KPMG

TaxNewsFlash

Canada

Quebec — Disclose Nominee Agreements by December 23

October 5, 2020
No. 2020-75

Taxpayers who are party to certain nominee agreements entered into in Quebec or that bear tax consequences in Quebec may be required to disclose information about that agreement to the province by December 23, 2020. Quebec recently passed measures to require either party to a nominee agreement that is made as part of a transaction, or a series of transactions, to disclose this information by December 23, 2020 or 90 days after conclusion of the nominee agreement, whichever is later. This obligation applies to all nominee agreements entered into on or after May 17, 2019, as well as certain agreements entered into before this date where the tax consequences continue after May 16, 2019.

Such taxpayers must meet this new requirement by filing a prescribed form 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.

Background
Quebec announced changes to the mandatory disclosure mechanism and the rules governing the use of nominees in 2019. As a result, affected taxpayers are required to file a prescribed form for new mandatory disclosures of nominee agreements entered into in Quebec. Although Quebec initially indicated that these disclosures would be required as early as September 16, 2019 for some taxpayers, the province later extended the filing deadline to the later of:

- The 90th day following the conclusion of the nominee agreement, or

- The 90th day following the day the bill introducing the new measures receives assent.

These measures were included in Quebec Bill 42, which received assent on September 24, 2020.

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 a July 2019 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 (except for agreements concluded before September 24, 2020, which must be filed by December 23, 2020 at the latest, under the transitional rules).

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 December 23, 2020. 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, prescribed form Quebec form TP-1079.PN-V, "Disclosure of a Nominee Agreement" must be filed, which 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.

Penalties

Taxpayers that fail 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.