tax burden of $159 million for the targeted corporations.

■ Estimate of the economic and fiscal impact of introducing a diverted profits tax

In order to assess the economic and fiscal impact of introducing a diverted profits tax, the Ministère des Finances du Québec made the assumption that it would prompt corporations with foreign income that is partially subject to the new tax to gradually reduce their activities in Québec so as keep the tax burden constant.[29]

Under the assumption that the targeted corporations would reduce their purchases from their Québec suppliers in the same proportion as their own activities in Québec, the unilateral introduction of a diverted profits tax in Québec could ultimately lead to:

— a loss of 68 050 jobs, most of which would be with Québec suppliers;

— a decline of $7.5 billion in GDP;

— a $513-million loss in tax revenue, including $146 million related to direct job losses.

TABLE 18

Economic and fiscal impact of the unilateral introduction of a diverted profits tax – 2013

	Direct	Indirect	Total
Jobs	−25 480	−42 570	−68 050
GDP (billions of dollars)	−3.3	-4.2	-7.5
Tax revenue (millions of dollars)	**−146**	**−367**	**−513**
Corporate tax	—	−115	−115
Other tax	−146	−252	−398

29 The corporate tax burden includes income tax net of tax credits, employer Health Services Fund contributions and the financial corporation capital tax.

❑ Analysis of the economic and fiscal impact of Québec withdrawing from Canadian tax treaties

If Québec were to not recognize a Canadian tax treaty, dividends from foreign affiliates domiciled in a jurisdiction with a Canadian tax treaty would be taxed in Québec.

If Québec were to cease recognizing a Canadian tax treaty and no longer apply the rules applicable to foreign affiliates, there would be no mechanism to take into account foreign income tax paid by the foreign affiliates on earnings from which they paid dividends, thus resulting in double taxation.

— The dividends would be tax free under the federal tax system as well as under the tax system of the other provinces.

Québec's non-recognition of a Canadian tax treaty would increase the tax burden in Québec for corporations repatriating dividends from a jurisdiction affected by that non-recognition even if Québec legislation included a mechanism for taking into account the foreign income tax paid by the corporation.

In this regard, the information currently available does not allow the Ministère des Finances du Québec to identify the jurisdiction from which the dividends were repatriated by the 620 corporations with ties to tax havens covered by a Canadian tax treaty, and hence it cannot evaluate the net effect such a withdrawal would have on the tax burden of the companies involved.

In order to illustrate the economic and tax impact of Québec's non-recognition of a Canadian tax treaty, the Ministère des Finances du Québec estimated the increase in the gross tax burden (without a mechanism for taking into account foreign income tax paid) attributable to the double taxation of foreign dividends.

Then, the extent to which those corporations would reduce their activities in Québec in order to maintain a constant tax burden following the double taxation was assessed.

■ Fiscal impact of double taxation caused by Québec's withdrawal from Canadian tax treaties

Assuming that 7%[30] of the taxable dividends received by these corporations is from a member of the corporate group conducting activities in a tax haven that has a tax treaty with Canada, Québec's non-recognition of these treaties would directly increase the tax burden by:

— $34.9 million for 413 corporations with ties to Delaware (United States);

— $21.9 million for 220 corporations with ties to Luxembourg;

— $13.2 million for 70 corporations with ties to Ireland;

— $11.7 million for 80 corporations with ties to Switzerland.

TABLE 19

Illustration of the increase in gross tax burden arising from the withdrawal from certain tax treaties for Québec corporations whose corporate group has ties to tax havens
(millions of dollars, unless otherwise indicated)

	Number of corporations [(1)]	Increase in gross tax burden following double taxation of foreign dividends
Delaware (United States)	413	34.9
Luxembourg	220	21.9
Ireland	70	13.2
Switzerland	80	11.7
Singapore	19	6.0
Barbados	24	0.8
Hong Kong	13	0.1
Others	34	0.0

(1) Since the corporate group of some corporations has ties to more than one tax haven with a tax treaty with Canada, the total number of corporations exceeds the total sample of 620 corporations.

30 Since there is no information available on the origin of intra-corporate dividends in order to isolate the amounts from corporate group members domiciled in a tax haven, the source of intra-corporate dividends declared by Québec corporations is deemed to be distributed equally among the corporations comprising the corporate group.

■ Illustration of the economic impact of Québec's withdrawal from Canadian tax treaties

Considering that these corporations would reduce their purchases from their Québec suppliers in the same proportion as their direct activity on Québec soil in order to maintain a constant tax burden, Québec's non-recognition of Canada's tax treaty with:

— Delaware (United States) would entail a loss of 12 000 jobs and a decline of nearly $1.4 billion in GDP;

— Luxembourg would entail a loss of 34 550 jobs and a decline of nearly $3.4 billion in GDP;

— Ireland would entail a loss of 11 690 jobs and a decline of over $1.3 billion in GDP;

— Switzerland would entail a loss of 10 790 jobs and a decline of nearly $1.3 billion in GDP.

TABLE 20

Illustration of economic impacts of Québec's withdrawal from Canadian tax treaties
(millions of dollars, unless otherwise indicated)

	Jobs (number)			GDP		
	Direct	Indirect	Total	Direct	Indirect	Total
Delaware (United States)	−4 240	−7 760	**−12 000**	−557	−809	**−1 365**
Luxembourg	−4 690	−29 850	**−34 550**	−918	−2 458	**−3 376**
Ireland	−2 750	−8 950	**−11 690**	−436	−912	**−1 349**
Switzerland	−5 510	−5 290	**−10 790**	−682	−570	**−1 252**
Singapore	−2 250	−1 120	**−3 370**	−209	−125	**−334**
Barbados	−40	−40	**−80**	−4	−4	**−8**
Hong Kong	−40	−10	**−50**	−3	−1	**−4**
Others	−10	—	**−10**	−1	—	**−1**

Note: Totals may not add due to rounding.

■ Illustration of the fiscal impact of Québec's withdrawal from Canadian tax treaties

The tax impact of Québec's non-recognition of a tax treaty therefore corresponds to the sum of:

— revenue collected through double taxation of the foreign income of corporations that have ties with the jurisdiction concerned;

— tax losses resulting from the decline in direct and indirect activities attributable to those corporations, which will act to keep their tax burden constant.

As such, Québec's non-recognition of Canadian tax treaties with:

— Delaware (United States) would entail a loss of $85.2 million for the government;

— Luxembourg would entail a loss of $394.6 million for the government;

— Ireland would entail a loss of $87.3 million for the government;

— Switzerland would entail a loss of $79.5 million for the government.

TABLE 21

Illustration of the tax impact of Québec's withdrawal from Canadian tax treaties
(millions of dollars)

	Direct	Indirect	Total
Delaware (United States)	−17.8	−67.4	**−85.2**
Luxembourg	−24.2	−370.4	**−394.6**
Ireland	−8.9	−78.4	**−87.3**
Switzerland	−30.9	−48.5	**−79.5**
Singapore	−11.0	−9.6	**−20.6**
Barbados	−0.2	−0.4	**−0.6**
Hong Kong	−0.2	−0.1	**−0.3**
Others	−0.1	—	**−0.1**

Note: Totals may not add due to rounding.

1.10 The possibility of collecting QST through credit card transactions

Several QST collection-related issues have been raised over the past few years as Québec consumers use more and more foreign suppliers of properties and services.

Online and payment services and intermediaries (credit, debit, Interac or PayPal) are used in up to 94.8% of online purchases[31] made outside Québec and Canada.

Since those methods of payment are so extensively used for purchases from foreign suppliers, it has been proposed that the institutions issuing payment cards and the suppliers of payment services (the “payment intermediaries”) collect QST on online purchases made by Québec consumers.

However, implementing such a solution raises important issues.

1.10.1 Issues related to QST collection by payment intermediaries on online purchases outside Québec

Issues with respect to that proposal included the absence of information required for QST collection, international standards and tax avoidance.

❑ Absence of information required for QST collection

In order to collect and submit taxes on online purchases by Québec residents, the payment intermediaries involved would have to be able to determine whether QST would have to be collected for all transactions.

QST is applied to most properties and services, but not all. In addition, according to the destination principle, QST will be applied only if the properties or services are supplied in Québec, for use or consumption in Québec.

As part of the analysis conducted by the Ministère des Finances du Québec and Revenu Québec, discussions with industry representatives revealed that payment intermediaries do not have the information required for proper QST collection.

The information they gather does not allow for a determination of the nature of the properties or services, or the location of the consumer at the time the transaction is made, or the location where the properties or services are provided to the consumer.

In fact, the payment intermediaries know only the total amount of the transaction, the currency and the supplier’s identity.

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[31] Survey conducted by the Centre facilitant la recherche et l’innovation dans les organisations in 2014-2015.

Below are a few examples where it would be inappropriate to charge QST on credit card transactions:

- A consumer orders a $20 book (GST but not QST taxable) and a daytimer for $15 (GST and QST taxable) from a foreign supplier. The payment intermediaries identify the transaction only as a total transaction of $35 rather than indicating that only $15 is QST taxable. The addition of $3.49 in QST would therefore not be appropriate;
- A Québec supplier charges QST on a transaction with a Québec consumer even though the online order was made from one of the supplier's facilities outside Québec. The payment intermediary would therefore collect the QST a second time;
- A Québec consumer makes purchases while visiting outside Québec, or reserves hotel rooms or concert tickets for this trip. QST would not generally be applicable for such transactions

An international agreement stipulates that the Canada Border Services Agency collects the QST applicable to non-commercial imports of tangible property into Québec for the Québec government.

The collection of QST by payment intermediaries as well as by the Canada Border Services Agency could also lead to double QST collection and consumer reimbursement measures would be called for.

❑ Tax avoidance

Québec consumers could be tempted to use foreign payment cards or other payment methods such as virtual currency (e.g. bitcoins) to avoid tax collection by payment intermediaries.

Since it is impossible to cover all methods of payment, the risk of encouraging the use of such other methods is real, affecting the efficiency of the proposed solution.

❑ OECD's position

The OECD does not recommend tax collection through payment intermediaries.[32]

Instead, it recommends improving the efficiency of tax collection on imports and requiring foreign suppliers of intangibles properties and services to register in the consumers' country of residence.

Although this proposal to oblige payment intermediaries to collect QST may seem interesting, it should not be adopted for the reasons stated above.

It is proposed instead that the OECD solutions be followed, namely, do a better job of collecting GST on tangible property at borders and oblige foreign merchants to register and collect both QST and GST on intangibles properties and services.

[32] Organisation of Co-operation and Economic Development, *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, May 4, 2017*, p. 124-125.

Application of a tax on credit card transactions: the Brazil example

In Brazil there is a tax on financial transactions that applies to several types of foreign currency transactions made by Brazilians, including credit card transactions, foreign currency purchases, prepaid debit card transactions, foreign currency withdrawals, travellers' cheques, securities transactions, and so on.

This is a regulatory tax because its terms of application may be adjusted depending on the economic conditions in the country, particularly since fluctuations in the Brazilian currency can be extremely volatile.

It is not a sales tax like the GST or the QST. It applies to the amount of the transaction and only to financial transactions. Its terms of application can be adjusted to the country's economic situation. Consequently, it is an economic policy tool and its application does not raise the aforementioned issues related to sales tax collection by payment entities.

1.11 Section 5907 of the Income Tax Regulation

1.11.1 Issue raised

Recommendation 7 of the Committee on Public Finance's report asks the government to examine the legality of subsection 5907(11.2) of the federal Income Tax Regulations (ITR).

1.11.2 Analysis of tax-exempt dividend rules

The Income Tax Act stipulates that Canadian corporations do not have to pay taxes on dividends from an "exempt surplus" of a foreign affiliate, as defined by the regulation.

Before 1995, the ITR defined "exempt surplus" as active revenue from a foreign affiliate residing in a country appearing on the list of designated countries.

In 1995 the list of designated countries was removed from the ITR, which now references, among others, countries with which Canada has tax treaties. However, the changes made that year added the condition that the foreign affiliate must be a resident of that country for the purpose of the tax treaty as well.

Subsection 5907(11.2)c) of the ITR was added to specify that this new condition does not change the tax treatment of dividends from the exempt surplus of a foreign affiliate residing in a country that appeared on the list of designated countries before 1995.

The fact that tax treaties with a foreign country did not apply to certain foreign corporations of that country did not necessarily mean that these corporations did not reside in that foreign country. The addition of this subsection simply confirmed that Canadian corporations that hold shares in such corporations could continue to receive tax-exempt dividends from them even after 1995.

1.11.3 Validity of the regulation

The Income Tax Act refers to the ITR to define the concept of "exempt surplus," which is useful for determining the tax treatment of dividends received by Canadian corporations from foreign affiliates. Subsection 5907(11.2) of the ITR sets out a rule for applying the definition of "exempt surplus" and there is no issue as to its legality. The government has obtained a legal opinion to that effect.

1.12 Support for research and development in Québec

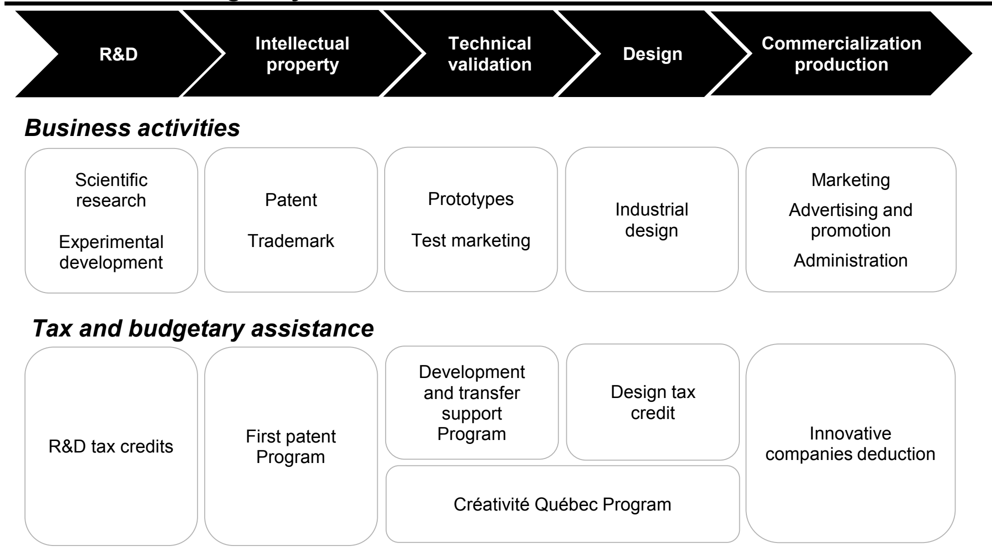
Québec has introduced various measures to encourage innovation in businesses, including tax credits for research and development (R&D).

