Québec Land Transfer Duties: Clarifying Exemptions to Partnerships

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Under the *Act Respecting Duties on Transfers of Immovables* (the *Act*), every municipality in Quebec must collect land transfer duties (LTD) on the transfer of real property situated within its territory, at rates that could be as high as three per cent of the basis of imposition.

Prior to the release of Bill n°13: An Act to amend the Taxation Act, the Act respecting the Québec sales tax and other legislative provisions (the Bill), which entered into force in June 2019, the exemption from LTD under the *Act* only provided for the transfer of real property between closely related legal persons. This created uncertainty when transferring real property between related persons in a partnership structure – a structure commonly relied on in real estate ventures.

Overview of the "New" Rules

The provisions introduced in the Bill apply in respect of any transfer of real property made after December 20, 2017 and provide an exemption from the payment of LTD in the following circumstances:

1. Transfer made by an individual to a partnership:

Under the amended legislation, a transfer made by a natural person (i.e. an individual) to a partnership would be exempt if, immediately after the transfer, the individual's share in the partnership's profits or losses is at least 90 per cent (Closely Related Test)[1]. At first glance, the revised legislation appears to apply the same Closely Related Test that previously existed for corporations under the *Act*. However, for corporations, the Closely Related Test states that a transfer of real property would be exempt if immediately after the transfer, the transferor owned shares of the capital stock of the transferee carrying at least 90 per cent of the voting rights that may be exercised under any circumstances at the annual meeting of shareholders of the transferee[2]. Thus, the Closely Related Test for corporations is based on the shareholder's voting rights, while the threshold for partnerships is based on the partner's share in the partnership's profits or losses.

As an example, if a an individual were to transfer the ownership of his or her real property into a partnership in which he or she owed more than 90 per cent of the voting units, but shared equally in the profits or losses with the other partners[3], this transfer would be subject to LTD. On the other hand, if the same individual were to transfer the ownership of his or her real property into a corporation, where he or she held more than 90 per cent of the voting rights, the transfer would be exempt from mutation duties, regardless of the rights to profits or losses.

Subject to exceptions provided for in the *Act*, such as dissolution of the partnership or if the individual ceased to be a partner of the partnership for a reason such as death or bankruptcy, the Closely Related Test must be respected throughout a 24-month holding period.

2. Transfer by a partnership to an individual:

This same adaptation of the Closely Related Test discussed above exists for transfers made from partnerships to transferees that are individuals. A transfer made by a corporation to an individual, would require that the individual carry at least 90 per cent of the voting rights of the corporation[3] while the transfer made from a partnership to an individual would require that the individuals share in the partnership's profits and losses is at least 90 per cent[5]. In both cases, the 24-month holding period rule and related exceptions previously discussed are also applicable.

3. Transfer by a partnership to a legal person (and vice versa) and transfer between two partnerships:

The amended legislation has added that a partnership would be deemed to be a legal person (i.e. a corporation) for the purpose of this Closely Related Test, but that this deemed corporation's "shares" would carry voting rights of the partnership in a proportion that is equal, at that time, to the partner's share in the partnership's profits or losses[6]. The 24-month holding period rule and related exceptions previously discussed are also applicable.

Takeaway

Without the amendments discussed herein, exemptions provided for under the *Act* applied solely to corporation and individuals, not partnerships. These new provisions apply in respect of any transfer of real property made after December 20, 2017.

Though these new rules appear daunting, they do create clarity regarding the exemption for partnerships from LTD under the *Act* and with some proper planning, allow for flexibility when transferring real property in between partnership structures.

[1] *1*9(a.1) of the Act

[2] 19(a) of the Act

[3] Note; under 2202 of the *Civil code of Quebec*, the share of each partner in the assets, profits and losses is equal if it is not determined by the contract.

[4] 19(b) of the Act

[5] *New* 19(b.2) of the Act

[6] Section 19(par (d) read in conjunction with the fourth paragraph)

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