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Disclosure Rules for Nominee Contracts Come into Force in Québec

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Bill 42, *An Act to give effect to fiscal measures announced in the Budget Speech delivered on 21 March 2019 and to various other measures* was assented to on September 24, 2020, bringing into force the new rules respecting the disclosure of nominee contracts to Revenu Québec (RQ). The purpose of the new rules, which were announced in Information Bulletin 2019-5 (May 17, 2019), is to “protect the integrity and fairness of the Québec tax system.”

The Disclosure Obligation

Under the new rules, a taxpayer who is a party to a nominee contract entered into in the course of a transaction having tax consequences under the Québec's *Taxation Act* (or who is a member of a partnership that is a party to such a contract) must disclose the contract and the transaction to RQ.

Although the legislation itself does not define the term “tax consequences,” RQ has confirmed that it interprets the term to refer to income tax consequences (including the creation of tax attributes, such as adjusted cost base) in respect of which Québec has taxing jurisdiction, and that the vast majority of commercial transactions have tax consequences and would therefore be subject to the new disclosure rules. RQ has specifically stated its view that

- the new disclosure rules apply to a number of common arrangements in which nominee agreements are used, including typical nominee agreements used in real estate transactions; and
- the disclosure rules apply to nominee agreements in respect of property located outside Québec, provided that at least one of the parties to the nominee agreement is subject to Québec income taxation.

The obligation to disclose applies in respect of nominee contracts entered into after May 16, 2019, as well as in respect of nominee contracts entered into before May 17, 2019, if the tax consequences of the transaction in the course of which the nominee contract was entered into continue after May 16, 2019. Disclosure by one party to a nominee contract is deemed to have been made by all the other parties to that contract. In the case of a limited partnership, the disclosure obligation applies only to the general partners.

A new Form TP-1079.PN is used for disclosure and taxpayers must indicate the following:

- the date the nominee contract was entered into;
- the identity of the parties to the nominee contract;
- a complete description of the facts of the transaction that is sufficiently detailed to allow the Minister to analyze it and have a proper understanding of the tax consequences;
- the identity of any other person or entity in respect of which the transaction has tax consequences; and
- such other information as is required by the prescribed form. Note that the current version of Form TP-1079.PN requires the taxpayer to “[d]escribe, in complete detail, all the facts related to the transaction or series of transactions for which the nominee agreement was concluded, as well as all the tax consequences arising from the nominee agreement.”

Deadline

When the disclosure obligation applies:

- a nominee contract *entered into before September 24, 2020*, must be disclosed on or before December 23, 2020; and
- a nominee contract *entered into on or after September 24, 2020*, must be disclosed on or before the 90th day after the date on which the contract was entered into.

Failure to disclose

If the information return is not filed within the required time, the taxpayer or the partnership that is a party to the contract in question incurs, solidarily (jointly and severally) with the other parties to the contract, a *penalty* of \$1,000 and an additional penalty of \$100 per day, as of the second day, for every day the failure to file continues, up to a maximum of \$5,000. This penalty appears to apply to each contract that is not disclosed within the required time.

The failure to disclose the nominee contract and the related transaction *suspends prescription*. In other words, RQ may reassess tax, interest and penalties even if the normal reassessment period has expired, to the extent that the reassessment may reasonably be considered to relate to the tax consequences of the transaction in question. The late disclosure of a nominee contract ends the suspension of prescription.

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