R&D tax credits are intended to stimulate investments in R&D in Québec, whether in terms of human capital or closer cooperation between enterprises, universities and research centres.

Combining all the support for innovation provided by the Québec government, enterprises that carry out their activities in Québec can benefit from government support at all stages of innovation.

ILLUSTRATION 4

Main tax and budgetary measures for innovation



Refundable tax credits for R&D in Québec

Corporations engaged in R&D activities in Québec can take advantage of four refundable tax credits:

− tax credit for researchers' salaries;

− tax credit for research contracts with universities or public research centres;

− tax credit for private partnership research;

− tax credit for contributions to a research consortium.

The tax credit are 30% for SMBs and 14% for large companies. The tax base for each tax credit is defined in the following table.

Tax base for R&D tax credits

"Salaries and Wages" tax credit	Salary or 50% of the value of a subcontract with an unrelated third party
"University" tax credit	80% of the value of a subcontract with a university, eligible public research centre or research consortium
"Private partnership" tax credit	100% of the value of R&D as part of a partnership contract and 80% of the value of a subcontract.
"Research consortium" tax credit	Amount of fees and contributions paid

1.12.1 Tax treatment of intellectual property transfers

The free movement of goods and capital has enabled different economies to specialize and create wealth by positioning themselves in the global value chain according to their comparative advantages.

Corporations that carry out R&D work may want to sell their intellectual property or grant licenses to use their intellectual property for different purposes.

For instance, an enterprise holding a patent may decide to sell it to a foreign corporation and thereby earn revenue without taking the risk of marketing the innovation.

— This enterprise might be taxed on its capital gain and decide to allocate its resources to other more profitable activities such as other R&D work or the marketing of other intellectual property rights that it owns.

If a corporation sells its intellectual property or grants a license for its use, the tax system has mechanisms to allow the government to tax the revenue from the transaction.

— The transactions have to be based on fair value.

The OECD is working to coordinate the tax systems of different jurisdictions and set up ways of regulating transfer pricing between related corporations.

OECD transfer pricing principles
Transfer pricing rules are intended to make the operating costs between related enterprises match the price that would have been agreed between non-related enterprises (the arm's length principle). In October 2015 the OECD published final reports on Base Erosion and Profit Shifting (BEPS) Actions 8-10. Those reports contain a revised chapter on transfer pricing principles for intangibles. The principles in this chapter particularly emphasize respect for the following rules: – the legal ownership of intangibles by a related enterprise does not in itself determine the right to collect income generated through the use of such intangibles; – related enterprises performing important value creation functions related to development, enhancement, maintenance, protection or use of intangibles can expect appropriate remuneration. The BEPS recommendations include revisions to the Transfer Pricing Principles. The revisions allow for an improved interpretation of the arm’s length principle and are intended to better align the profits of multinational enterprises with the economic activities generating those profits. The clarifications provided in the revisions, for the most part, support the current interpretation of the Canada Revenue Agency and application of the arm’s length principle. The Canada Revenue Agency therefore applied these revisions because they are consistent with its current practices.

Source: OECD, *Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 – 2015 Final Reports*, October 5, 2015, p. 64.

1.12.2 **Encourage innovation in all its forms**

R&D tax credits are intended to stimulate investments in scientific research and experimental development in Québec.

In this regard, a significant portion of R&D expenditures do not necessarily lead to intellectual property applications.

To qualify for R&D tax credits the expenditures incurred must meet certain eligibility criteria, especially those demonstrating that they are intended to resolve a scientific or technological uncertainty.

However, when an enterprise applies for a R&D tax credit it has no way of knowing whether its R&D activities will result in an innovation.

R&D work can sometimes engender new R&D work, and so on over many years. The application for intellectual property rights may not be made until about a decade later.

Lastly, R&D work may result in an important innovation but not lead to an application for intellectual property rights.

— For example, a corporation whose R&D work leads to a significant improvement in its procedures will not necessarily apply for intellectual property rights because it may prefer to keep its innovation internal (that is, a business secret).

Over the past few years, fewer than 5% of enterprises that received R&D credits have been awarded patents. Those activities have, however, created significant economic benefits for Québec.

TABLE 22

Number of companies that received a USPTO[(1)] patent and received R&D tax credits

	2007	2008	2009	2010	2011	2012	2013	2014
Number of companies with an establishment in Québec to which the USPTO awarded a patent	192	197	204	227	217	287	261	270
Number of companies that received Québec R&D tax credits	9 115	9 243	9 066	8 679	8 113	7 487	6 970	6 349
Proportion (%)	**2.1**	**2.1**	**2.3**	**2.6**	**2.7**	**3.8**	**3.7**	**4.3**

(1) United States Patent and Trademark Office.
Sources: Compilation of the Ministère de l'Économie, de la Science et de l'Innovation and the United States Patent and Trademark Office.

Recommendations of the Québec Taxation Review Committee with regard to R&D credits

As part of its work, the Québec Taxation Review Committee analyzed the economic and fiscal impacts of R&D credits.

This work led the Committee to stress that:

- R&D investments are essential to keep well performing businesses in Québec;
- tax measures have a direct impact on the competitiveness of businesses making R&D investments;
- R&D investments have positive externalities for the whole of society;
- the absence of government support would threaten many of these investments.

As such, the Committee recommended that the R&D tax credits be maintained but that certain adjustments be made.

The Committee's recommendations in its interim report

With regard to R&D tax credits, the Committee recommended that the government:

- set a minimum threshold of expenditures eligible for R&D credits;
- abolish the higher tax credit rates for enterprises dealing with private partnership research projects, research consortiums and university research contracts.

Government action

The government acted on the Committee's recommendations on R&D tax credits in its Québec Economic Plan – Fall 2014 Update.

The government:

- introduced minimum threshold expenditures to qualify for the R&D tax credits of $50 000 for corporations with assets of $50 million or less and $225 000 for corporations with assets of $75 million or more;
- standardized R&D tax credits, abolishing the higher tax credit rates for enterprises dealing with private partnership research projects, research consortiums and university research contracts for large enterprises.

❑ Impact of limiting the movement of intellectual property rights

If an enterprise could no longer easily trade its intellectual property with foreign corporations, that could have serious repercussions on the value of its assets.

- The intellectual property rights holder could be prevented from selling to the highest bidder.
- That could even affect the value of certain enterprises whose capitalization is based on the value of their intellectual property, leading them to reduce their R&D work.

The free movement of innovations is generally seen as a significant benefit because it allows knowledge to be spread and processes improved – two factors favourable to growth and productivity.

1.12.3 The success of the Québec R&D support program

Since its implementation, the Québec R&D support program has enabled Québec to make significant progress in terms of R&D investments.

The government's incentive-based approach has allowed an innovation ecosystem promoting the growth and increased competitiveness of Québec businesses to be built.

- In addition, this approach has also led to stronger cooperation between enterprises, universities and research centres.

Moreover, R&D work is an economic activity in itself that can generate positive spinoffs for everyone in Québec.

An incentive-based rather than coercive approach allows Québec to remain attractive for corporations that wish to conduct R&D and makes Québec's innovation ecosystem sustainable.

❑ A proactive approach based on results

Innovation assistance measures are an important focus of government action. In addition to analyzing the economic and tax impacts of those measures, the government is watching the development of the Québec innovation ecosystem so that it can support its growth, increase its benefits for the Québec economy and make public interventions more profitable.

To do this, the government has recently introduced measures to promote the marketing and manufacturing in Québec of innovations designed by enterprises.

- The government wants to ensure that innovations designed by Québec enterprises remain in Québec and lead to commercial activities in Québec.

■ Deduction for innovative companies seeks to increase R&D spinoffs

The government acted proactively by introducing the innovative companies deduction (ICD) as part of the Québec Economic Plan of March 2016.

— The ICD is intended to encourage qualified innovative manufacturing corporations to promote the results of R&D work that they conducted in Québec, and which led to filing for a patent.

— With the ICD, enterprises in the manufacturing sector that market products incorporating patent protecting inventions developed in Québec will benefit from a lower tax rate on their revenue attributable to the marketing of such products.

The Québec approach is therefore to use tax incentives to encourage corporations to conduct R&D work in Québec and take advantage of the results.

This approach makes Québec enterprises more competitive and encourages their integration into the global supply chain, which contributes to Québec's economic growth and keeps publicly-funded intellectual property on Québec soil.

The innovative companies deduction (ICD)

To promote the marketing and manufacturing of innovations designed by corporations in Québec, the government introduced an innovative companies deduction (ICD).

Briefly, with the ICD, the tax rate on the income portion attributable to the marketing of a product incorporating patented parts is reduced from 11.8% to 4.0%.

By introducing the ICD, the government wants to promote:

- investment in the innovative manufacturing sector;
- retention of intellectual property developed in Québec;
- production and marketing of goods resulting from patents protecting inventions designed in Québec;
- the competitiveness of Québec corporations.

APPENDIX 2: ACTIONS

1.1 Step up the fight against international tax planning

Technological advances facilitate the flow of capital and give rise to new forms of economic activity. The government is therefore faced with complex changes that can erode the tax base with which it funds public services.

These phenomena include the increased use of tax havens, international tax planning, the growth of e-commerce and the advent of the sharing economy.

To manage these new issues, the government must rely on the expertise of specialized resources and cooperate in the implementation of new ways to apply existing tax principles, so that everyone pays their fair share.

The government is therefore creating the Special Task Force on International Tax Planning. To that end, the government will:

- grant further resources to the Ministère des Finances du Québec to boost its ability to analyze international taxation and take action to better counter international tax planning by multinationals;
- allocate additional resources to Revenu Québec to strengthen its ability to fight tax evasion and international tax avoidance;
  - Revenu Québec will use these additional means to further cooperate with the federal government in the treatment and analysis of international aggressive tax planning involving Québec taxpayers.

Moreover, Revenu Québec will create the Forum on International and Emerging Tax Schemes, with the participation of the Canada Revenue Agency, which will enable the expertise of participants from various sectors to be pooled. The work will be public in nature.

1.1.1 Special Task Force on International Tax Planning

The goal of the Special Task Force on International Tax Planning will be to proactively identify the planning used by both corporations and individuals, in order to better control it by rapidly amending Québec tax legislation. To that end, the task force will be mandated to:

- ramp up tax audits of international activities, in collaboration with the Canada Revenue Agency;
- identify, document and analyze the international tax planning schemes used by both businesses present in Québec and Québec residents;
- recommend to the Minister of Finance of Québec the actions to be taken to counter the schemes identified.

❑ Take full advantage of the new information available

Revenu Québec already receives a fair amount of information under the agreement signed with the Canada Revenue Agency in 2009.

— The purpose of this agreement is to facilitate the administration and enforcement of tax laws.

Under the renewed agreement, Revenu Québec will have access to, among other things, five new types of information key to the fight against international tax planning and the use of tax havens:

— the Information Return of Non-arm's Length Transactions with Non-residents;

— the Information Return Relating to Controlled or Not-Controlled Foreign Affiliates;

— the International Electronic Funds Transfer Report;

— the Foreign Income Verification Statement;

— the Country-by-Country Report for Canadian and U.S. multinationals having a member located in Québec.

In addition, the Canada Revenue Agency will ask the jurisdictions concerned for authorization to share country-by-country reports with Québec and the other Canadian provinces.

This information will help the Special Task Force on International Tax Planning perform tax audits.

It will also enable the detection of new international tax planning arrangements with respect to, for example, profit shifting.

❑ Additional resources

To further develop the expertise and tools essential to analyzing and auditing international tax planning arrangements, the government will provide for additional resources for Revenu Québec and the Ministère des Finances du Québec.

The extra resources will expand Québec expertise and bolster cooperation between the various organizations participating in the process to combat international tax planning.

TABLE 23

Breakdown of additional resources granted to the Ministère des Finances du Québec and Revenu Québec

Clienteles and sectors	Additional staff
Ministère des Finances du Québec	
Analyses and legislative action	5
Revenu Québec	
Action with respect to businesses (transfer pricing, etc.)	30
Action with repect to individuals	45
Subtotal	**75**
TOTAL	**80**

Boost the ability of the Ministère des Finances du Québec to conduct analyses and take action to better counter international tax planning

To widen the scope of analyses and better counter international tax planning–for example, through legislative amendments–the government will grant further resources to the Ministère des Finances du Québec.

Among other things, these new resources will:

- expand the government's international taxation expertise;
- allow for analysis of the international tax planning practices of corporations in Québec;
- enable legislative amendments to be drafted, particularly in cooperation with Finance Canada, in order to counter international tax planning schemes.

Strengthen the ability of Revenu Québec to fight tax evasion and tax avoidance

In conjunction with the creation of the Special Task Force on International Tax Planning, the government will grant an extra 75 resources to Revenu Québec, for the purpose of:

- identifying, auditing and assessing non-compliant taxpayers, as well as strengthening internal analyses and efforts to foster tax compliance;
- compiling, organizing and processing information necessary to the analysis of international tax planning activities;
- bolstering cooperation with the Canada Revenue Agency with respect to the processing and analysis of aggressive international tax planning arrangements involving Québec taxpayers.

