

Consumer Taxes

TVQ. 164.1-1/R4

Improvement by a municipality of roads that are under the management of the Ministère des Transports et de la Mobilité durable du Québec

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Reference(s):

Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 16, 164.1, 386 and 678

This version of interpretation bulletin TVQ. 164.1-1 replaces the version of March 28, 2013, to reflect legislative amendments to the Act respecting the Québec sales tax that introduce a partial Québec sales tax rebate for municipal entities and exclude municipalities from the application of the exemption for a supply made at direct cost (see S.Q. 2015, c. 21, ss. 653 and 711). This version of the bulletin is effective January 1, 2014.

This bulletin explains how the *Act respecting the Québec sales tax (AQST)* applies to a municipality that enters into a memorandum of agreement (MOA) with the Ministère des Transports et de la Mobilité durable du Québec (MTQ) for the improvement of roads that are under the management of the MTQ.

GENERAL POINTS

1. Typically, an MOA is entered into where the MTQ entrusts a municipality (Municipality) with road improvement work in respect of roads that are under the management of the MTQ (Work attributable to the MTQ).
2. Under the MOA, the Municipality agrees to carry out work to implant or restore municipal infrastructures, such as the water and sewage systems under the stretch of the road where the Work attributable to the MTQ is carried out, or to carry out work with respect to municipal equipment connected with that stretch of road.
3. The MTQ and the Municipality agree that the latter will act as the client for all the work.
4. After a public call for tenders, the Municipality, as the client, awards to a contractor (Contractor) a contract to carry out all the work.
5. The MTQ undertakes to pay the Municipality an amount that is equal to the actual cost of the Work attributable to the MTQ and invoiced by the Contractor, as well as the share attributable to the MTQ of the amount claimed by various firms for related costs (in respect of preparatory

activities, supervision, public utilities or procurement). The MOA provides that the MTQ will assume all such costs up to the maximum amount stipulated therein.

6. For its part, the Municipality undertakes to pay the Contractor and the firms responsible for carrying out related activities the amount agreed upon for the carrying out of all the work, according to the bid accepted by the Municipality and approved by the MTQ.

APPLICATION OF THE ACT

7. Under paragraph (4) of section 164.1 of the AQST, a supply made by a municipality or a board, commission or other body established by a municipality of a service of repairing or maintaining roads, streets, sidewalks, or similar or adjacent property is exempt.

ADMINISTRATIVE PRACTICE

8. Bearing in mind that, under certain MOAs, it is difficult for the Municipality to determine whether the services supplied involve construction rather than maintenance within the meaning of paragraph (4) of section 164.1 of the AQST and that the Municipality cannot claim an input tax refund in respect of the property and services purchased in the course of a supply of such maintenance services, Revenu Québec adheres to the following administrative practice in respect of MOAs that the MTQ enters into with municipalities.

9. Work attributable to the MTQ constitutes repair or maintenance work where the cost of that work gives rise to a current expenditure or an operating expenditure as opposed to a capital expenditure in respect of which capital cost allowance can be claimed.

Construction work

10. Where the Work attributable to the MTQ constitutes construction work, the Municipality makes a taxable supply of services to the MTQ.¹

11. If the Municipality is a Québec sales tax (QST) registrant, it must invoice and collect the QST in respect of the taxable supply of services it makes to the MTQ and can claim an input tax refund in respect of the property and services it purchases in the course of making the taxable supply to the MTQ.

12. A municipality that is not a QST registrant may apply to register retroactively for the QST. Details concerning the effective date of registration are provided in the current version of interpretation bulletin TVQ. 415-2.

¹ Considering the amendments to the AQST mentioned in the preamble to this bulletin, the direct cost exemption provided for in section 148 of the AQST may apply to a supply made under a written agreement entered into before December 3, 2013. Details concerning the direct cost exemption and how it applies can be found in version TVQ. 164.1-1/R3 of this bulletin, dated March 28, 2013.

Repair or maintenance

13. In view of the administrative practice set out in point 9 of this bulletin, the Municipality makes an exempt supply of a repair service or maintenance service to the MTQ where the expenditure for the Work attributable to the MTQ constitutes a current expenditure or an operating expenditure.

14. Because the Municipality can claim a partial QST rebate, at the prescribed rate for a municipality, it can recover the QST paid or payable to its suppliers in respect of property or services purchased for the purpose of making an exempt supply to the MTQ of a repair or maintenance service referred to in paragraph (4) of section 164.1 of the AQST.

15. The partial QST rebate at the prescribed rate for a municipality has been in effect since January 1, 2014, in respect of taxable supplies of property and services on which the QST became payable and was paid after December 31, 2013.

16. The partial QST rebate must be claimed within four years after the last day of the claim period in which the QST was paid or became payable.

Payment of QST by the MTQ

17. Effective April 1, 2013, the MTQ must pay QST to the Municipality in respect of the MTQ's taxable purchases of property and services.