Mandatory Disclosure Requirement of Nominee Agreements

August 09, 2019

Update for November 3, 2020

On May 17, 2019, the Minister of Finance of Québec released an information bulletin (the Bulletin) implementing an immediate and mandatory disclosure mechanism with respect to nominee agreements. In particular, the Bulletin develops the General Anti-Avoidance Rule (GAAR) disclosure rules and penalties to aggressive tax planning involving shams and the use of nominee agreements.

On September 24, 2020, the Government of Québec passed these measures into law thereby giving legal force to the new requirements to disclose nominee agreements.

What you need to know

The disclosure must be made by means of Form TP-1079.PN-V sent under separate cover and by registered mail, and must include all the information requested on the form including:

- The date that the nominee agreement was entered into;
- The identity of the parties to the nominee agreement; and
- A complete and sufficiently detailed description of the facts relating to the transaction or series of transactions to which the nominee agreement relates and the identity of any person or entity for whom the transaction or series of transactions give rise to tax consequences.

Filing deadline

The deadline to disclose the use of nominees is the later of the following dates:

- the 90th day after the nominee agreement was entered into; and
- December 23, 2020.

Through discussions with Revenu Québec, we understand that disclosures made prior to September 24, 2020, respecting technical interpretation 80-7/R2 and 1136-7/R2 do not need to be disclosed anew using the prescribed form. We trust that the draft legislation will be explicit in this regard.

Update for September 9, 2019

Mandatory Disclosure of Nominee Agreements: Filing deadline extension

On May 17, 2019, the Minister of Finance of Québec released an information bulletin (the Bulletin) implementing an immediate and mandatory disclosure mechanism with respect to nominee agreements. In particular, the Bulletin develops the General Anti-Avoidance Rule (GAAR) disclosure rules and penalties to aggressive tax planning involving shams and the use of nominee agreements. Non-disclosure can result in penalties and the suspension of the prescription (statute barring) period for any transactions subject to the nominee agreement.

To maximize compliance, Revenu Québec recently announced that it will be extending the deadline to disclose nominee agreements concluded prior to May 17, 2019 and that continue to have tax consequences after that date and those entered into on or after May 17, 2019.

The deadline is now the later of the following dates:

- the 90th day after the nominee agreement was entered into; or
- the 90th day following the day the legislation introducing the new measures receives assent.

August 9, 2019

Under Québec civil law, the contractual relationship whereby one party (the Nominee) agrees to hold title to certain property on behalf of the beneficial owner (the Principal) is commonly referred to as a nominee agreement. Under this arrangement, generally without informing the third party, the Nominee acts as agent to the Principal to execute transactions on his or her behalf, effectively allowing the Principal to remain anonymous.

A nominee agreement is commonly used in real estate transactions where multiple parties are involved and anonymity of the true owner is important, for example in the case of asset protection, financing transactions and for investment confidentiality.

As part of its initiative to protect the integrity and fairness of its tax system, the provincial 2019-2020 budget put an emphasis on the disclosure requirement of nominee agreements. Most recently, on May 17, 2019, the Minister of Finance of Québec released an information bulletin[1] (the Bulletin) implementing, an immediate and mandatory disclosure mechanism with respect to nominee agreements. Specific rules were also created for nominee agreements concluded prior to May 16, 2019 and where the tax consequences of the transaction or series of transactions to which the nominee agreement relates continue to have effect after the publication date of the Bulletin.

The Bulletin states that the provincial tax legislation will be amended to take into account three new measures:

1) Mandatory disclosure of a nominee agreement

Now, parties to a nominee agreement must file, no later than 90 days after the date on which the nominee agreement was concluded, a prescribed form which is not yet available to the public. Until the prescribed form is created and available to the public, parties to nominee agreements must disclose the following to Revenu Québec:

- 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;
- the identity of any person or entity on which such a transaction or series of transactions has tax consequences; and
- any other information requested in the prescribed form.

We have recommended to clients, before the prescribed form becomes available, to make said disclosure by letter sent by registered mail.

2) Penalty for non-disclosure

Failure to disclose a nominee agreement within the prescribed time limit of 90 days or no later than September 16, 2019 for existing nominee agreements which continue to have tax consequences, will render the Nominee and the Principal jointly liable for a penalty of up to $6,000. More specifically, they will be exposed to an initial penalty of $1,000 and an additional penalty of $100 per day, which shall be calculate for a maximum of 50 days.

3) Prescription period

Failure to disclose a nominee agreement within the prescribed time limit (either 90 days or before September 16, 2019), will effectively suspend the prescription period otherwise applicable with respect to the tax consequences arising from a transaction or series of transactions that occurred that year and that are part of the nominee agreement.

Conclusion

Accordingly, nominee agreements entered into after May 16, 2019 must be filed with Revenue Québec no later than 90 days after the date on which the nominee agreement was concluded and is irrespective of the reason for the nominee agreement.

All existing agreements, in which the tax consequences of the transaction or series of transactions continue to apply on or after May 16, 2019 must be disclosed to Revenue Québec no later than September 16, 2019.

If you are party to a nominee agreement or intend to enter into one, our specialized tax group is available to discuss your disclosure obligations and the related tax consequences of your particular nominee arrangement.

[1] Québec Information Bulletin

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