



TaxNewsFlash Canada

Quebec — Act Now to Disclose Nominee Agreements

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If you have entered into a nominee agreement in Quebec, you may have new tax disclosure requirements. Quebec recently announced that either party to a nominee agreement made as part of a transaction, or a series of transactions, must disclose this information to Revenu Quebec. This obligation applies to all nominee agreements entered into since May 17, 2019. Additionally, certain agreements entered into before May 17, 2019 where the tax consequences continue after May 16, 2019, will need to be disclosed by September 16, 2019. Quebec announced these changes in the province's Information Bulletin 2019-5, and provided additional details at a Canadian Tax Foundation (CTF) event held on July 11, 2019.

Quebec taxpayers must meet this new requirement for qualifying nominee agreements even if they already disclose details of such an arrangement in their provincial tax return. Taxpayers who do not disclose nominee agreements they are a party to face penalties of up to \$5,000. As a result, you should identify any qualifying contracts and prepare to comply with this new provincial tax obligation.

Background

In its 2019-20 provincial budget, Quebec said that it would soon announce measures to strengthen the mandatory disclosure mechanism and improve the rules governing the use of nominees.

Under Quebec civil law (section 2130 of the Quebec Civil Code (QCC)), a nominee agreement (also called *prête-nom* or agency agreement) is a legal arrangement wherein the owner registers the property in the name of the nominee. While the nominee holds

legal title to the property, it does not hold any beneficial interest in the property. Also, nominees are not liable for owners' contracts.

Under a nominee agreement, a person (i.e., the mandator) confers upon another person (i.e., the mandatary) the power to represent him or her in the performance of a juridical act with a third person. The mandatary is bound to exercise this power. A nominee agreement is a simulation-led mandate, as defined under section 1451 QCC, where the agreement is a "secret contract" (counter-letter) that expresses the genuine will of the parties that differs from the intention expressed in the apparent contract.

Generally, when there is a nominee agreement, the mandatary seemingly owns the property title and rights of this contract or the asset it pertains to without being the beneficial owner of the asset. The mandatary acts on behalf of the person that mandated him or her.

Currently, taxpayers are required to disclose certain nominee agreements by answering questions in the provincial tax return (Co-17). At the CTF event, Revenu Quebec said that in some cases nominee agreements entered into before May 17, 2019 and already disclosed in the Co-17 will also have to be disclosed under the new requirement.

Revenue Quebec also stated that it did not intend to define "nominee agreement" in the Quebec *Taxation Act*.

Complying with the disclosure

Under the new requirements, taxpayers must disclose the contract regardless of the legitimacy of the nominee agreement. For example, disclosure is required if a nominee agreement is used to:

- Collect rental payments or to pay expenses
- Buy assets in a matrimonial context
- Allow a buyer to prevent a capital gain in the sale of an immovable.

Any taxpayer that is a party to a nominee agreement that was concluded on or after May 17, 2019 must file a prescribed form with the required disclosure no later than 90 days after the date on which the nominee agreement was concluded.

In addition, you may have a reporting requirement if you are a party to a nominee agreement concluded before May 17, 2019. Where the "tax consequences" of the transaction or series of transactions to which the agreement relates continue on or after May 17, 2019, you must now file a prescribed form to report the required disclosure no later than September 16, 2019. To determine whether "tax consequences" continue on or after May 17, 2019, or to determine what are the "tax consequences" to be described on the prescribed form, Revenu Quebec said that this terminology should be "broadly

interpreted” and specified that taxpayers will have to disclose a nominee agreement if, for example, they are used for acquiring a rental real building for the cumulating year in view of claiming the principal residence exemption.

To disclose a nominee agreement, taxpayers must use a prescribed form that includes information on:

- The date of the nominee agreement
- The identity of the parties to the nominee agreement
- A full description of the facts of the transaction or series of transactions to which the nominee agreement relates, and the identity of any person or entity for which such transaction or series of transactions has “tax consequences”
- Any other requested information.

Revenu Quebec noted at the CTF event that, where this form has not been published when the taxpayers must make the disclosure, that taxpayer may send a letter that includes this information. In addition, only one of the parties to the nominee agreement is required to disclose that agreement.

Penalties

Revenu Quebec advises that a taxpayer that fails to disclose details of a nominee agreement they are a party to in the prescribed form within the prescribed time limit, will be jointly liable for a penalty of \$1,000 and an additional penalty of \$100 per day (up to a maximum total penalty of \$5,000). In addition, Revenu Quebec will also be able to suspend a taxpayer’s assessment period where they fail to disclose a nominee agreement.

We can help

Your KPMG adviser can help you assess how these changes will affect any agreements you have entered into and assist you in complying with these complicated new disclosure requirements. For more information, contact your KPMG adviser.

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