

# IMPORTANT MODIFICATIONS TO *THE ACT RESPECTING DUTIES ON TRANSFERS OF IMMOVABLES*

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The March 17 Québec budget sets out various projected amendments that will introduce significant changes to the regime of duties on transfers of immovables in the Province of Québec. While the modifications to *An Act respecting duties on transfers of immovables* (the "**Act**") have not yet been tabled or adopted, it appears from the announcements made in the budget that these measures will apply to all transfers of immovables taking place after March 17, 2016. This bulletin summarizes the amendments proposed in the latest provincial budget.

The Act provides that municipalities must perceive the duties applicable to the transfer of an immovable occurring on their territory and establishes the method of calculation of the duties as well as possible exemptions.

The proposed measures comprise: i) a revision of various exemptions existing under the Act and restrictions to their application; ii) a modification of the date when duties on transfers of immovables become payable; iii) the introduction of a disclosure mechanism for all immovable transfers contemplated under the Act; and iv) the addition of new exemptions.

## **Modification of Certain Exemptions**

As a first step, some of the exemptions applicable to transactions between two closely related legal persons will be revised. In support of these changes, the government argues that the exemptions relating to the possession of a determined percentage of the issued shares of the capital stock of a corporation to which are attached full voting rights or of a determined percentage of the fair market value of the capital stock of a corporation have created difficulties in their application and may have been used in cases where the government is of the view that land transfer duties should have been paid.

As a reminder, the Act currently contains exemptions in cases where a transfer occurs between two closely related legal persons. These include situations where:

- at least 90% of the issued shares having full voting rights of the capital stock of the legal person are

- owned by the co-contracting party, a qualifying subsidiary of the co-contracting party, a legal person of which the co-contracting party 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% of the fair market value of all the issued and outstanding shares of the capital stock of the legal person are owned by the co-contracting party;
  - at least 90% of the fair market value of all the issued and outstanding shares of the capital stock of the transferor and of the transferee are owned by one and the same legal person or group of legal persons.

Clarifications will be included so that the percentage of shares owned in the capital stock, i.e. 90%, will be calculated taking into account the number of votes attached to the shares. Moreover, the budget introduces the obligation to be set out in the Act that the satisfaction of the condition giving rise to the exemption be maintained for at least 24 months following the transaction. Thus, the determination of whether the condition for the exemption is satisfied will occur at the time of the transfer, but will also have to be maintained for a period of 24 months thereafter, failing which the duties will become due. A similar obligation having the effect of restricting any change of control of the transferee during a period of 24 months following an exempt transfer currently exists under the Act, but in the form of special duties via a reference to s. 1129.29 of the *Taxation Act*.

Furthermore, the government announced that, in the case of an exempt transfer between a legal person and a natural person, the Act would be amended so that the condition giving rise to the exemption will have to be fulfilled for a period of 24 months prior to the transaction. The situations where a person acquires a right to acquire, control voting rights or require the legal person to redeem, acquire or cancel shares of its capital stock held by other shareholders will be taken into account. The person, in these cases, will be deemed to have acquired the shares to which that right is attached. This will, however, not be the case when the exercise of the right in question is contingent upon the death, bankruptcy or permanent disability of an individual.

In addition, disclosure mechanisms will be introduced to provide that the transferee of an immovable who benefitted from an exemption will have the obligation to notify the municipality in which territory the immovable is located when the exemption condition ceases to be satisfied at any time during the 24-month period following the exempted transfer. It is specified that such disclosure will have to be made within 90 days of the date when the exemption condition ceases to be met. The budget states that the *Taxation Act* will be modified so that a transferee who fails to file such notice will have to pay to the Minister of Revenue special duties equal to 150% of the transfer duties payable, with applicable interest.

Moreover, it was announced that the provisions granting exemptions when the transfer occurs between two closely related legal persons when at least 90% of the fair market value of the issued and outstanding shares of

a legal person are owned by the co-contracting party or where 90% of the fair market value of the transferee's and of the transferor's shares are owned by the same legal person or group of legal persons will be revoked.

Considering the projected amendments to the Act, it was announced that the anti-avoidance rule included in the Act referring to s. 1129.29 of the *Taxation Act* will be repealed.

### **Disclosure of Non-Registered Transfers**

The provisions of the Act currently prescribe that land transfer duties applicable to the transfer of an immovable only become due when the transfer is registered at the land register.

Following the new rules announced in the budget, the duties will become payable on the date of the transfer. In order to implement this change, a disclosure mechanism will be introduced so that the transferee will have to notify the municipality in which territory the immovable is located of the transfer where such transfer is not registered at the land register. This disclosure will have to take place within a 90-day period following the date of the transfer. The budget states that the *Taxation Act* will be modified so that a transferee who fails to disclose the transfer will have to pay the Minister of Revenue special duties equal to 150% of the payable duties, with applicable interest.

This notice, similarly to the notice discussed above that must be given where one has ceased to comply with the exemption condition, will contain various information, including the name and address of the transferor and the transferee, the particulars required under s. 9 of the Act if they are omitted on the deed of transfer, the date where the exemption condition ceased to be met or the identity of the apparent owner mentioned in the last deed registered on the land register, as applicable, as well as the last and first names of the professionals involved in the transfer of the immovable. The purpose sought by this last piece of information remains unclear at this stage. It will be interesting to see how municipalities will use the disclosure of the names of the professionals involved in the transaction.

### **Additional Exemptions**

The budget also introduced additional exemptions in favour of former de facto spouses and recognized exemptions granted to international governmental organizations.

As the modifications outlined above have not yet been adopted, it will be interesting to see in the near future how these amendments will be dealt with and implemented under the Act.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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