Revenu Québec's additional resources will be allocated so as to encompass all clienteles and sectors necessary for processing international tax planning files.

Announcements by the federal government relating to the fight against tax evasion
As part of Budget 2016, the federal government announced investments over five years to enable the Canada Revenue Agency to: − hire additional auditors and specialists; − develop robust business intelligence infrastructure; − increase verification activities and improve the quality of investigative work that targets criminal tax evaders. In addition, the Canada Revenue Agency is going to improve its ability to collect outstanding tax debts. Lastly, in Budget 2017, the federal government announced additional investments over five years to prevent tax evasion and improve tax compliance. These investments will be used to: − fund new initiatives in the fight agains tax evasion and tax avoidance; − extend existing programs.

- **Greater cooperation with the Canada Revenue Agency**

Revenu Québec and the Canada Revenue Agency already actively cooperate on several joint files involving Québec taxpayers or businesses.

However, given the complexity of aggressive tax planning files, the internationalization of structures, and the importance of taking action to counter them and protect government tax bases, Revenu Québec and the Canada Revenue Agency recently agreed to step up their cooperation in order to combat aggressive tax planning involving Québec taxpayers.

Pooling the expertise of Revenu Québec and the Canada Revenue Agency in the processing of aggressive tax planning arrangements will result in:

— the sharing and development of advanced expertise in the processing and identification of international tax planning arrangements, and in the use of tax havens by individuals and businesses present in Québec;

— the development and implementation of new ways of countering these emerging phenomena;

— the pooling of knowledge and tools key to the analysis and auditing of international tax planning arrangements;

— a greater contribution by Québec to the analysis of problems relating to transfer pricing;

— optimal use of the information exchanged between the federal tax administration and Revenu Québec under the Agreement Concerning the Exchange of Information Regarding Taxes and Other Duties.

Profit shifting
Transfer pricing principles The OECD recently made changes to its Transfer Pricing Guidelines to provide for taxing the profits of multinationals in the country where most of a multinational's economic activity occurs, as determined by people functions and value creation. Under the value creation concept, the arm's length principle must now take into account the functions performed by each of the parties to the transaction, taking into account assets used and risks assumed, including the relation between these functions and value creation, in broad terms, by the multinational enterprise group to which the parties belong, the circumstances of the transaction and practices in the sector of activity concerned. **Processing of files involving profit shifting** The Canada Revenue Agency is the "competent authority" in negotiations with foreign jurisdictions about the resolution and arbitration of double-taxation issues that can arise in the case of transfer pricing. Application of the Transfer Pricing Guidelines across jurisdictions helps to ensure the proper measurement of taxable income in each jurisdiction, avoid double taxation, minimize inter-jurisdictional conflict between tax administrations and foster international trade and investment. The Québec government wants to develop its expertise and play a greater role in the processing of transfer-pricing files. Cooperation between the two tax administrations in combating aggressive tax planning will enable Revenu Québec to work with the Canada Revenue Agency on the processing and analysis of files involving transfer prices agreed by enterprises present in Québec.

1.1.2 Forum on International and Emerging Tax Schemes

To develop knowledge, expertise and practices with respect to the fight against tax evasion and tax avoidance, Revenu Québec will also set up, with the participation of the Canada Revenue Agency, the Forum on International and Emerging Tax Schemes.

The forum will draw on expertise in the public and university sectors, as well as in the private sector, and will advance global knowledge about combating tax evasion and tax avoidance, as well as aggressive tax planning.

The results of the work carried out will be public in nature. This will enable taxpayers to:

- be informed of the various international and emerging tax strategies that are not allowed;
- be informed of the impact of the use of these strategies on government revenues and the funding of public services;
- learn about the government's efforts to counter these schemes.

In particular, the forum will be mandated to:

- foster the emergence of ideas, thoughts and proposals aimed at advancing efforts to understand tax base erosion, and improve the means implemented to eradicate it or limit its impacts;
- ramp up discussions with other tax administrations and document best practices to more effectively combat international and emerging tax evasion and tax avoidance;
- inform the population, via a public showcase, of the work being done and advances in knowledge;
- contribute to the efforts of tax administrations to counter aggressive tax planning.

The mandates will also apply to emerging issues, such as those relating to e-commerce and the sharing economy.

❑ Ensuring access to the best specialists

Under the direction of Revenu Québec, the forum will also solicit the participation of specialists from university and private networks, on the basis of priorities. The initiatives implemented will be in relation to the use of tax havens, tax avoidance and aggressive tax planning, and may take a variety of forms:

- research funding;
- scholarships or internships for graduate-level university students;
- solicitation of local and international experts to provide training, give conferences and lead information sessions;
- forging of partnerships with various organizations.

1.2 Multilateral information exchange actions

The Québec government multiplies information exchange opportunities and processes with various jurisdictions and organizations. These exchanges give Revenu Québec access to a large quantity of information that it would not otherwise have.

Québec has taken the steps necessary to take full advantage of the introduction of the following mechanisms:

- rules for international electronic funds transfers;
- a country-by-country reporting process;
- a process for the automatic exchange of information on financial accounts held by non-residents at foreign financial institutions;
- a process for the spontaneous exchange of decisions relating to tax matters, between the Canada Revenue Agency and tax administrations in other jurisdictions.

Revenu Québec will have access to this information in part through the renewal of the Agreement Concerning the Exchange of Information Regarding Taxes and Other Duties.

1.2.1 International electronic funds transfers – FINTRAC

Since January 1, 2015, certain financial intermediaries, such as banks, have been required to report international electronic funds transfers of $10 000 or more to and from Canada to the Canada Revenue Agency. The required information must be reported on the International Electronic Funds Transfer Report form (RC-438) no later than five working days after the day of the transfer.

This obligation applies to:

- financial entities (banks, credit unions, caisses populaires, financial services cooperatives, trust and loan companies, and state-owned enterprises that accept deposits);
- money services businesses;
- casinos.

These reporting requirements are the same as those for the reports remitted to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

As part of the renewal of the Agreement Concerning the Exchange of Information Regarding Taxes and Other Duties, the Canada Revenue Agency agreed to Revenu Québec's having access to this information. The two organizations are collaborating on the operationalization of this exchange.

1.2.2 **Exchange of country-by-country reports**

The OECD recommended, among other things, country-by-country reporting as part of the base erosion and profit shifting (BEPS project).

The country-by-country report is a form that multinational enterprises (MNEs) are required to complete for the tax administration of the country in which their parent entity is a resident. It includes the global allocation, by country, of important data for the MNE, such as sales figure, profits, income tax paid, stated capital, retained earnings, number of employees and tangible assets, as well as the main activities of each of its subsidiaries.

The country-by-country report is therefore not a report which accompanies a self-assessment or on the basis of which an assessment can be made; rather, it is a mechanism that provides tax authorities with information enabling them to conduct a risk evaluation.

The first exchanges of country-by-country reports between jurisdictions are expected to take place by June 2018 and will pertain to taxation years beginning after 2015.

The multilateral country-by-country agreement does not allow for the sharing of information with another level of government. However, implementation of the agreement hinges on protocols for putting in place the appropriate measures to protect the confidentiality of information. As part of the signing of these protocols, the Canada Revenue Agency will propose a clause to the countries concerned authorizing it to share with Revenu Québec the information exchanged.

Exchange of information with the Canada Revenue Agency concerning country-by-country reports

Where a jurisdiction receives a country-by-country report, that jurisdiction will automatically exchange the report with other jurisdictions in which the MNE operates, provided that, in each case, the other jurisdiction has implemented country-by-country reporting, the two jurisdictions have a legal framework in place for automatic exchange of information and they have entered into a competent authority agreement relating to this type of reporting.

If the jurisdiction where a subsidiary resides cannot obtain the country-by-country report from the parent's jurisdiction through automatic exchange of information—for example, where the parent entity resides in a jurisdiction that does not have an agreement for the automatic exchange of country-by-country reports—then, in certain cases, the tax administration of the subsidiary's jurisdiction may require the subsidiary to file the country-by-country report.

An MNE may avoid having this filing requirement imposed on multiple subsidiaries in multiple jurisdictions by designating one of its subsidiaries to be a "surrogate" for filing purposes. Provided that the surrogate is located in a jurisdiction which has implemented this type of reporting, the surrogate would then file the country-by-country report on behalf of the MNE as a whole.

Situation in Canada

An MNE that has a parent entity present in Canada is required to file a country-by-country report with the Canada Revenue Agency within one year of the end of the fiscal year to which the report relates. This also applies to the Canadian subsidiary of an MNE whose parent entity is not subject to the *Income Tax Act* and is present in a jurisdiction that has not entered into an agreement with Canada for the automatic exchange of these reports.

The Canada Revenue Agency expects approximately 120 of these reports to be filed by Canadian MNEs in 2017.

1.2.3 Information exchange agreement between the Canada Revenue Agency and Revenu Québec

Revenu Québec and the Canada Revenue Agency signed the Agreement Concerning the Exchange of Information Regarding Taxes and Other Duties.

Revenu Québec receives a fair amount of information under this agreement, which is aimed at facilitating the administration and enforcement of tax laws.

For several months now, the Revenu Québec and Canada Revenue Agency teams have been working on the renewal of the agreement. In this context, it was agreed that Revenu Québec will have access, in accordance with the terms set forth in the agreement, to new types of information key to combating aggressive tax planning and the use of tax havens involving taxpayers subject to Québec income tax. This new information includes:

- information returns relating to non-arm's length transactions with non-residents (required where transactions total more than $1 million);
- information returns relating to controlled or not-controlled foreign affiliates (provide details of the organizational structure of affiliates and the composition of revenue);
- foreign income verification statements (provide details of foreign property held by taxpayers, where the total cost of all of a taxpayer's foreign property exceeds $100 000);
- international electronic funds transfer reports;
- country-by-country reports of Canadian and U.S. multinational entities.

Information exchange agreement between the Canada Revenue Agency and Revenu Québec

The purpose of the Agreement Concerning the Exchange of Information Regarding Taxes and Other Duties between the Canada Revenue Agency and Revenu Québec is to increase cooperation between the parties with regard to the application and enforcement of their respective tax laws, through a concerted and efficient exchange of information of mutual interest concerning any taxpayer.

It sets out, in particular, the terms and conditions for information exchanges covered by the agreement and, considering the confidential nature of the information, states the applicable protection obligations.

It is the most important agreement Revenu Québec has for applying and enforcing tax laws with respect to the exchange of information.

Nature of the information shared

The agreement enables the parties to exchange a large amount of information. The information exchanged concerns, for example, tax returns, audits, objections and appeals, investigations, recovery, aggressive tax planning and certain international information, such as tax information held by Canada and other countries that may be shared under existing tax treaties.

1.2.4 **Standard for Automatic Exchange of Financial Account Information in Tax Matters in the Québec context**

On June 2, 2015, the Canadian government signed the Multilateral Competent Authority Agreement, which flows from the Convention on Mutual Administrative Assistance in Tax Matters, along with the protocol amending the convention, which implements the Automatic Exchange Standard.

This agreement will require financial institutions in Canada to target accounts held by non-residents and to report certain information on these accounts to the Canada Revenue Agency.

Under the Automatic Exchange Standard, foreign tax authorities will provide information on accounts held by Canadian residents in their jurisdiction to the Canada Revenue Agency, which, on a reciprocity basis, will provide to foreign tax authorities similar information on accounts held in Canada by residents of these jurisdictions.

So that Revenu Québec has access to this information, the Canada Revenue Agency will ask the foreign jurisdictions for authorization to share the information with the provinces.

Multilateral Competent Authority Agreement
On October 24, 2014, all OECD and G20 countries, and certain other countries having “large financial centre” status, agreed to adopt the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the standard). This standard, drafted by the OECD and the G20, provides for the automatic, annual exchange, between governments, of financial account information, including account balances, interest, dividends and proceeds from the transfer of financial assets. It covers accounts held by natural and legal persons, including trusts and foundations. At August 30, 2017, 95 jurisdictions had committed to applying the standard and beginning automatic information exchanges in 2017 or 2018. To implement this standard, participating countries signed the Multilateral Competent Authority Agreement. In so doing, signatory countries undertake to support interntional efforts to strengthen cooperation against offshore tax evasion. Thus, two countries may mutually agree to automatically exchange financial information relevant to the administration and enforcement of their domestic tax legislation.

1.3 Obligation to collect the QST

1.3.1 The e-commerce challenge

The QST, like the GST/HST, is a value added tax (VAT). It applies if property and services are acquired for use or consumption in Québec (the "destination principle").

Thus, as a rule, the QST applies to property and services acquired in Québec, whether the property and services are produced in Québec or imported from elsewhere in, or from outside, Canada.

In contrast, the QST does not generally apply to property and services sold by Québec businesses for use or consumption outside Québec.

The QST is payable by the recipient, whether the property or service is acquired in the recipient's capacity as a consumer or for other purposes.

The supplier is generally required to register for the QST, and to collect the QST paid by the recipient and remit the tax to Revenu Québec.

Suppliers that do not have a physical or significant presence in Québec are not required to register for the QST, or to collect or remit the tax, even when their supplies are taxable.

In such a situation, the following rules apply:

- in the case of services and intangible property, Québec consumers are required to self-assess the QST payable;
- in the case of tangible property imported from outside Canada, the QST is normally collected by the Canada Border Services Agency. Regarding tangible property acquired from a Canadian province, the Québec consumer is obliged to self-assess the QST payable.

The rise in the number of online transactions in recent years therefore poses a significant challenge for all countries that charge a VAT. In addition to the loss of government revenue, it is a matter of fairness toward domestic businesses, which are required to collect and remit the tax.

1.3.2 Approach proposed by the Québec government

The OECD recommends that foreign suppliers be required to register for the VAT of the country of destination of the property or services, and that they collect and remit that country's tax. The OECD also recommends that a simplified registration system be put in place for such suppliers.

