



# New Mandatory Disclosure of Nominee Agreements to Revenu Québec

August 23, 2019

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On May 17, 2019, *Finances Québec* issued Information Bulletin 2019-5 (the “Bulletin”) stating that Quebec tax legislation will be amended so that *Revenu Québec* (“RQ”) is notified of any nominee agreement entered into as part of a transaction or series of transactions (the “Proposed Amendments”). On August 22, 2019, RQ released an update regarding an extension of the deadline date for filing.

## What you should know

- Pursuant to the Proposed Amendments, one of the parties to a nominee agreement must disclose specific information to RQ by the later of the following dates: (i) the 90<sup>th</sup> day following the conclusion of the nominee agreement; or (ii) the 90<sup>th</sup> day following the day the bill introducing the new measures receives assent.
- The Proposed Amendments will apply to nominee agreements entered into on or after May 17, 2019. Based on the wording used in the Bulletin, all nominee agreements (whether they have “tax consequences” or not) appear to be caught by the Proposed Amendments. This would include typical nominee agreements used in real estate transactions.
- On the other hand, nominee agreements concluded prior to May 17, 2019 will have to be disclosed to RQ no later than the 90<sup>th</sup> day following the day the bill introducing the new measures receives assent to the extent “tax consequences” related to such nominee agreements continue on or after May 17, 2019.
- For example, a nominee agreement entered into prior to May 17, 2019 where the nominee still holds legal title of a real property after May 17 and the beneficial owner collects rental income after that date should be caught by the Proposed Amendments according to RQ. RQ also indicated that the term “tax consequences” means in fact “income tax consequences”, although the Bulletin does not specify it.
- Failure to disclose the required information to RQ may lead to penalties of \$1,000 and an additional \$100 per day up to a maximum of \$5,000. Moreover, the statutory prescription period otherwise applicable to a taxation year for a party to a nominee agreement may be suspended with respect to the related tax consequences

## Information Return

Pursuant to the Proposed Amendments, the mandatory disclosure will have to be made through the prescribed form called “information return”. Although the information return has yet to be published, the

Bulletin mentions the information to be disclosed: (i) the date of the nominee agreement; (ii) the identity of the parties to the nominee agreement; (iii) 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; and (iv) any other information requested by the prescribed form. Prior to the publication of an information, parties can disclose a nominee agreement to RQ using a mere letter containing the above-mentioned information.

The disclosure is only required to be made by one of the parties, as, once duly made, it will be deemed to have been made by the other party to the nominee agreement as well. The disclosure must be filed with RQ by the later of the following dates: (i) the 90<sup>th</sup> day following the conclusion of the nominee agreement; or (ii) the 90<sup>th</sup> day following the day the bill introducing the new measures receives assent.

## Recommendations

Prior to the release of the draft legislation, the conservative approach for our clients would be to disclose all nominee agreements entered into on or after May 17, 2019 by the later of the following dates: (i) the 90<sup>th</sup> day following the conclusion of the nominee agreement; or (ii) the 90<sup>th</sup> day following the day the bill introducing the new measures receives assent.

With respect to nominee agreements concluded prior to May 17, 2019, our clients would need to determine whether income tax consequences related to such nominee agreements continue on or after that date. Such analysis must be made on a case by case basis. According to RQ, this should likely include typical nominee agreements used in the real estate industry and concluded prior to May 17 to the extent the real property has not been sold prior to that date. Where appropriate, the disclosure will need to be filed no later than the 90<sup>th</sup> day following the day the bill introducing the new measures receives assent.

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