

PARTNERSHIP EXEMPTION FROM QUÉBEC LAND TRANSFER TAX

When an immovable (for example, land) is transferred from one corporation to another without any change in ultimate beneficial ownership (for example, between “closely related legal persons”), Québec land transfer tax (LTT) does not apply. This exemption is now to be extended to immovables owned by a partnership, according to proposals for the amendment of the Act Respecting Duties on Transfers of Immovables (CQLR c. D-15.1) announced on December 20, 2017 in [Information Bulletin 2017-14](#).

Real estate ventures are commonly structured as partnerships, and REITs are required to use partnerships. Prior to the proposals, a reorganization of a partnership often resulted in LTT liability, which was accepted as an unfortunate cost of doing business. Partnership exemptions have been a feature of similar taxes in other provinces and countries for some time, so the Québec changes can be seen as harmonizing the LTT rules with those of other jurisdictions.

It may have been possible prior to the proposed amendments to avoid LTT liability in transfers involving partnerships, but civil-law cases were conflicting, and much uncertainty remained (see, for example, Allard Itée, [1996 CanLII 5712](#); Polyclinique médicale Fabreville, SEC c. Laval (Ville de), [2006 QCCS 3251](#); Ferme CGR enr., SENC (Syndic de), [2010 QCCA 719](#); and 9197-6837 Québec inc. c. Terrebonne (Ville de), [2014 QCCQ 685](#)).

The proposed amendments will provide an exemption from the payment of LTT in the following circumstances (applicable to transfers of immovables made after December 20, 2017):

- The transferor (a natural person) transfers an immovable to a transferee (a partnership) and, immediately after the transfer, the transferor’s share of the income or losses of the partnership is at least 90 percent.
- The transferor (a partnership) transfers an immovable to a transferee (a natural person) and, immediately preceding the transfer, the transferee’s share of the income or losses of the partnership is at least 90 percent. If the transferor (a partnership) was formed less than 24 months prior to the transfer of the immovable, the exemption from the payment of transfer duties will be granted at the time of the transfer if the exemption condition is met throughout the period between the date on which the partnership is formed and the date of the transfer.
- The transferor and the transferee (both partnerships) are held directly or indirectly by a person or partnership whose share of the income or losses of the partnership is at least 90 percent. The same rule will apply if one party is a corporation and the other a partnership.

In all three of the circumstances described above, the “90 percent share of income or losses” condition must be met during the 24-month period following the date of the transfer. The disclosure mechanism, which was introduced in Québec’s 2016-17 budget to counteract common tax-planning strategies, remains applicable to partnerships, with the necessary adaptations. In particular, if the exemption condition related to the percentage of income or losses ceases to be met in the 24-month period following the date of the transfer, the transferee of an immovable will be required to disclose that fact. (See “[The New Quebec Land Transfer Tax Act](#),” Canadian Tax Focus, August 2016, and Raphael Barchichat, “[Droits sur les mutations immobilières](#),” Canadian Tax Foundation real estate tax seminar, July 12, 2016.)

**Text originally published on the Canadian Tax Foundation website and available by [clicking here](#)*

*Canadian Tax Focus
Volume 8, Number 1, February 2018
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