Québec wants to act on the OECD recommendations. Since the QST and the GST rules in this respect are harmonized, it is preferable to take coordinated action. In this context, Québec proposes to Canada to work together to implement the OECD sales tax recommendations.

❑ Services and intangible property

It is proposed that foreign suppliers of services and intangible property be required to register for the QST and the GST/HST, and to collect and remit the taxes. In tandem with this measure, a simplified registration system would be set up to facilitate compliance with tax obligations while ensuring the integrity of the tax systems.

❑ Tangible property from outside Canada

With respect to online purchases of tangible property from foreign suppliers, an existing agreement provides that the Canada Border Services Agency is responsible for collecting, on behalf of the Québec government, the QST applicable to non-commercial imports of property to Québec, that is, property imported by Québec individuals (consumers).

However, with the advent of e-commerce, postal administrations are faced with a skyrocketing number of parcels going through customs clearance, and sales tax is charged on only a fraction of imported tangible property.

Post Canada, in collaboration with the Canada Border Services Agency, is working to modernize its processing centres in Montréal and Toronto, which will improve the situation.

Québec indicated that it would contribute financially to improving tax collection until the modernization is complete and yields the anticipated results.

This is in line with steps taken by Revenu Québec with the Canada Border Services Agency and the Canada Revenue Agency to improve tax collection at borders.

❑ Property and services from other Canadian provinces

In the case of property and services from the rest of Canada sold by suppliers that do not have a physical or significant presence in Québec, the Québec government wants to require these suppliers to register for the QST and to collect and remit the tax in accordance with special registration rules.

— This is the only solution not only for services and intangible property, but also for tangible property, since there are no customs controls for intercepting parcels from elsewhere in Canada.

It is a matter of fairness. It means following through on the OECD sales tax recommendations across Canada.

Given that the Canadian economy is highly integrated, a coordinated approach involving the federal government, the governments of the other provinces and those of the territories is key.

Québec will undertake talks with the federal government, the other provinces and the territories to ensure that the QST is collected by Canadian suppliers that sell property or services for use or consumption in Québec without having a physical or significant presence in Québec.

1.4 Voluntary disclosure

The OECD considers it important for countries to offer taxpayers the opportunity to regularize their tax affairs, by means of voluntary disclosure programs.[13]

Revenu Québec's voluntary disclosure program is in keeping with the principles laid out by the OECD in such matters. Consequently, the program should be continued for now. The government believes it is important to continue the program, while ensuring disciplined management.

However, continuation of the program will be re-evaluated based on the trend in recent developments in the exchange of information between Canada and foreign jurisdictions, particularly developments concerning the implementation of the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the "Automatic Exchange Standard"), as well as on the federal government's reflection on voluntary disclosure matters.

Ultimately, what happens to Revenu Québec's voluntary disclosure program will be determined by the OECD approach and the improvement of information exchanges internationally.

1.4.1 Revenu Québec's voluntary disclosure program

❑ Overview of the program

The object of the voluntary disclosure program is as follows:

> Revenu Québec's mission is to ensure that all taxpayers pay their fair share toward the funding of public services; its goal is tax fairness for all. With that in mind, Revenu Québec therefore considers spontaneous compliance with fiscal legislation to be a cornerstone of the tax system. That is why it encourages any person that has failed to meet one or more fiscal obligations to reportee and pay any unpaid amounts under the voluntary disclosure program.[14]

Essentially, subject to compliance with certain conditions, the voluntary disclosure program allows taxpayers, in cases where a penalty could be imposed, to rectify their tax situation themselves by disclosing, for example, omissions or false statements to Revenu Québec.

To be eligible for Revenu Québec's program, voluntary disclosure must be spontaneous, complete and verifiable, and must include full payment of the estimated duties and interest. If these conditions are met, Revenu Québec will not impose the penalties provided for under fiscal legislation and will not institute penal proceedings. Revenu Québec's voluntary disclosure program includes a partial waiver of interest in certain circumstances, essentially for years in respect of which the prescription period has expired.

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[13] Organisation for Economic Co-operation and Development, *Update on Voluntary Disclosure Programmes – A Pathway to Tax Compliance*, August 7, 2015, p. 5.

[14] Revenu Québec, *Interpretation Bulletin ADM.4/R7*, "Voluntary Disclosure Program," paragraph 1.

Spontaneous, complete and verifiable disclosure with payment included

The disclosure must be spontaneous

A disclosure is not spontaneous where, for example, further to an examination of the facts, on the date of the request, it is reasonable to believe, in light of an objectively demonstrable fact, that the person was aware that Revenu Québec or a body of another government that administers fiscal laws was about to undertake an examination, audit or investigation (or other control measures) regarding the person, or that such actions had already been taken. The same applies where, on that date, the person is being investigated for tax fraud by another body or authority (such as a police force).

The disclosure must be complete

A disclosure is complete where the person discloses, for all the fiscal laws, taxation years and periods in which the person's tax situation does not comply with the fiscal laws administered by Revenu Québec, all the instances where the person failed to meet the person's fiscal obligations. For example, in a case involving amounts invested or accrued in a foreign country, the disclosure must result in the taxation of all unreported amounts for all the years in question. Likewise, foreign investments may be subject to income tax unless their tax-exempt status can be proven.

The disclosure must be verifiable

A disclosure is verifiable where the person provides Revenu Québec with all the information, records and documents required to determine the accuracy of the facts submitted and the estimated duties.

The fiscal debt must be paid

A person making a voluntary disclosure must pay the related tax debt in full. Accordingly, for Revenu Québec to process the file, the estimated duties and interest must be paid.

Disallowance

If any of the terms concerning the filing of a disclosure, the eligibility of a disclosure and the various deadlines are not met, Revenu Québec may, at any point in the processing of a disclosure, notify the person that the disclosure has been disallowed.

In the event that a voluntary disclosure is disallowed, Revenu Québec may determine or redetermine the amount of the duties, interest and penalties payable by the person for the taxation years and periods in question and issue the person a notice of assessment in that regard. Revenu Québec may also institute legal proceedings.

Voluntary disclosures are subject to the powers of audit and investigation conferred by the *Tax Administration Act*.[15] As a result, the full cooperation of the person and the person's representative is key—both must be diligent in reporting the information and completing the documents necessary for the disclosure to be processed.

Lastly, there are various situations in which Revenu Québec's voluntary disclosure program does not apply. For example, the program cannot be used to avoid paying a penalty for filing a return after a statutory filing deadline. Nor can it be used in situations where it is reasonable to conclude that the disclosure is being made essentially for retroactive tax planning purposes.

Moreover, as mentioned previously, voluntary disclosures must be complete, and the duties applicable for periods of non-compliance must be paid in full, as illustrated below.

Illustration of full payment of duties

Context

Revenu Québec must on occasion deal with situations of tax non-compliance covering a very long period.

In this type of situation, the amount of accumulated capital is often the only information available.

If the taxpayer does not cooperate and provide satisfactory explanations, Revenu Québec generally has no choice but to estimate an assessment in order to spread taxation of the accumulated capital over the period of enrichment and non-compliance.

Revenu Québec's position in this regard was shared with the tax community in conjunction with a publication of the Association de planification fiscale et financière, in September 2012.

The principles of self-reporting and self-assessment under the *Taxation Act* are based on the honesty and integrity of Quebecers. In this context, tax case law recognizes that the tax administration may estimate the income tax payable by taxpayers that fail in their duty to determine the amount themselves.

Brief description of the taxation of initial capital

Initial capital is stopped at a specific date and deemed to be composed of the taxpayer's income not taxed for one or more taxation years prior to that date, to the extent that the income's provenance and non-taxableness are not otherwise explained.

The purpose of this approach and this method is to spread taxation of the enrichment over the entire period of non-compliance, for the full duration of the enrichment.

[15] CQLR, chapter A-6.002.

❑ A program that works

The program ensures that the full amount of duties and a significant portion of the interest owing in respect of past years are recovered, fosters reinvestment of offshore amounts in the Québec economy, ensures that, in future, income from these amounts is self-assessed, and avoids costly, complex proceedings.

Since 2009-2010, Revenu Québec has recovered almost $600 million through its voluntary disclosure program.

TABLE 24

Tax recovery further to the processing of voluntary disclosures – 2009-2010 to 2016-2017
(millions of dollars)

	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	Total
Tax recovery	39.2	31.0	51.2	56.0	53.5	63.2	92.1	206.6	**592.8**

Source: Revenu Québec.

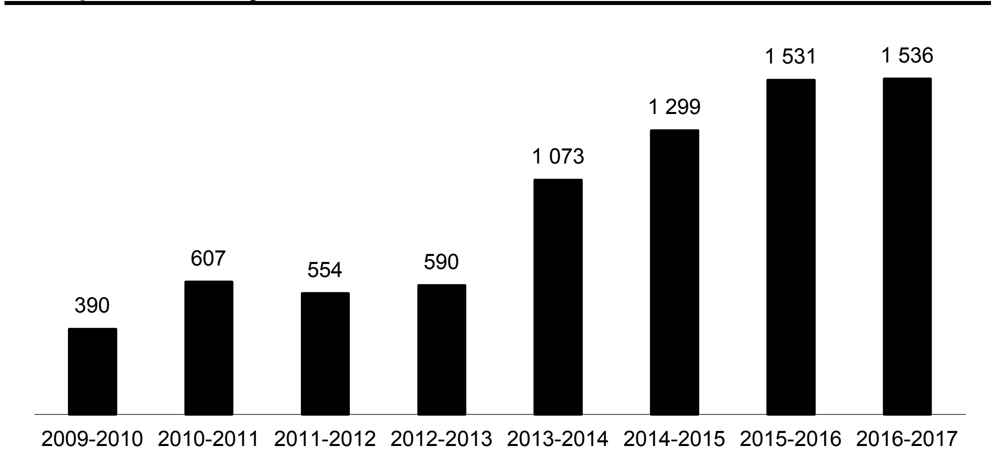
❑ An increasing number of disclosures

Since 2009-2010, the number of voluntary disclosure files has been on the rise. A total of 7 580 files have qualified for Revenu Québec's program. In 2016-2017, 1 536 files of taxpayers or mandataries were sent to Revenu Québec.

Processing this type of file is long and complex, and specialized resources are required.

CHART 7

Receipt of voluntary disclosure files – 2009-2010 to 2016-2017



Source: Revenu Québec.

1.4.2 The need for balance between placing limits on the voluntary disclosure program and Revenu Québec's detection capability

Elimination of the voluntary disclosure program, or a significant tightening of its eligibility criteria, comes with certain risks directly related to tax recovery under the program.

Indeed, there is no guarantee that taxpayers having become ineligible for the voluntary disclosure program would ultimately be targeted by Revenu Québec, precluding the recovery of any amounts by the tax authorities.

The Québec government therefore considers it important to strike a balance between placing limits on the voluntary disclosure program and Revenu Québec's detection capability.

Moreover, the voluntary disclosure program remains relevant even in a context of reports and media leaks.

Reports, media leaks and the relevance of the voluntary disclosure program

The use of tax havens is a global phenomenon that continues to be a matter of concern at Revenu Québec.

In this field, reports, including those on the world stage or by journalists, are a way to obtain information on the conduct of citizens who appear not to comply with their tax obligations. All reports and information received from the public are examined and taken into consideration, as in the case of the revelations by Offshore Leaks or the databases made public by the International Consortium of Investigative Journalists in relation to the Panama Papers and Bahamas Leaks.

Conducting audits of tax haven files is complex because of a number of elements, in particular the long audit period and the difficulty of obtaining supporting documents in foreign countries or relative to periods in the distant past.

In this context, the voluntary disclosure program continues to be relevant since, in its absence, there is no guarantee that taxpayers eligible for the program would ultimately be identified by Revenu Québec, precluding the recovery of any amounts.

1.4.3 The OECD approach to voluntary disclosure

❑ Update of the OECD reference document

In 2015, the OECD updated its reference document on voluntary disclosures of offshore income and assets not reported to the tax authority of the country of residence.[16]

According to the OECD, the 2015 update was necessary to take into consideration the substantial progress made in the exchange of information internationally. In this regard, the key event is the adoption of the new Standard for Automatic Exchange.[17]

The OECD is of the opinion that, once the Automatic Exchange Standard is fully implemented in a large number of jurisdictions, the rate of detection by tax authorities will rise considerably with respect to offshore income and assets not reported to the tax authority of the country of residence.[18]

❑ Certain contextual elements and principles with respect to voluntary disclosures

The OECD holds that a voluntary disclosure program should be an integral part of a broader strategy designed to improve tax compliance.

The OECD rightly points out that the majority of taxpayers comply with their tax obligations, while a very small percentage of them are deliberately non-compliant.

Briefly, according to the OECD voluntary disclosure principles, voluntary disclosure programs should clearly set out their aims and terms. In addition, the cost-effectiveness of the programs should be demonstrable, and the programs should be generally consistent with the tax system in place. Moreover, the OECD believes that the programs should help deter tax evasion, be structured so as to raise the compliance rate of the eligible population, and be complemented by measures that improve tax compliance in the longer term.

The OECD further mentions that taxpayers who decide to participate in a voluntary disclosure program should be treated less harshly than those who persist in being non-compliant. That said, taxpayers who participate in the program should necessarily be treated more harshly than those who are compliant, and who represent the majority of taxpayers.

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[16] Organisation for Economic Co-operation and Development, *Update on Voluntary Disclosure Programmes – A Pathway to Tax Compliance*, August 7, 2015. This document updates the 2010 publication *Offshore Voluntary Disclosure – Comparative Analysis, Guidance and Policy Advice*. In 2015, the OECD did a complete update of the 2010 document, and also presented the results of a survey of 47 member countries, including Canada, pertaining to the terms of their respective voluntary disclosure programs.

[17] See note 14.

[18] See note 14, pp. 9 to 11.

