

Recent amendments to the Act respecting duties on transfers of immovables

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On March 17, 2016, the Government of Québec presented its 2016-2017 budget, which included important amendments to the *Act respecting duties on transfers of immovables* (the Act).

The Act provides that every municipality must collect duties on the transfer of any immovable located in its territory, however, it has become clear that various schemes have permitted certain transferees to take advantage of the provisions, granting an exemption from paying transfer duties in situations where they should normally have been paid.

Please find an overview of the amendments to the Act below.

Tightening of certain provisions granting an exemption from paying transfer duties

The Act provides for an exemption from paying duties on the transfer of an immovable—by a transferor who is a natural person to a transferee who is a legal person of which at least 90 percent of the issued shares of the capital stock with full voting rights are owned by the transferor immediately after the transfer.

Inversely, an exemption is provided for the transfer of an immovable by a transferor that is a legal person to a natural person who, immediately before the transfer, owns at least 90 percent of the issued full voting shares of the capital stock of the transferor.

In addition, the Act provides for an exemption where an immovable is transferred between two closely related legal persons. For the purposes of this exemption, a legal person is closely related to a particular legal person if, at the time of the transfer, one of the following situations applies:

- At least 90 percent of the issued full voting shares of the capital stock of the legal person are owned by the particular legal person, a qualifying subsidiary of the particular legal person, a legal person of which the particular legal person is a qualifying subsidiary, a qualifying subsidiary of a legal person of which the legal person is a qualifying subsidiary or any combination of such legal persons or subsidiaries;
- At least 90 percent of the fair market value of all the issued and outstanding shares of the capital stock of the legal person is owned by the particular legal person;
- At least 90 percent of the fair market value of all the issued and outstanding shares of the capital stock of the legal person and of the particular legal person is owned by the same legal person or group of legal persons.

Amendments include:

- Clarifying that the 90 percent threshold indicated above must be determined by calculating the number of votes attached to the shares of the capital stock of the legal person to trigger the application of the exemption condition for the transfer of an immovable between a natural person and a legal person, as well as between two closely

related legal persons;

- Introducing a requirement to maintain the exemption condition, for a period of 24 months, in respect of the transfer of an immovable between a natural person and a legal person, as well as between two closely related legal persons;
- Introducing a disclosure mechanism applicable where the exemption condition ceases to be met in the case of the transfer of an immovable by a transferor who is a natural person to a transferee that is a legal person as well as between two closely related legal persons;
- Restricting the scope of the exoneration provisions for the transfer of an immovable between two closely related legal persons by revoking: (i) the provision granting exemption from paying transfer duties where at least 90 percent of the fair market value of all the issued and outstanding shares of the capital stock of a legal person is owned by a particular legal person, and (ii) the provision granting exemption from paying transfer duties where at least 90 percent of the fair market value of all the issued and outstanding shares of the capital stock of a legal person and a particular legal person is owned by either the same legal person or the same group of legal persons.

Furthermore, given that certain provisions for exemption from paying transfer duties have been tightened, the anti-avoidance rule providing for the imposition of special duties in respect of transfer duties introduced in 1993 will be revoked.

Change to the transfer duties due date and introduction of a disclosure mechanism for transfers not registered in the land register

- *Change to the transfer duties due date*

The Act provides that transfer duties are payable from the time the deed ascertaining the transfer of the immovable is registered in the land register.

Thus, even though the claim relating to transfer duties arises at the time of an immovable's transfer, the possibility for the municipality to collect the claim is suspended until the deed ascertaining the transfer of the immovable is registered in the land register.

Considering that the Act was designed to tax the transfer of an immovable, and not the registration in the land register of the deed ascertaining the transfer of the immovable, the Act will be amended so that the transfer duties will become payable as of the date of an immovable's transfer.

The transfer duties resulting from the transfer of an immovable will be payable by the 31st day after the municipality sends the account to the transferee. It will bear interest from that day at the rate in effect for interest on arrears of such taxes.

- *Introduction of a disclosure mechanism for transfers not registered in the land register*

The Act will be amended so as to require the transferee of an immovable to notify the municipality in whose territory the immovable is located where the deed ascertaining the transfer of the immovable is not registered in the land register.

The notice of disclosure must be filed with the municipality within 90 days following the date of the immovable's transfer, unless the deed ascertaining it is registered in the land register by that date at the latest, and it must be accompanied by an authentic copy of the notarial deed en minute or a copy of the deed under private signature ascertaining the transfer of the immovable.

- *Prescription*

A claim respecting transfer duties resulting from the transfer of an immovable is prescribed by three years from the day the notice of disclosure is filed with the municipality in whose territory the immovable is located, excluding any unpaid amount of such claim further to a statement that is fraudulent or tantamount to fraud. More specifically, no period of prescription will begin to run in respect of a transfer of an immovable that has not been disclosed.

- *Failure to file the notice of disclosure within the prescribed period*

The *Taxation Act* will be amended so that a transferee will be required to pay the Minister of Revenue special duties equal to 150 percent of the transfer duties payable in respect of the transfer of an immovable to the transferee if the latter fails to file with the municipality in whose territory the immovable is located, within the prescribed period, the notice of disclosure of the transfer.

The transferee of an immovable that fails to file the notice with the municipality concerned within the prescribed period will be required to pay, to the Minister of Revenue, interest calculated from the date beginning on which the transferee was in default of filing the notice of disclosure until the date on which the Minister receives payment of the special duties.

- *Voluntary disclosure*

A transferee of an immovable that fails to file the notice with the municipality concerned within the prescribed period may make a disclosure under Revenu Québec's voluntary disclosure policy, provided the disclosure complies with the conditions applicable under that policy.

Introduction of an exemption from paying transfer duties on the transfer of an immovable between former de facto spouses

The Act will be amended to introduce an exemption from paying duties on the transfer of an immovable between former de facto spouses within twelve months following the date they ceased to be spouses due to the breakdown of their union.

Recognition of an exemption from duties granted to certain international governmental organizations

When the Québec government receives in its territory an international governmental organization, it grants the organization, under an agreement, various exemptions and courtesy prerogatives to enable it to adequately fulfil its mission and to facilitate its task.

Amendments will be made to the Act to stipulate that a transferee that is an international governmental organization and has entered into an agreement with the government concerning its establishment in Québec will be exempt from paying transfer duties and special duties in respect of the transfer of an immovable. These amendments will be declaratory.

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