



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 997

**An Act to regulate e-commerce and
ensure tax fairness for traditional and
local businesses**

Introduction

**Introduced by
Mr. Amir Khadir
Member for Mercier**

**Québec Official Publisher
2017**

EXPLANATORY NOTES

This bill amends various legislative provisions concerning income tax and sales tax collection in order to regulate e-commerce and ensure tax fairness for traditional and local businesses.

The bill amends the Taxation Act so that persons who are not physically present in Québec, but whose online presence is significant, are considered to have an establishment in Québec.

To that end, the bill amends the notion of permanent establishment to specify that a person with a significant online presence via a website through which sales or service contracts are made or data is collected has a permanent establishment in Québec. Under the bill, a person is deemed to have a significant online presence if he or she makes a significant number of sales or service contracts with persons residing in Québec, if a significant number of persons visit the website, from locations in Québec, via which he or she sells goods or services, if a significant number of payments are made to him or her by persons located in Québec for the supply of goods or services, or if he or she collects and uses data of a personal nature from persons residing in Québec.

The bill also amends the Taxation Act to require that activities conducted via a website through which sales or service contracts are made or data is collected be included in the activities related to determining persons deemed to carry on business in Canada.

The Act respecting the Québec sales tax is amended so that persons with a significant online presence are required to collect the Québec sales tax. To that end, the bill broadens the definition of “establishment” to include the notion of a significant online presence via a website through which sales and service contracts are made or data is collected.

Another amendment to the Act respecting the Québec sales tax requires that payment service providers be considered mandataries of persons to whom they provide payment services in the context of online transactions.

The bill provides that persons who do not appear in the registrants' register be deemed non-registrants, and that payment service providers act as mandataries for non-registrants and collect the sales taxes in their stead.

The bill amends the Tax Administration Act to make it an offence for persons with a significant online presence in Québec not to file an income tax return. Such persons incur a penalty of 50% to 200% of the amount of the payments made to them by Québec residents for the provision of goods and services.

Another amendment to the Tax Administration Act requires payment service providers to report, to an authorized person, information relating to purchases made in Canada or abroad, by a person residing in Québec, via a website through which sales or service contracts are made or data is collected. In cases of non-compliance with this obligation, the bill provides that the payment service provider incurs a penalty of 30% of the amount of the purchases made.

Lastly, the bill makes it an offence for anyone to wilfully conceal or attempt to conceal data, whether computerized or not, likely to allow identification of a person deemed to have a significant online presence in Québec.

LEGISLATION AMENDED BY THIS BILL:

- Tax Administration Act (chapter A-6.002);
- Taxation Act (chapter I-3);
- Act respecting the Québec sales tax (chapter T-0.1).

Bill 997

AN ACT TO REGULATE E-COMMERCE AND ENSURE TAX FAIRNESS FOR TRADITIONAL AND LOCAL BUSINESSES

AS current tax legislation is not adapted to the digital environment in which Québec finds itself, especially as regards e-commerce;

AS businesses with no physical presence in the province of Québec circumvent the sales tax and income tax collection mechanism, a practice which contributes to erosion of Québec's tax base;

AS, when Québec consumers purchase goods or services online from a supplier or provider located outside the province of Québec or outside Canada, no sales tax and income tax collection mechanism applies to the supplier or provider or allows the Government to receive the amounts to which it is entitled by law;

AS this creates a context in which it is beneficial for foreign multinationals not to have a physical presence in the province of Québec;

AS this situation creates tax unfairness for traditional and local businesses;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PURPOSE

1. The purpose of this Act is to regulate e-commerce and ensure tax fairness for traditional and local businesses as regards income tax and sales tax collection.

AMENDING PROVISIONS

TAX ADMINISTRATION ACT

2. The Tax Administration Act (chapter A-6.002) is amended by inserting the following section after section 58.2:

“58.3. Every payment service provider within the meaning of section 1 of the Act respecting the Québec sales tax (chapter T-0.1) shall, on request, provide information with regard to purchases made via a website, in Canada or abroad, by a person residing in Québec to a person authorized by the Minister.”