Lastly, having comprehensively assessed the OECD principles, and considering their specific context, the Québec government believes that Revenu Québec's voluntary disclosure program is in keeping with the spirit of these principles.

Furthermore, Revenu Québec's voluntary disclosure program is relevant as a source of additional information in the fight against tax evasion or abusive tax avoidance involving tax havens.

Revenu Québec's voluntary disclosure program: a source of additional information

Revenu Québec's voluntary disclosure program is a source of additional information in in the fight against tax evasion or abusive tax avoidance involving tax havens.

As mentioned by the OECD, information obtained through voluntary disclosure programs could enable the identification of taxpayers who use tax haven schemes. Efficient use of this information could lead to the recovery of additional amounts of tax over and above those directly attributable to the disclosures made. Lastly, according to the OECD, the use of information obtained through voluntary disclosure programs as part of a broader tax compliance strategy ultimately stengthens the tax administration's credibility and its ability to identify non-compliance.

The Direction générale du recouvrement at Revenu Québec, which is responsible for administering the voluntary disclosure program, shares information it receives with other Revenu Québec branches, such as those that participate in the detection of tax haven schemes used for tax evasion or tax avoidance purposes, or in audits bearing on the use of these schemes.

1.4.4 Federal reflection on the Canada Revenue Agency's Voluntary Disclosures Program

The federal tax authorities have undertaken a reflection on their Voluntary Disclosures Program in light of the recommendations made in the report of the Offshore Compliance Advisory Committee (OCAC).[19] In the report, the OCAC endorses the continuation of the Voluntary Disclosures Program as an integral part of the regime for the administration and enforcement of the law by the Canada Revenue Agency, and proposes adjustments to certain conditions for eligibility, in order to guarantee the fairness of the tax system.

Further to the ongoing federal reflection process, the Voluntary Disclosures Program remains and the revised policy underpinning the program was made public for the purpose of soliciting comments.[20]

This draft document states that the majority of taxpayers comply with their obligations and that an important principle of the program is for relief to be fair and not reward non-compliance. The circular also provides that the Minister is not required to grant relief in respect of all applications made to the Voluntary Disclosures Program. Each application will be examined and the matter will be decided on the merits of the application.

Revenu Québec is therefore following the federal government's reflection process closely.

1.4.5 Trend in Revenu Québec's voluntary disclosure program

As shown in the OECD update, the terms of voluntary disclosure programs must be tailored to the circumstances in which tax authorities function.

Thus, certain recent developments could have an impact on the Québec voluntary disclosure program.

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[19] Offshore Compliance Advisory Committee, *Report on the Voluntary Disclosures Program*, 2016. Canada Revenue Agency, News Release, "Minister Lebouthillier Welcomes the Recommendations in the Offshore Compliance Advisory Committee's Report," December 8, 2016.

[20] Canada Revenue Agency, For Discussion Purposes Only – *Draft Information Circular – IC00-1R6 – Voluntary Disclosures Program*, June 2017. News Release, "Minister Lebouthillier Announces Consultations on Changes to the Voluntary Disclosures Program to Ensure a Fairer Tax System for All Canadians," June 9, 2017. According to the news release, the Canada Revenue Agency's online consultations were to be open for 60 days and changes to the program were to be made in fall 2017.

❑ The new Standard for Automatic Exchange of Financial Account Information

The Automatic Exchange Standard could be a source of additional information for the Canada Revenue Agency and, consequently, allow for the identification of taxpayers who are Canadian residents holding unreported offshore accounts.

The actual impact of the Automatic Exchange Standard for the Québec government has yet to be determined. To consider the actual effects of the Automatic Exchange Standard in the Québec context, the government should allow it to be fully applied before reviewing Revenu Québec's voluntary disclosure program.

❑ Trend in the federal reflection on the Canada Revenue Agency's Voluntary Disclosures Program

If the federal government makes changes to the Canada Revenue Agency's Voluntary Disclosures Program, Revenu Québec should review its program in light of these changes, so that the program continues to be relevant and efficient despite contextual changes.

However, the review of Revenu Québec's program should not be undertaken before the federal government has completed consultations on the federal program and before any changes have been in effect for a while, so that Revenu Québec can evaluate their various impacts.

1.4.6 Continuation of the voluntary disclosure program

Revenu Québec's voluntary disclosure program is relevant and efficient. Consequently, the program should be continued for now.

Indeed, because of its terms and conditions, the program allows for the recovery of the full amount of duties and a significant portion of the interest owing that are often attributable to long periods of non-compliance. In a context in which audits of files involving tax havens are complex, there is no guarantee that, without the program, taxpayers in such a situation of non-compliance would ultimately be identified by Revenu Québec, precluding recovery of any amounts. Revenu Québec's voluntary disclosure program is also an additional source of information conducive to identifying taxpayers who use tax haven schemes.

Moreover, Revenu Québec's voluntary disclosure program is in keeping with the related OECD principles. In that regard, the OECD recognizes the importance of offering taxpayers the opportunity to regularize their tax affairs, by means of voluntary disclosure programs such as Revenu Québec's. When a voluntary disclosure program is part of a comprehensive compliance strategy and underpinned by certain principles, the program can be a significant, low-cost means for tax authorities to recover tax amounts. Moreover, as pointed out by the OECD, a carefully administered voluntary disclosure program is beneficial to participating taxpayers, but also to the government and to all taxpayers who otherwise meet their tax obligations.

Lastly, as part of the administration of Revenu Québec's voluntary disclosure program, special attention will be paid to recent developments in international electronic funds transfers and exchanges of financial account information, in relation to the implementation of the Automatic Exchange Standard, as well as to the federal government's reflection on voluntary disclosures.

The terms and conditions of Revenu Québec's voluntary disclosure program will subsequently be re-evaluated, so that it remains relevant and efficient in light of these developments.

If re-evaluation were to lead to the tightening of the eligibility conditions under the program, Revenu Québec would have to conduct more international tax audits and investigations. Consequently, part of Revenu Québec's staff presently assigned to the voluntary disclosure program would be reassigned to international tax audits and investigations, so as to continue benefiting from the expertise acquired in this regard.

1.5 Trusts not resident in Canada

On August 27, 2010, the Minister of Finance of Canada made public revised legislative proposals concerning non-resident trusts.

These proposed amendments to the *Income Tax Act* were incorporated into Bill C-28 (Part 1), tabled in the House of Commons on November 21, 2012, and the implementing act received Royal Assent on June 26, 2013.

Briefly, these amendments provide that trusts not resident in Canada will be deemed to be resident in Canada for Canadian taxation purposes if, at the end of the taxation year, they have:

- a resident contributor, that is, a person who made a contribution to the trust and who is resident in Canada at the end of the taxation year; or
- a resident beneficiary, that is, a person who is a beneficiary under the trust and who is resident in Canada at the end of the taxation year, and a connected contributor, that is, a person who made a contribution to the trust at a time when the person was resident in Canada.

This presumption of residence of a non-resident trust is aimed at subjecting the trust to Canadian income tax, as if it were a trust resident in Canada, on its income from the “resident portion” of its property, and as a trust not resident in Canada on its income from the “non-resident portion” of its property.

- Briefly, where a trust is not resident in Canada, the “resident portion” of its property includes property that was contributed by a resident contributor or, if the trust has a resident beneficiary, by a connected contributor.

1.5.1 Harmonization with Québec tax legislation

The Ministère des Finances du Québec announced that Québec tax legislation would be amended to incorporate the amendments to the federal tax legislation.

The announced harmonization provided for the amendment of Québec tax legislation to incorporate, with adaptation on the basis of its general principles, the amendments made to the federal tax legislation with respect to non-resident trusts.

In addition, the Ministère des Finances du Québec indicated that the Québec tax legislation amendments would be passed only once any federal statute giving effect to the amendments with which the Québec tax legislation was to be harmonized had received Royal assent.

- It was also provided that the amendments to the Québec tax legislation would take into account the technical amendments to be made to the harmonization provisions before the federal statute receives Royal Assent.

Moreover, in the case of harmonization measures, Revenu Québec customarily waits for the federal statute to receive Royal assent before drafting the amendments to the Québec tax legislation, so as to work with the final verson of the legislative text.

The amendments to the *Income Tax Act* concerning the coverage rules for non-resident trusts were passed on June 26, 2013.[21]

The amendments to the Québec tax legislation implementing this harmonization were introduced in Bill 69, which was assented to by the National Assembly on December 4, 2015 (S.Q. 2015, chapter 36).

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[21] *An Act to amend the Income Tax Act, the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the First Nations Goods and Services Tax Act and related legislation* (S.C. 2013, c. 34).

1.6 Improve the accessibility and effectiveness of information in the enterprise register

The mission of the Registraire des entreprises[22] (the Registraire) includes administering the legislation governing the constitution of Québec enterprises, and keeping a register and making it available to citizens.

Out of a concern for improving the accessibility and effectiveness of the information in the register, new measures will be implemented by the Registraire to:

- enable the public to search the register using an individual's name;
- broaden the list of organizations that may obtain information from the register;
- improve public protection and information reliability;
- promote the register to the public.

1.6.1 Enable the public to search the register using an individual's name

Presently, citizens may consult the enterprise register to find out information on individuals who have an interest in a particular enterprise, using the enterprise number or name. However, the same search cannot be done using an individual's name, because of the existing provisions of the *Act respecting the legal publicity of enterprises*.

To enhance transparency in the economic sector and strengthen public protection, the Act will be amended to enable the public to search using an individual's name.

1.6.2 Broaden the list of organizations that may obtain information from the register

Currently, the Registraire may release information contained in the register, in whole or in part, to a government department, body or enterprise (applicant) further to an agreement with the Minister of Employment and Social Solidarity. Under these agreements, applicants may be informed when an enterprise changes the information concerning it. Revenu Québec and certain government departments and bodies with investigative powers are also authorized under these agreements to use the register to compile information based on the name and home address of a natural person.

However, the Act provides that only certain bodies may be considered government bodies and therefore competent to enter into such an agreement.

[22] On April 1, 2017, the activities of the Registraire des entreprises were transferred to Services Québec, which is under the responsibility of the Ministère du Travail, de l'Emploi et de la Solidarité sociale.

In a context in which government efforts combine to better combat fraud and corruption, legislative amendments will be made to extend the possibility of entering into such agreements to more government entities. Among other things, this will enhance the efficiency of government bodies in their investigations and recordkeeping.

In addition, the Registraire will implement a computerized solution, in collaboration with the government departments and bodies concerned, including Revenu Québec, in order to facilitate the use, by government bodies, of the information in the register and ramp up their investigative capability.

1.6.3 Improve public protection and information reliability

Various measures will be taken to, in particular, enhance the quality of the information and improve public protection.

- ❑ **Grant the Registraire the power to require the provision of any document or information needed to verify the accuracy of the information declared by enterprises**

To ensure the reliability of the information in the register, the Act will be amended to expressly grant the Registraire the power to require the provision of the documents or information needed to verify the accuracy of the information declared by entreprises. Moreover, the Registraire will be allowed to refuse a registration declaration if an enterprise does not comply with its request.

- ❑ **Compel entreprises to declare certain additional information**

The government will amend the *Act respecting the legal publicity of enterprises* or its applicable regulations to compel enterprises to declare certain additional information, in conjunction with a registration declaration or an annual update.

This supplementary information, such as the website address, email address or telephone number, will be made accessible in the register so that interested parties can communicate with entreprises that much more easily.

- ❑ **Broaden the application of penal sanctions relating to the filing of false, incomplete or misleading declarations**

An enterprise, or the administrator of the property of others, that knowingly files a false, incomplete or misleading declaration commits an offence and is liable to a fine under the *Act respecting the legal publicity of enterprises*. However, the Act does not provide for any penal sanctions in respect of a person, other than the enterprise or the administrator, that sets up a fictitious enterprise for the purpose of committing fraud or identity theft.

As a deterrent, and to protect citizens and enterprises, the scope of the offence provided for in the Act will be broadened to include any person, regardless of whether the person is subject to the Act.

Moreover, the prescription period for a penal offence under the *Act respecting the legal publicity of enterprises* is currently one year as of the date of the offence. This period is ill-suited, because the Registraire cannot realistically detect a false declaration immediately. The Act will therefore be amended to introduce a section that will extend the prescription period for penal sanctions.

1.6.4 **Promote the register to the public**

Registration in the enterprise register is the gateway to Québec's legitimate economy. All enterprises carrying on business in Québec, barring exceptions, are required to register with the Registraire. Furthermore, the register is a public information bank available to all citizens. However, there is still a certain lack of awareness of the enterprise register.

To promote the register and the services offered, an information campaign will be launched, with a view to raising awareness of the existence of this central public register and its ready accessibility.

1.7 Expand integrity requirements to better fight aggressive tax planning

Aggressive tax planning (ATP) threatens the Québec tax base and undermines the integrity and fairness of the tax system.

To ensure that all Québec taxpayers pay their fair share of taxes, and to maintain public confidence in the tax system, the Québec government has taken several measures in recent years to counter ATP.

On January 30, 2009, the Ministère des Finances du Québec (MFQ) released the working paper entitled *Aggressive Tax Planning*, which describes the issues relating to ATP and the actions under consideration to combat it.[23]

On October 15, 2009, further to these consultations, the Ministère des Finances du Québec announced various measures to better combat ATP,[24] including a compulsory disclosure mechanism for certain transactions.

[23] Ministère des Finances du Québec, *Aggressive Tax Planning*, January 30, 2009.

[24] Ministère des Finances du Québec, *Information Bulletin 2009-5*, October 15, 2009.

