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Significant amendments to the Act Respecting Duties on Transfers of Immovable following the 2016-2017 provincial budget

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The use of a nominee corporation

The *Act Respecting Duties on Transfers of Immovables* (the "**Act**") imposes transfer duties (also known as the "welcome tax") on the transfer of immovables in Quebec.

Since transfer duties are only payable from the time the transfer is registered in the land register (section 6 of the Act), some property structures make it possible, in practice, to avoid paying them.

One of these ownership structures consists in registering a nominee corporation as the owner in the land register, while the real owner is the corporation's shareholder. This way, upon the sale of the property, it is not the nominee corporation who is a party to the transaction, but rather its shareholder who sells the property and the shares of the nominee corporation. The name of the owner of the immovable remaining unchanged in the land register, this makes it possible to avoid paying transfer duties.

These transactions deprive municipalities of significant revenues, as was the case for Quebec City when the Hotel Le Concorde was sold in 2014. The 2016-2017 budget tabled on March 17, 2016 by Minister of Finance Carlos Leitão (the "Budget") provides for significant amendments to the Act to end this practice. Therefore, effective from March 18, 2016, the Act will be amended to provide that the payment of transfer duties **will be due from the date an immovable is transferred,** irrespective of whether or not the transfer deed is registered in the land register. In the case of a transfer which is not registered in the land register, the transferee will be required to file a notice of disclosure within 90 days from the date of the transfer, failing which he will be required to pay to the Minister of

Revenue supplementary duties equal to 150% of the transfer duties payable in respect of the transfer, as well as interest.

The Budget also announces other, more technical changes to the Act, which are summarized hereinafter. Although most of the changes announced in the Budget also apply from March 18, 2016, it must be noted that no bill has been tabled. Pending the adoption of the Budget and the tabling of a Bill, it is recommended to rely on what is provided for in the Budget.

Tightening of some exemptions

Transfer between a legal person and a natural person who controls the shares: clarifications as to the concept of “control”

Until the Budget, there was an exemption from transfer duties when the transfer of an immovable was made between, on the one hand, a natural person and, on the other hand, a legal person, **90% of the issued fully voting shares** of whom were owned by the natural person immediately before the transfer. The Budget specifies the conditions for the exemption as to the 90% percentage which must henceforth be established by calculating the **number of votes** attached to the issued shares of the share capital of the legal person, irrespective of the number of shares held. This amendment does away with the ambiguity that existed in the case of multiple voting shares.

Transfer between “closely related legal persons”: reduction in scope of this definition

An exemption is also provided for when the transfer of an immovable occurs between two closely related persons. Until the Budget, legal persons were considered to be closely related, particularly when one of them held either (i) more than 90% of the fully voting shares of the other legal person or (ii) at least 90% of the fair market value (FMV) of all the shares issued and outstanding of the other legal person.

The Budget restricts the scope of the definition of “closely related legal persons” by deleting the criterion based on the FMV of the shares because it was difficult in practice to verify compliance.

It is to be noted that for the purpose of this definition, the obligation to hold 90% of the voting shares will also be replaced with an obligation for one of the legal persons to hold 90% of the voting rights attached to the issued shares of the share capital of the other legal person, irrespective of the number of shares held.

New obligation to maintain the conditions for exemption for a minimum period of 24 months following or preceding the transfer

Furthermore, in order to eliminate some schemes, the sole purpose of which is to momentarily satisfy the exemption condition related to the percentage of voting rights, the Act will be amended to introduce a minimum period during which the condition for exemption of exempted transfers will be required to be maintained.

Thus, in the case of the exempted transfer of an immovable by a natural person to a legal person or between two closely related legal persons, compliance with the condition for exemption pertaining to the percentage of voting rights must maintain for a **24 month period following the transfer.** In the case of the transfer by a legal person to a natural person, the exemption will only be granted if the condition has been complied with for a minimum period of **24 months preceding the transfer.** If the legal person which transferred the immovable to a legal person has been incorporated for less than 24 months prior to the transfer, the exemption from the payment of the transfer duties will be granted provided that the condition of exemption has been satisfied **from the date of the incorporation of the legal person until the moment immediately preceding the transfer.**

In the case where a transferee ceases to be entitled to the exemption, he will be required to pay the transfer duties. In such a case, a notice of disclosure will be required to be provided to the municipality within 90 days from the date on which such condition ceases being met, failing which the transferee will be required to pay to the Minister of Revenue supplementary duties equal to 150% of the transfer duties payable in respect of the transfer, as well as interest.

Beware of some provisions of shareholder agreements and other agreements

Furthermore, when, during the 24-month period preceding or following, as the case may be, the date of transfer of an immovable which allowed the transferee to benefit from the exemption from transfer duties, a person acquires the right to acquire or control the voting rights or require the legal person to redeem, acquire or cancel shares of its share capital held by other shareholders, it will then be deemed to have acquired the shares on which this right applies, except for some exceptions which will be found in the amendments to the Act.

New exemption for transfer between former common-law partners

The Act will be amended to introduce an exemption from the payment of the transfer duties when the transfer of an immovable is made **between former common-law partners within 12 months following the breakup.** Common-law partners are two persons who have been living together in a marital relationship for a 12-month period or are the father and mother of a same child. This amendment will apply in respect of the transfer of an immovable made after March 17, 2016.