3. Section 59.0.0.1 of the Act is amended by adding the following paragraph at the end:

“Despite the first paragraph, every person with a significant online presence in Québec via a website through which sales or service contracts are made or data is collected, as provided for in section 12 of the Taxation Act (chapter I-3), who fails to file a fiscal return for a taxation year in the manner provided for in section 37.1.2, incurs a penalty of 50% to 200% of the amount of the payments made to the person by Québec residents for the provision of goods and services.”

4. The Act is amended by inserting the following section after section 59.0.4:

“59.0.5. Every payment service provider within the meaning of section 1 of the Act respecting the Québec sales tax (chapter T-0.1) who fails to provide the information referred to in section 58.3 at the request of any person authorized by the Minister for any purpose relating to the application or enforcement of a fiscal law, incurs a penalty of 30% of the amount of the purchases made.”

5. The Act is amended by inserting the following section after section 59.4:

“59.4.1. Every person who wilfully conceals or attempts to conceal data, whether computerized or not, likely to allow identification of a taxpayer deemed to have a significant online presence as provided for in section 12 of the Taxation Act (chapter I-3), is guilty of an offence and is liable to a fine of not more than \$1,000 and, for a second offence within five years, to a fine of not less than \$1,000 nor more than \$5,000 and, for a third or subsequent offence within that period, to a fine of not less than \$5,000 nor more than \$25,000.”

TAXATION ACT

6. Section 7.18 of the Taxation Act (chapter I-3) is amended by adding the following subparagraph after subparagraph ii of subparagraph *a* of the second paragraph:

“iii. in soliciting orders or offering anything for sale in Québec via a website through which sales or service contracts are made or data is collected;”.

7. Section 12 of the Act is amended by adding the following paragraph at the end:

“Despite the first paragraph, a person is also considered to have an establishment in Québec if the person has a significant online presence there via a website through which sales or service contracts are made or data is collected. A person is deemed to have a significant online presence if

(1) the person made a significant number of sales or service contracts with persons resident in Québec;

(2) a significant number of persons visit the website, from locations in Québec, through which the person's goods and services are available;

(3) a significant number of payments are made to the person by persons located in Québec for the provision of goods or services; or

(4) the person collects and uses data of a personal nature from persons resident in Québec.”

ACT RESPECTING THE QUÉBEC SALES TAX

8. Section 1 of the Act respecting the Québec sales tax (chapter T-0.1) is amended

(1) by adding the following paragraph at the end of the definition of “permanent establishment”:

“(3) a significant online presence via a website through which sales or service contracts are made or data is collected, in accordance with section 12 of the Taxation Act (chapter I-3);”;

(2) by inserting the following definition in alphabetical order:

““payment service provider” means a person who is

(1) a financial institution listed at any time in a taxation year or a financial institution within the meaning of paragraph *b* of subsection 1 of section 149 of the Excise Tax Act (Revised Statutes of Canada, 1985, chapter E-15);

(2) an e-money establishment, regardless of the place of residence, that offers means of payment in the form of e-money; or

(3) a payment intermediary, regardless of the place of residence;”.

9. The Act is amended by inserting the following section after section 41.0.1:

“41.0.1.1. A payment service provider is deemed to act as a mandatary on behalf of a person to whom the payment service in the context of online transactions is provided.”

10. The Act is amended by inserting the following sections after section 418.1:

“418.2. The Minister shall maintain a registrants' register.

The register shall contain each registrant's legal name, trade-name and registration number assigned under section 415 or 415.0.6. The information contained in the register is public.

“418.3. Persons not appearing in the register are deemed non-registrants.

“418.4. In respect of purchases made in Québec via a transactional website, a payment service provider must act as the mandatary of persons deemed to be non-registrants under section 418.3 and collect any tax payable under Title I in their stead.”

II. This Act comes into force on (*insert the date of assent to this Act*), except section 10, which comes into force 18 months after the date of coming into force of this Act.