Compulsory Disclosure Mechanism

Briefly, the compulsory disclosure mechanism, as announced in 2009, applied when a taxpayer, or a partnership of which the taxpayer was a member, carried out a transaction resulting, directly or indirectly, for a taxation year or a fiscal period, as the case may be, in a tax benefit of $25 000 or more for the taxpayer or in an impact on the income of the taxpayer or the partnership, as the case may be, of $100 000 or more, where the adviser’s remuneration for the transaction fell into one of the following categories:

- all or part of it was conditional on obtaining a tax benefit resulting from the transaction or was determined, in whole or in part, on the basis of the tax benefit;
- all or part of it could be refunded to the taxpayer, in any manner whatever, if the expected tax benefit from the transaction failed to materialize;
- all or part of it was earned by the adviser only after the expiry of the prescription period applicable to the taxation year or taxation years in which the transaction took place.

However, any request related to the payment to a taxpayer of an amount the taxpayer was deemed to have paid to the Minister of Revenue as an instalment on income tax payable for a taxation year, that is, any application for a refundable tax credit, did not constitute a transaction involving conditional remuneration.

As part of Budget Speech 2015-2016, the tax legislation was again amended to broaden the scope of the compulsory disclosure mechanism.

First, the compulsory disclosure mechanism was broadened to include any transaction involving conditional remuneration that was aimed at obtaining a refundable tax credit and that resulted, directly or indirectly, in a tax benefit of $25 000 or more for the taxpayer seeking to obtain the tax credit.

Second, the compulsory disclosure mechanism was also broadened to include a transaction involving contractual coverage, where a taxpayer, or partnership of which the taxpayer was a member, carried out a transaction resulting, directly or indirectly, for a taxation year or for a fiscal period, as the case may be, in a tax benefit of $25 000 or more for the taxpayer, or in an impact on the income of the taxpayer or the partnership, as the case may be, of $100 000 or more.

1.7.1 Bolster the fight against aggressive tax planning

To bolster the fight against aggressive tax planning, three other measures will be taken.

The tax legislation will be amended to:

- raise the existing penalty for an assessment issued on the basis of the general anti-avoidance rule (GAAR) from 25% to 50%;
- increase the existing penalty for the promoter of a transaction or series of transactions in regard to which a GAAR-based assessment is issued from 12.5% of the fees paid to the promoter to 100% of these fees;
- suspend the prescription period for issuing a reassessment in respect of a taxpayer that is the subject of a formal demand concerning unnamed persons, where the reassessment involves the application of GAAR.

General anti-avoidance rule
The general anti-avoidance rule (GAAR) is aimed at striking a balance between safeguarding the tax base and taxpayers' need for certainty when a line is drawn between legitimate tax planning and abusive avoidance transactions. GAAR's application is threefold. − The first step consists in determining whether a transaction gives rise to a tax benefit. − The second step consists in determining whether the transaction is an avoidance transaction, in the sense that it was not undertaken primarily for bona fide purposes—obtaining a tax benefit is not a bona fide purpose. − The third step consists in determining whether the avoidance transaction is abusive. These three conditions must be met for a tax benefit to be denied under GAAR. When GAAR is applied, the legislation provides that the tax consequences to a taxpayer must be reasonably determined in the circumstances, in order to deny a tax benefit which, but for GAAR, would result, directly or indirectly, from the avoidance transaction or from a series of transactions that includes the avoidance transaction.

1.7.2 Expand trust identification requirements

Trusts are increasingly used in tax planning to avoid or reduce income tax that would otherwise be payable by individuals or corporations. To validate whether trusts and their principal actors comply with tax laws, Revenu Québec must have a complete picture of trusts that are liable for Québec income tax and of those that may have a significant link with Québec.

Within this framework, the Québec government intends to improve the transparency of trusts in tax matters since, in the opinion of Revenu Québec, information is the key to identifying tax evasion and tax avoidance.

The government considers it important to adopt rules that will allow for greater transparency, in order to ensure the integrity of the tax system and, in that regard, it intends to continue the steps taken in the past with respect to the tax system as it applies to trusts.

To that end, the government is examining ways to better identify trusts subject to Québec income tax and those that may have a significant link with Québec.

Trust identification rules will be expanded through the establishment of requirements pertaining to a mandatory taxpayer identification number. These measures will enable Revenu Québec to, among other things:

- deepen its knowledge of trusts, their principal actors, their property and their activities, and to validate whether they comply with tax laws;
- ensure that trusts are not used as vehicles for tax evasion or abusive tax avoidance purposes.

The Québec government will take into account the federal government's work on enhancing the tax reporting requirements for trusts, in order to improve the collection of information on beneficial ownership and on the possible incorporation of new measures concerning trust reporting obligations.

Improved transparency

Context

Transparency in tax matters is something both the Québec government and the federal government are working hard to improve. It is also vital to understand the ownership and control of corporations to protect the integrity of the tax and financial systems.

Federal announcements in March 2017

On tabling its 2017 budget, the federal government announced its commitment to implementing strong standards for corporate and beneficial ownership transparency that provide safeguards against, for example, tax evasion and tax avoidance, while continuing to facilitate the ease of doing business in Canada. It is also examining ways to enhance the tax reporting requirements for trusts in order to improve the collection of beneficial ownership information.

The federal government therefore announced that it would collaborate with provinces and territories to put in place a national strategy to strengthen the transparency of legal persons and legal arrangements and improve the availability of beneficial ownership information.

Active participation by Québec

The Ministère des Finances du Québec is participating in the joint work of the federal government and the provinces and territories, to improve the transparency of legal persons and legal arrangements.

1.7.3 Examine the use of nominee agreements for tax avoidance and tax evasion purposes

A nominee agreement is a mandate under which a person empowers another person to enter into a contract with a third person on the first person's behalf, without disclosing to the third person that the other person is acting on behalf of the first person. A nominee agreement is a lawful form of the contract of mandate, provided for and governed by the *Civil Code of Québec*.

Tax authorities must determine the tax payable by a taxpayer on the basis of one or more real transactions, without taking into account the nominee. Moreover, the nominee agreement must be disclosed when a tax return is filed for the year during which the agreement was entered into.

The Ministère des Finances du Québec is concerned by the fact that, in certain cases, a nominee agreement may be used to avoid paying tax that would normally apply.

To ensure the transparency, integrity and fairness of the tax system, the Ministère des Finances will examine schemes that use nominee agreements for tax avoidance and tax evasion purposes, in order to put in place a mechanism for countering such schemes.

1.7.4 Examine means to better counter tax schemes based on sham transactions

A sham is a transaction or series of transactions designed to conceal the true nature of transactions or relations between the parties from the tax authorities. It therefore has an element of deception intended to create an illusion in order to mislead the tax authorities as to a taxpayer's identity or the actual nature of a transaction or series of transactions.

Currently, the tax legislation enables such schemes to be countered. Nevertheless, certain taxpayers, with the help of their adviser, continue to use shams in their planning.

To ensure the integrity and fairness of the tax system, the Ministère des Finances du Québec and Revenu Québec will examine further measures to better counter tax schemes based on sham transactions.

1.8 Strengthen integrity conditions

Additional measures will be put in place to establish different business relations between the Québec government and certain of its suppliers having participated in abusive tax avoidance transactions.These measures aim to:

— exclude suppliers that were assessed for abusive tax avoidance, regardless of whether they used tax havens;

— cut off from government contracts professional firms that abetted abusive tax avoidance;

— examine the possibility of revisiting eligibility for any form of financial assistance from the Québec government, in the case of businesses having participated in abusive tax avoidance transactions.

1.8.1 Current situation

Several actions have already been taken to ensure the probity of suppliers that bid on public contracts.

Thus, for contracts exceeding $25 000, bidders must enclose a certificate from Revenu Québec with their call for tenders document. The certificate attests that the business has filed the returns and reports it was required to file under Québec tax laws, that it has no debts owing to Revenu Québec or, as the case may be, that it has entered into a payment agreement with which it complies or that recovery of its debts has been legally suspended. If the bidder defaults, the bidder may rectify its situation to obtain its certificate.

— Since the introduction of this measure in 2010, over 417 865 certificates[25] have been issued. Through this measure, the accounts receivable of 13 963 businesses were paid and revenue of $223.1 million was received.

On April 1, 2016, the requirement to obtain a certificate was extended to contracts entered into by companies in the construction sector and to those signed with a personnel placement agency.

— Since the introduction of this measure, 102 973 certificates have been authenticated by private sector stakeholders.

— In this way, 5 443 companies have regularized their situation, for revenue totalling $45.9 million.

The measures concerning the certificate were broadened with respect to public contracts through the creation of the register of enterprises ineligible for public contracts (RENA).

This register contains the names of enterprises having committed certain offences. Once an enterprise has been entered in the register, it cannot be awarded a public contract or subcontract; nor can it continue a contract in process. This applies, for example, to enterprises convicted of tax evasion.

[25] Results at September 30, 2017.

Register of enterprises ineligible for public contracts

In the wake of anti-corruption efforts, and to combat and sanction certain fraudulent practices in the construction industry, the Québec government adopted a series of measures to ensure the probity of enterprises doing business or seeking to do business with the state.

In that regard, the register of enterprises ineligible for public contracts (RENA) was created in 2012. RENA contains:

- the names of enterprises having committed an offence under the *Act respecting contracting by public bodies* (LCPB);
- the names of enterprises whose authorization to enter into public contracts or subcontracts was refused or revoked.

Once a contractor has been entered in the register, the contractor cannot, without authorization, be awarded a public contract or subcontract; nor can it continue a contract in process.

Bill 108, *An Act to facilitate oversight of public bodies' contracts and to establish the Autorité des marchés publics*, of which the clause-by-clause consideration began on May 10, 2017, proposes that the Autorité des marchés publics be created and that this new body be made responsible for all public procurement for public bodies, the application of the *Act respecting contracting by public bodies as regards ineligibility for public contracts*, prior authorization to obtain public contracts or subcontracts and contractor performance evaluations in relation to the performance of contracts.

Offences

Schedule I to the LCPB lists the offences for which enterprises can be entered in RENA. The tax offences for which enterprises can be entered in RENA are specified in the following statutes:

- *Tax Administration Act* (chapter A-6.002);
- *Taxation Act* (chapter I-3);
- *Income Tax Act* (R.S.C. 1985, c. 1 (5th Supp.));
- *Excise Tax Act* (R.S.C. 1985, c. E-15);
- *Fuel Tax Act* (chapter T-1).

Similarly, to strengthen the integrity conditions for enterprises seeking to do business with the state, enterprises must obtain from the AMF authorization to enter into public contracts or subcontracts, in order to bid on a public tender for contracts involving an expenditure above certain thresholds.[26]

Authorization is granted further to the examination of several automatic exclusion criteria established in the *Act respecting contracting by public bodies.*[27] Two such criteria are to not be named in RENA and to hold a certificate from Revenu Québec.

— Even in the absence of any reason for automatic exclusion, a certain number of elements pertaining to the past and present conduct of an enterprise and its officers may be considered.

Lastly, professional firms will be subject to the same rules for awarding contracts as other private sector enterprises. Consequently, if a professional firm is convicted of an offence to which RENA applies, it will lose the right to enter into contracts with the government.

Professional assistance provided to aid tax evasion

Under the Canadian constitution, criminal law is under federal jurisdiction. The provinces have jurisdiction in penal affairs that enables them to impose sanctions, such as a fine, penalty or prison term, with a view to enforcing provincial law.

Pursuant to section 62 of the *Tax Administration Act* (CQLR, chapter A-6.002), hereinafter "TAA," a person who is convicted of tax evasion is liable to a fine of at least $1 000 and not more than $1 million, or to both the fine and imprisonment for a term not exceeding five years less one day. More specifically, subparagraph (*d*) of the first paragraph of this section applies to any person who "wilfully, in any manner, evades or attempts to evade compliance with a fiscal law or payment or remittance of a duty imposed under such a law."

In addition, subparagraph (*g*) of the first paragraph of section 62 of the TAA states that conspiring with any person to commit an offence described in that section is also an offence under that section. Lastly, section 68.0.1 of the TAA stipulates the following:

> "Every person who, by act or omission, aids another person to commit an offence against a fiscal law or a regulation made under such a law is a party to the offence and is liable to the sentence provided for the offence, whether or not the person who received the aid has been prosecuted or convicted. "

Consequently, professional assistance to aid tax evasion, whether in Québec or abroad, is an activity in respect of which penal sanctions are provided for under Québec tax legislation.

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26 Service contracts and subcontracts, if their value is equal to or greater than $1 million; construction contracts and subcontracts, if their value is equal to or greater than $5 million; public-private partnership contracts performed as part of an infrastructure project carried out under a public-private partnership within the meaning of the *Act respecting Infrastructure Québec*, if their value is equal to or greater than $5 million; certain Ville de Montréal contracts, as determined in government orders.

27 CQLR, chapter C-65.1.

1.8.2 Prohibit the awarding of public contracts to taxpayers having been assessed for abusive tax avoidance

The government will incorporate new exclusion criteria regarding the issue of the AMF's authorization to enter into contracts.

Thus, briefly, a particular taxpayer having carried out a transaction or series of transactions in respect of which a final assessment based on the general anti-avoidance rule (GAAR) is issued will not be able to obtain authorization from the AMF to enter into public contracts, and will be entered in RENA.

This will also be the case for a partnership in respect of one of the members of which such an assessment is issued.

Likewise, a promoter of a transaction or series of transactions having led to the issue of a final, GAAR-based assessment further to which a penalty is imposed on the promoter will not be able to obtain authorization from the AMF to enter into public contracts.

Definitions
Particular taxpayer "Particular taxpayer" will refer to a person in respect of which a final, GAAR-based assessment is issued, unless the person filed, prior to the issue of such an assessment, a preventive disclosure relating to the transaction or series of transactions having led to the issue of the final assessment concerned, in accordance with the rules and time limits already set forth in the tax legislation. In the case of a transaction or series of transactions carried out by a limited partnership, preventive disclosure to Revenu Québec by the general partner will be recognized. In the case of a transaction or series of transactions carried out by a partnership other than a limited partnership, preventive disclosure to Revenu Québec by any member of the partnership will be recognized. **Promoteur** "Promoter," in regard to a transaction or series of transactions will refer to a person or a partnership: – that commercializes the transaction or series of transactions, promotes it or otherwise supports its development or the interest it generates; – that receives or is entitled to receive, directly or indirectly, a consideration for the commercialization, promotion or support, or another person or partnership related to, or associated with, the person or partnership receives or is entitled to so receive such a consideration; and – it is reasonable to believe that the person or partnership assumes an important role in the commercialization, promotion or support.

