

REVENU QUÉBEC'S NEW DISCLOSURE REQUIREMENTS FOR NOMINEE (PRÊTE-NOM) AGREEMENTS

NEW RULES

On May 17, 2019, the Québec government changed the rules regarding the disclosure of nominee or prête-nom agreements. Nominee agreements must now be disclosed through a separate compliance procedure with its own form, deadlines and penalties. The new rules apply to both existing and future nominee agreements.

Any nominee agreement with "income tax consequences" must be disclosed to the Revenu Québec ("RQ"). The RQ has stated that it intends to interpret "income tax consequences" very broadly to include, for example, any creation of tax basis.

For example, if a person or entity has acquired an immovable via a nominee arrangement and the immovable has not been sold before May 17, 2019, the nominee arrangement would have to be reported.

DEADLINES

If the nominee agreement was in place prior to May 17, 2019, it must be disclosed (even if it had previously been disclosed in Form CO-17) by September 16, 2019.

For nominee agreements concluded after May 17, 2019, the disclosure must be made within 90 days of the conclusion of such agreement.

REQUIRED FORMS

Though the RQ has yet to publish the prescribed form, the disclosure must still be made in accordance with announced deadlines. Until a form is published, the disclosure should be made by letter that includes: (i) the date of the contract, (ii) the identities of the parties, (iii) the identity of any other party for whom the nominee creates tax consequences, and (iv) a description of the facts relating to the nominee agreement.

PENALTIES

These new rules have serious consequences for non-compliance - a penalty of up to \$5,000 and the suspension of the prescription period otherwise applicable. As a result, if a nominee agreement is inadvertently overlooked, the prescription period could be suspended indefinitely. Once disclosure is made, the suspension is lifted.

WHAT TO DO NEXT

Please contact Alain Moussallie as soon as possible if you are a party to a nominee agreement.

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