1.8.3 **Need for additional analysis for grants**

Currently, there are no specific eligibility measures regarding grants. Moreover, any debt owing to Revenu Québec is deducted from grants, through governmental compensation.

To tighten the eligibility conditions for government assistance, Revenu Québec is evaluating the possibility of requiring that the certificate from Revenu Québec be filed with applications for a grant, when circumstances allow.

However, a more in-depth examination is needed to establish the conditions of application of such a measure.

1.9 Introduction of a tax informant reward program

Revenu Québec has a denunciation program through which persons who believe that another person or a business is not meeting their fiscal obligations may report that fact to Revenu Québec.[28] Such reports may be made anonymously. However, the program does not offer rewards.

In 2014, the Canada Revenue Agency launched the Offshore Tax Informant Program (OTIP).

Under the Agreement Concerning the Exchange of Information Regarding Taxes and Other Duties entered into with the Canada Revenue Agency, Revenu Québec benefits from the results of the OTIP.

This program came in following the Department of Finance Canada's announcement of the Stop International Tax Evasion Program[29] in its Economic Action Plan 2013. As the program's name indicates, it is a program that pays rewards for information pertaining to international tax evasion.

Subsequently, the Ministère des Finances du Québec announced that it approved the federal government's initiative, that it would monitor the development of the program and that it would announce at a later date whether similar measures had to be introduced.[30]

Providing information can have a significant personal, social or professional cost for an informant. Consequently, people with knowledge of transactions designed to avoid paying income tax may be encouraged to notify the tax authorities if a reward is offered.

In this context, a tax informant reward program will be introduced. This program will complement that of the federal government and will be different in scope, targeting sham transactions and transactions calling into play the general anti-avoidance rule. In addition, for an informant to receive a reward, the information must result in the recovery of at least $100 000 in duties further to the enforcement of a Québec tax law.

A contract will be entered into between Revenu Québec and informants, and will set forth the undertakings of each of the parties. It will take into account the parameters below.

Revenu Québec will therefore be able to share results obtained through Québec's information reward program with the Canada Revenue Agency.

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28 See: http://www.revenuquebec.ca/en/a-propos/denonciation/default.aspx.

29 Department of Finance Canada, *Economic Action Plan 2013 – Jobs, Growth and Long-Term Prosperity*, March 21, 2013, p.367.

30 Ministère des Finances du Québec, *Bulletin d'information 2013-7*, July 11, 2013, p. 6.

1.9.1 **Information sought**

❑ Type of information

Information pertaining to a transaction or series of transactions that constitutes a sham—a transaction or series of transactions that is designed to conceal from the tax authorities the true transaction carried out by the parties—and that has, therefore, an element of deception intended to create an illusion in order to mislead the tax authorities as to a taxpayer's identity or the actual nature of a transaction will be information covered by Québec's information reward program.

Similarly, information pertaining to a transaction or series of transactions calling into play the application of the general anti-avoidance rule[31] will be information covered by Québec's information reward program.

With respect to the transaction or series of transactions, this information must lead to a recovery of duties under the application of a Québec tax law of at least $100 000 (not counting interest and penalties), and must not be excluded information for the purposes of the program.

❑ Québec tax law

For the purposes of Québec's information reward program, "Québec tax law" will be defined as a fiscal law, within the meaning of the *Tax Administration Act*,[32] passed by the Québec government.

❑ Excluded information

Information pertaining to a transaction or series of transactions that has already been reported to Revenu Québec, be it by voluntary disclosure, preventive disclosure or mandatory disclosure, or in any other way, will be excluded from Québec's information reward program.

Information pertaining to an activity of international tax non-compliance covered by the OTIP will also be excluded for the purposes of Québec's information reward program, as will information pertaining to a transaction or series of transactions that has already been reported to the Canada Revenue Agency, whether the information was obtained by voluntary disclosure, the filing of a reportable transaction information return[33] or any other way.

For greater clarity, a series of transactions reported to Revenu Québec or the Canada Revenue Agency will include that in which information on one or more transactions in the series was reported to Revenu Québec or to the Canada Revenue Agency.

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[31] Section 1079.10 of the *Taxation Act* (CQLR, chapter I-3).

[32] See note 16.

[33] Form RC312 E of the Canada Revenue Agency.

1.9.2 **Informant**

Any natural person, other than an excluded natural person, may be an informant for the purposes of Québec's information reward program.

Anonymous information will not be accepted.

❑ Excluded natural person

A natural person having benefited directly or indirectly from one or more transactions in respect of which information was disclosed will be an excluded natural person.

A natural person having proposed the carrying out or planning of a transaction or series of transactions in respect of which information was disclosed, or having been remunerated to do so, will also be an excluded natural person.

The same will be true of employees of Revenu Québec, the Canada Revenue Agency or another tax authority and former employees having obtained, in the performance of their duties for Revenu Québec, the Canada Revenue Agency or another tax authority, information covered under Québec's information reward program.

However, a natural person having benefited indirectly from a transaction in respect of which information was disclosed and who is able to show, to the satisfaction of Revenu Québec, that they did not participate in the transaction will not be an excluded natural person.

1.9.3 **Rewards**

An informant's reward may be up to 15% of the duties, minus penalties and interest, that are recovered by Revenu Québec under a Québec tax law further to the information disclosed. The rate of the reward will be determined on the basis of such factors as the quality of the information provided by the informant, its relevance and its value to Revenu Québec. The informant's cooperation throughout the information examination process will also be taken into account.

Revenu Québec will establish criteria for determining the reward rate that may apply to information.

A reward will be paid to an informant only once the duties have been recovered and all time limits for filing objections and appeals have expired.

1.9.4 **Implementation of the program**

Revenu Québec will need to develop a procedure for disclosing information, and establish criteria for determining the applicable reward rate, under Québec's information reward program.

In addition, once the details on the information disclosure procedure have been made public, Revenu Québec will be able to enter into an agreement with an informant to obtain information covered by Québec's information reward program.

1.10 Talks with the federal government

The Committee on Public Finance asked the Québec government to discuss with the federal government the possibility of implementing recommendations 28 to 38 of the report, which bear on issues of federal jurisdiction.

This section lists in chronological order the main talks that have taken place between Québec government and federal government authorities since the publication of the committee's report on April 5, 2017:

— May 24, 2017: Representatives from the Ministère des Finances du Québec and the Department of Finance Canada discussed in detail recommendations 28 and 38 of the report.

— June 7, 2017: Representatives from Revenu Québec met with representatives from the Canada Revenue Agency to discuss the fight against abusive tax planning.

— June 13, 2017: At a meeting of the Federal-Provincial-Territorial Committee on Taxation, representatives from the Ministère des Finances du Québec made recommendations to the committee and discussed them with their federal, provincial and territorial counterparts.

— June 22, 2017: Representatives from Revenu Québec met with representatives from the Canada Revenue Agency to discuss the committee's recommendations in detail.

— September 22, 2017: Representatives from Revenu Québec met with representatives from the Canada Revenue Agency and the Canada Border Services Agency to discuss QST collection at borders.

— October 11, 2017: Representatives from Revenu Québec met with representatives from the Canada Revenue Agency and the Canada Border Services Agency to discuss QST collection at borders.

— October 13, 2017: Representatives from Revenu Québec met with representatives from the Canada Revenue Agency to discuss collaboration on the measures to be put in place to follow through on the recommendation in the committee's report.

APPENDIX 3: FOLLOW-UP ON THE RECOMMANDATIONS OF THE COMMITTEE ON PUBLIC FINANCE

1.1 Summary of follow-up on recommendations

TABLE 25

Follow-up on the recommendations of the Committee on Public Finance – The Tax Havens Phenomenon

	Action Plan(1)	Under review	Not included
RECOMMENDATIONS TO BE IMPLEMENTED BY THE QUÉBEC GOVERNMENT			
Google tax			
Recommendation 1 – Ministère des Finances			
Study the economic impact of a diverted profits tax (Google tax) and submit its findings to the Committee on Public Finance by September 2017. Determine the rate or rates at which shifted profits should be taxed.	√		
Recommendation 2 – Revenu Québec			
Work with the Ministère des Finances du Québec and use country-by-country reports to estimate the annual profits earned in Québec and shifted to avoid taxation.	√		
Recommendation 3			
Amend the legislative framework to allow online transactions to be taxed using the credit cards used to pay for purchases.	√		
Non-resident trusts			
Recommendation 4 – Ministère des Finances			
Assess the tax status of non-resident trusts in Québec with an eye to amending the *Taxation Act* so they will be considered resident.	√		
Canadian tax treaties			
Recommendation 5			
Tax dividends received in Québec that have been subject to foreign deductions.			√
Recommendation 6			
Grant a tax credit equal to the foreign income tax paid rather than allowing the income to be brought back into Québec tax free.			√
Recommendation 7 – Ministère des Finances			
Obtain a legal opinion on Regulation 5907 of the Income Tax Regulations and submit it to the Committee on Public Finance by September 2017.	√		

(1) Tax Fairness Action Plan: Recommendations adopted or seeking the same objective.

TABLE 25

Follow-up on the recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

	Action Plan(1)	Under review	Not included
Recommendation 8 - Ministère des Finances			
Study the feasibility of Québec withdrawing from certain Canadian tax treaties, the economic impact of such withdrawal and how to proceed. Submit the findings of the study to the Committee on Public Finance by September 2017.	√		
Central enterprise register			
Recommendation 9 – Registraire des entreprises du Québec			
Begin working as quickly as possible with the relevant departments and organizations to create a central public enterprise register for Québec that will track the ultimate natural beneficiaries of enterprises. The said register would reveal via a name search all enterprises in which individual taxpayers have a stake.	√		
Recommendation 10			
Estimate and allocate the human, financial and physical resources needed for the Québec Enterprise Register to create a central public enterprise register for Québec.	√		
Recommendation 11			
Amend the laws on partnerships and corporations and potentially the *Civil Code* (for sole proprietorships) to prevent enterprises that do not provide sufficient information on their ultimate natural owners from being registered in Québec.		√	
Country-by-country reporting and tax rulings			
Recommendation 12 – Revenu Québec			
Obtain from the Canada Revenue Agency and analyze the country-by-country reports of multinationals with operations in Québec.	√		
Recommendation 13 – Revenu Québec			
Work with the Canada Revenue Agency to obtain tax information and rulings impacting Québec that the federal agency exchanges with or receives from Canada's partner countries.	√		
Recommendation 14			
Assess and allocate the additional human, financial and physical resources Revenu Québec needs to step up audits and analyze the information collected as a result of new international tax measures in the federal government's 2016–2017 budget.	√		
Mandatory and voluntary disclosure			
Recommendation 15 – Revenu Québec			
Strengthen compliance audits with regard to the Québec provision on operations subject to mandatory disclosure.	√		

(1) Tax Fairness Action Plan: Recommendations adopted or seeking the same objective.

TABLE 25

Follow-up on the recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

	Action Plan[1]	Under review	Not included
Recommendation 16			
Allocate more resources to auditing compliance with the mandatory disclosure and abusive tax avoidance provisions.	√		
Recommendation 17			
Abolish voluntary disclosure except in cases of good faith activities involving low amounts.			√
Tax credits for research and development			
Recommendation 18			
Make companies ineligible for research and development tax credits if they transfer the resulting intellectual property to a tax haven or low tax jurisdiction.			√
New types of business relationships			
Recommendation 19			
Ask the Caisse de dépôt et placement du Québec to gradually reduce investments in companies that practise abusive tax avoidance or tax evasion. Ask the Caisse de dépôt et placement du Québec to provide updates on such efforts in its annual reports.	√		
Recommendation 20			
Ask the Caisse de dépôt et placement du Québec to require that companies in which it makes significant investments and the governance of which it influences stop using tax havens.	√		
Recommendation 21			
The government stop using suppliers that have been found guilty of abusive tax avoidance or tax evasion or using tax havens.	√		
Recommendation 22			
Make enterprises that have been found guilty of abusive tax avoidance ineligible for government subsidies.		√	
Recommendation 23			
Make professional firms that have been found guilty of abetting tax evasion and abusive tax avoidance ineligible for government contracts.		√	
Recommendation 24			
Specify in applicable laws that providing professional assistance designed to aid or abet tax evasion or abusive tax avoidance is a criminal activity.	√		

(1) Tax Fairness Action Plan: Recommendations adopted or seeking the same objective.

TABLE 25

Follow-up on the recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

	Action Plan(1)	Under review	Not included
OTHER RECOMMENDATIONS			
Recommendation 25			
Amend the *Act respecting the protection of personal information in the private sector* to require any taxpayer suspected of having dealings with a financial institution in a tax haven to release the financial institution from any duty of confidentiality with respect to the taxpayer's bank accounts (in any appropriate way).			√
Recommendation 26			
Enact a law to protect and possibly compensate whistleblowers who help reveal tax evasion or abusive tax avoidance at or above yet-to-be determined amounts.	√		
Recommendation 27			
Create a centre of expertise in the fight against world-wide tax evasion, abusive tax avoidance and planning.	√		
RECOMMENDATIONS TO BE DISCUSSED WITH THE FEDERAL GOVERNMENT			
That the Government of Quebec discuss with the federal government the possibility of:			
Recommendation 28			
Legislation on research and development tax credits for federally chartered enterprises, making such credits contingent on not transferring the intellectual property resulting from the research and development to tax havens or low tax jurisdictions.	√*		
Recommendation 29			
Have the Canada Revenue Agency estimate the profits generated annually by multinationals throughout Canada and routed to tax havens to be taxed at a yet-to-be-determined rate (Google tax). Have the Canada Revenue Agency transmit information about Québec to Revenu Québec.	√*		
Recommendation 30			
Amend the relevant law(s) to require any Canadian taxpayer suspected of having dealings with a financial institution in a tax haven to release the financial institution of any duty of confidentiality with respect to the taxpayer's bank accounts (in any appropriate way).	√*		
Recommendation 31			
Amend the *Income Tax Act* and associated regulations, specifically section 95(1) of the *Income Tax Act* and Regulation 5907 of the Income Tax Regulations, in order to tax at a yet-to-be-determined rate the income or wealth from tax havens with which Canada has tax treaties.	√*		

(1) Tax Fairness Action Plan: recommendations adopted or targeting for the same objective.
* Recommendation discussed with the federal government.

TABLE 25

Follow-up on the recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

	Action Plan(1)	Under review	Not included
Recommendation 32			
Create a central public register of the ultimate beneficiaries of federally chartered corporations.	√*		
Recommendation 33			
Add provisions to the *Criminal Code* covering misrepresentations or omissions in Canada's existing central registers.	√*		
Recommendation 34			
Add provisions to the *Criminal Code* for the aiding and abetting of abusive tax avoidance by legal, accounting or tax firms, or by banks or other promoters.	√*		
Recommendation 35			
Specify in applicable laws that providing professional assistance designed to aid or abet tax evasion or abusive tax avoidance is a criminal activity.	√*		
Recommendation 36			
Reduce the €750 million revenue threshold (over CA$1.1 billion) for Canadian businesses subject to country-by-country reporting.	√*		
Recommendation 37			
Make corporate country-by-country reports public, as the European Union has done since an April 2016 decision.	√*		
Recommendation 38			
Make supporting the fight against tax havens a foreign policy priority.	√*		
FOLLOW-UP ON THE RECOMMENDATIONS OF THE COMMITTEE	**33**	**1**	**4**

(1) Tax Fairness Action Plan: recommendations adopted or targeting for the same objective.
* Recommendation discussed with the federal government.

1.2 Detailed follow-up on recommendations

TABLE 26

Detailed follow-up on recommendations of the Committee on Public Finance – The Tax Havens Phenomenon

Recommendations	Responses
RECOMMENDATIONS TO BE IMPLEMENTED BY THE QUÉBEC GOVERNMENT	
Google tax	
Recommendation 1 – Ministère des Finances	
Study the economic impact of a diverted profits tax (Google tax) and submit its findings to the Committee on Public Finance by September 2017. Determine the rate or rates at which shifted profits should be taxed.	See section 1.9 of Appendix 1.
Recommendation 2 – Revenu Québec	
Work with the Ministère des Finances du Québec and use country-by-country reports to estimate the annual profits earned in Québec and shifted to avoid taxation.	Country-by-country figures will not be available until 2018. The estimate based on another methodology developed by the OECD. See section 1.3 of Appendix 1.
Recommendation 3	
Amend the legislative framework to allow online transactions to be taxed using the credit cards used to pay for purchases.	Implementing this recommendation presents many difficulties, including the lack of complete and accurate information necessary for administering the QST. A QST collection solution based on credit card payments for online purchases would not be feasible. To solve the QST collection problem where online purchases are involved, the Action Plan proposes recommendations 4, 5 and 6 based on the solution recommended by the OECD.
Non-resident trusts	
Recommendation 4 – Ministère des Finance	
Assess the tax status of non-resident trusts in Québec with an eye to amending the *Taxation Act* so they will be considered resident.	Amendments to tax legislation have already been made by the Québec government with regard to the taxation of non-resident trusts. See section 1.5 of Appendix 2.

TABLE 26

Detailed follow-up on recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

Recommendations	Responses
Canadian tax treaties	
Recommendation 5	
Tax dividends received in Québec that have been subject to foreign deductions.	The fact that income from a corporation that is actively operated abroad can result in tax-exempt dividends encourages the repatriation of capital, thereby spurring local economic growth. This is why 29 of the 35 member countries of the OECD have adopted a system for repatriating dividends virtually or fully tax-free. In the absence of consensus among the international community, adopting a tax policy that is not in line with most OECD countries and the other provinces could compromise Québec's tax competitiveness within Canada and around the world. For this reason, the Québec government is not following up on this recommendation. See section 1.7, 1.8 and 1.9 of Appendix 1.
Recommendation 6	
Grant a tax credit equal to the foreign income tax paid rather than allowing the income to be brought back into Québec tax free.	The government is not following up on this recommendation since it is related to recommendation 5. See section 1.7, 1.8 and 1.9 of Appendix 1.
Recommendation 7 – Ministère des Finance	
Obtain a legal opinion on Regulation 5907 of the Income Tax Regulations and submit it to the Committee on Public Finance by September 2017.	Analysis confirms the Regulation's legal validity. See section 1.11 of Appendix 1.
Recommendation 8 – Ministère des Finance	
Study the feasibility of Québec withdrawing from certain Canadian tax treaties, the economic impact of such withdrawal and how to proceed. Submit the findings of the study to the Committee on Public Finance by September 2017.	It is not in Québec's interest to withdraw from Canadian tax agreements. The agreements allow for more transparency and place Canada in a position to fight more effectively against countries with harmful tax practices. The surpluses that have been repatriated to Canada and Québec come from a country where corporations actively operate a company, one that has transparency due to the exchange of tax information or collaboration between government tax bodies. Besides, companies could always circumvent Québec measures by going through other Canadian provinces. See sections 1.9 to 1.9 of Appendix 1. The government is relying on Canadian tax treaties to obtain more information. The Action Plan envisions recommendation 2.

TABLE 26

Detailed follow-up on recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

Recommendations	Responses
Central enterprise register	
Recommendation 9 – Registraire des entreprises du Québec	
Begin working as quickly as possible with the relevant departments and organizations to create a central public enterprise register for Québec that will track the ultimate natural beneficiaries of enterprises. The said register would reveal via a name search all enterprises in which individual taxpayers have a stake.	The Action Plan envisions recommendation 10.
Recommendation 10	
Estimate and allocate the human, financial and physical resources needed for the Québec Enterprise Register to create a central public enterprise register for Québec.	The Action Plan envisions recommendation 10. To that end, REQ resources will be adjusted.
Recommendation 11	
Amend the laws on partnerships and corporations and potentially the *Civil Code* (for sole proprietorships) to prevent enterprises that do not provide sufficient information on their ultimate natural owners from being registered in Québec.	The Ministère des Finance will examine schemes that use nominee agreements for tax evasion and avoidance purposes and implement a mechanism to prevent such schemes. See section 1.7 of Appendix 2. The Action Plan envisions stricter requirements for trust identification. See recommendation 11.
Country-by-country reporting and tax rulings	
Recommendation 12 – Revenu Québec	
Obtain from the Canada Revenue Agency and analyze the country-by-country reports of multinationals with operations in Québec.	The Action Plan envisions recommendations 1 and 3.
Recommendation 13 – Revenu Québec	
Work with the Canada Revenue Agency to obtain tax information and rulings impacting Québec that the federal agency exchanges with or receives from Canada's partner countries.	The Action Plan envisions recommendations 2 and 3.

TABLE 26

Detailed follow-up on recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

Recommendations	Responses
Recommendation 14	
Assess and allocate the additional human, financial and physical resources Revenu Québec needs to step up audits and analyze the information collected as a result of new international tax measures in the federal government's 2016–2017 budget.	The Action Plan envisions recommendations 3 and 8. To that end, the resources of Revenu Québec and the Ministère des Finance will be adjusted.
Mandatory and voluntary disclosure	
Recommendation 15 – Revenu Québec	
Strengthen compliance audits with regard to the Québec provision on operations subject to mandatory disclosure.	The Action Plan envisions recommendation 12.
Recommendation 16	
Allocate more resources to auditing compliance with the mandatory disclosure and abusive tax avoidance provisions.	The Action Plan envisions recommendation 3.
Recommendation 17	
Abolish voluntary disclosure except in cases of good faith activities involving low amounts.	The government will not follow up on this recommendation. The Action Plan envisions recommendation 9 instead. The Revenu Québec program follows best practices in this area. To be considered voluntary, the disclosure must be spontaneous, complete and verifiable, and the tax debt must be fully paid.
Tax credits for research and development	
Recommendation 18	
Make companies ineligible for research and development tax credits if they transfer the resulting intellectual property to a tax haven or low-tax jurisdiction.	The government will not follow up on this recommendation. See section 1.12 of Appendix 1.

TABLE 26

Detailed follow-up on recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

Recommendations	Responses
New types of business relationships	
Recommendation 19	
Ask the Caisse de dépôt et placement du Québec to gradually reduce investments in companies that practise abusive tax avoidance or tax evasion. Ask the Caisse de dépôt et placement du Québec to provide updates on such efforts in its annual reports.	In August, as part of an internal review of its tax practices, the Caisse de dépôt et placement du Québec published a statement explaining its tax framework, exemptions and the measures it has adopted to avoid the double taxation of the beneficiaries of its depositors' plans. CDPQ also described the nature of its investments in certain low-tax jurisdictions, its support of international efforts to counter tax evasion and its commitment to exercising its influence over its business partners to persuade them to stop using tax havens. As of 2017, CDPQ reports on its activities and commitments related to tax matters in its annual report. CDPQ's full statement is available at: https://www.cdpq.com/en/investments/responsible-investment/international-taxation.
Recommendation 20	
Ask the Caisse de dépôt et placement du Québec to require that companies in which it makes significant investments and the governance of which it influences stop using tax havens.	See the response to recommendation 19.
Recommendation 21	
The government stop using suppliers that have been found guilty of abusive tax avoidance or tax evasion or using tax havens.	The Action Plan envisions recommendation 13.
Recommendation no. 22	
Make enterprises that have been found guilty of abusive tax avoidance ineligible for government subsidies.	Thi recommendation is under study. See section 1.8 of Appendix 2.
Recommendation 23	
Make professional firms that have been found guilty of abetting tax evasion and abusive tax avoidance ineligible for government contracts.	The Action Plan envisions recommendation 13.
Recommendation 24	
Specify in applicable laws that providing professional assistance designed to aid or abet tax evasion or abusive tax avoidance is a criminal activity.	The Criminal Code is under federal jurisdiction. In Québec, abusive tax avoidance can lead to criminal sanctions. The Action Plan envisions recommendation 12 instead.

TABLE 26

Detailed follow-up on recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

Recommendations	Responses
OTHER RECOMMENDATIONS	
Recommendation 25	
Amend the *Act respecting the protection of personal information in the private sector* to require any taxpayer suspected of having dealings with a financial institution in a tax haven to release the financial institution from any duty of confidentiality with respect to the taxpayer's bank accounts (in any appropriate way).	The *Act respecting the protection of personal information in the private sector* (the Act) does not apply to foreign enterprises. A request for communication made under a new section of the Act is not likely to be interpreted as valid consent by a foreign bank, and would therefore be insufficient to authorize the bank to override bank secrecy.
	The approach recommended by the OECD to limit tax evasion that relies on the bank secrecy in some tax havens is cooperation between the different jurisdictions, mostly through automatic exchanges of financial information. This recommendation is adopted in the Action Plan. The Action Plan envisions recommendation 7.
Recommendation 26	
Enact a law to protect and possibly compensate whistleblowers who help reveal tax evasion or abusive tax avoidance at or above yet-to-be determined amounts.	The Action Plan envisions recommendation 14.
Recommendation 27	
Create a centre of expertise in the fight against world-wide tax evasion, abusive tax avoidance and planning.	The Action Plan envisions recommendation 3.
RECOMMENDATIONS TO BE DISCUSSED WITH THE FEDERAL GOVERNMENT	
That the Government of Quebec discuss with the federal government the possibility of:	
Recommendation 28	
Legislation on research and development tax credits for federally chartered enterprises, making such credits contingent on not transferring the intellectual property resulting from the research and development to tax havens or low-tax jurisdictions.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.

TABLE 26

Detailed follow-up on recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

Recommendations	Responses
Recommendation 29	
Have the Canada Revenue Agency estimate the profits generated annually by multinationals throughout Canada and routed to tax havens to be taxed at a yet-to-be-determined rate (Google tax). Have the Canada Revenue Agency transmit information about Québec to Revenu Québec.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.
Recommendation 30	
Amend the relevant law(s) to require any Canadian taxpayer suspected of having dealings with a financial institution in a tax haven to release the financial institution of any duty of confidentiality with respect to the taxpayer's bank accounts (in any appropriate way).	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.
Recommendation 31	
Amend the *Income Tax Act* and associated regulations, specifically section 95(1) of the *Income Tax Act* and Regulation 5907 of the Income Tax Regulations, in order to tax at a yet-to-be-determined rate the income or wealth from tax havens with which Canada has tax treaties.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.
Recommendation 32	
Create a central public register of the ultimate beneficiaries of federally chartered corporations.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.
Recommendation 33	
Add provisions to the *Criminal Code* covering misrepresentations or omissions in Canada's existing central registers.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.
Recommendation 34	
Add provisions to the *Criminal Code* for the aiding and abetting of abusive tax avoidance by legal, accounting or tax firms, or by banks or other promoters.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.
Recommendation 35	
Specify in applicable laws that providing professional assistance designed to aid or abet tax evasion or abusive tax avoidance is a criminal activity.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.

TABLE 26

Detailed follow-up on recommendations of the Committee on Public Finance – The Tax Havens Phenomenon (cont.)

Recommendations	Responses
Recommendation 36	
Reduce the €750 million revenue threshold (over CA$1.1 billion) for Canadian businesses subject to country-by-country reporting.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.
Recommendation 37	
Make corporate country-by-country reports public, as the European Union has done since an April 2016 decision.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.
Recommendation 38	
Make supporting the fight against tax havens a foreign policy priority.	Discussions have already been held with the federal government on this issue. See section 1.10 of Appendix 2.

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