

Changes to certain exemptions from the payment of transfer duties

The *Act respecting duties on transfers of immovables* (hereinafter referred to as the “Act”) provides that every municipality must collect duties on the transfer of any immovable situated within its territory.

Moreover, the Act grants an exemption from the payment of transfer duties in certain circumstances.¹ One such circumstance concerns the transfer of an immovable between a natural person and a legal person when, immediately after the transfer, the natural person owns shares of the capital stock of the legal person carrying at least 90% of the voting rights. Similarly, there is also an exemption from the payment of transfer duties on the transfer of an immovable between a natural person and a partnership when, immediately after the transfer, the natural person’s share in the partnership’s profits or losses is at least 90%.

As a corollary, there may be an exemption from the payment of transfer duties in the case of the transfer of an immovable from a legal person or partnership to a natural person if, throughout the 24-month period immediately preceding the transfer, the natural person owns shares of the capital stock of the legal person carrying at least 90% of the voting rights or the natural person’s share in the partnership’s profits or losses is at least 90%, as the case may be.

However, the application of these exemptions to the transfer of immovables by several transferors who are natural persons or to several transferees who are natural persons may raise interpretation issues. The Act will therefore be amended to provide a framework for situations in which an exemption from transfer duties is granted for the transfer of immovables involving several natural persons.

Furthermore, other technical adjustments will be made to the Act to:

- adjust the rules surrounding exemptions applicable to the transfer of an immovable involving a partnership;
- provide an exemption for natural persons who acquired, as a consequence of a death, an immovable that belonged to a partnership;
- make a concordance adjustment to the exemption applicable to the transfer of an immovable that will form part of a registered agricultural operation.

¹ Cases of exemption are provided in Chapter III of the Act.

1. New exemptions applicable to certain transfers of immovables involving several natural persons

❑ New exemptions applicable to the transfer of an immovable between several natural persons and a legal person

The Act will be amended to introduce an exemption from the payment of transfer duties upon the transfer of an immovable by a group of transferors where all members are natural persons to a transferee that is a legal person if, immediately after the transfer:

- the group of transferors owns shares of the capital stock of the transferee carrying at least 90% of the voting rights that may be exercised under any circumstances at the annual meeting of shareholders of the transferee; and
- each member of the group of transferors owns these shares in a proportion that is equivalent to their share in the immovable immediately before the transfer.

For greater clarity, these conditions must be met throughout the 24-month period following the date of the transfer of the immovable or, where one of the transferors dies during the 24-month period following the date of the transfer of the immovable, throughout the period preceding the date of death of the transferor and following the date of the transfer.

The Act will also be amended to introduce an exemption from the payment of transfer duties when an immovable is transferred by a transferor who is a legal person to a group of transferees where all members are natural persons, if, throughout the 24-month period immediately preceding the transfer:

- the group of transferees owns shares of the capital stock of the transferor carrying at least 90% of the voting rights that may be exercised under any circumstances at the annual meeting of shareholders of the transferor; and
- each member of the group of transferees owns these shares in a proportion that is equivalent to their share in the immovable immediately after the transfer.

However, if the legal person transferring the immovable was constituted less than 24 months before the transfer of that immovable, the exemption from the payment of transfer duties will be granted at the time of the transfer if the conditions for exemption are met throughout the period beginning on the date of constitution of the legal person and ending on the date of the transfer.

Correlatively, exemptions from the payment of transfer duties that currently apply to a transfer involving a natural person and a legal person² will no longer apply to the transfer of an immovable by several transferors who are natural persons or to several transferees who are natural persons.

² Subparagraphs a) and b) of paragraph 1 of section 19 of the Act.

■ **Disclosure mechanism applicable when the conditions for exemption cease to be met**

The Act currently provides that the transferee of an immovable whose transfer was exempted from transfer duties must notify the municipality in whose territory the immovable is situated when, during the 24-month period following the date of the transfer of the immovable or, if the transferor dies during the 24-month period following the date of the transfer of the immovable, at a particular time during the period preceding the date of death of the transferor and following the date of the transfer, the condition for exemption relating to the percentage of voting rights ceases to be met.³

The Act will therefore be amended, with the necessary adaptations, so that the current disclosure mechanism applies to the new exemption applicable to the transfer of an immovable by a group of transferors where all members are natural persons to a transferee who is a legal person.

■ **Exceptions to the obligation to file a notice of disclosure**

The Act will also be amended to introduce, in certain circumstances, exceptions to the obligation to file the notice of disclosure applicable when the conditions for exemption cease to be met in the 24-month period following the date of the transfer of the immovable.

More specifically, the Act will be amended so that a legal person that is a transferee of an immovable whose transfer was exempted from the payment of transfer duties under the exemption relating to the transfer of an immovable by a group of transferors where all members are natural persons to a transferee that is a legal person is not required to pay the transfer duties that would have been otherwise payable in respect of that transfer, if, at a particular time in the 24-month period following the date of the transfer of the immovable, the conditions for exemption are no longer met by reason of:

- the amalgamation of the transferee with one or more legal persons provided the group of transferors owns shares of the capital stock of the legal person resulting from that amalgamation that, throughout the period that begins immediately after that amalgamation and ends 24 months after the date of the transfer of the immovable, carry at least 90% of the voting rights that may be exercised under any circumstances at the annual meeting of the shareholders of that legal person and provided that each member of the group of transferors owns these shares in a proportion that is equivalent to their share in the immovable immediately before the transfer;
- the dissolution of the transferee.

³ This disclosure mechanism is provided for in the second paragraph of section 6.1 of the Act.

❑ **New exemptions applicable upon the transfer of an immovable between several natural persons and a partnership**

The Act will be amended to introduce an exemption from the payment of transfer duties upon the transfer of an immovable by a group of transferors where all members are natural persons to a transferee that is a partnership, if, immediately after the transfer:

- the share of the group of transferors in the transferee's profits or losses is at least 90%; and
- the share of each member of the group of transferors in the transferor's profits or losses in proportion to the total shares held by the group of transferors is equivalent to their share in the immovable immediately before the transfer.

For greater clarity, these conditions will have to be met throughout the 24-month period following the date of the transfer of the immovable or, in the event that one of the transferors dies during the 24-month period following the date of the transfer of the immovable, throughout the period preceding the date of death of the transferor and following the date of the transfer.

The Act will also be amended to introduce an exemption from the payment of transfer duties when the immovable is transferred by a transferor that is a partnership to a group of transferees where all members are natural persons, if, throughout the 24-month period immediately preceding the transfer:

- the share of the group of transferees in the transferor's profits or losses is at least 90%; and
- the share of each member of the group of transferees in the transferor's profits or losses in proportion to the total shares held by the group of transferees is equivalent to their share in the immovable immediately after the transfer.

However, in the event that the partnership that transferred the immovable was constituted less than 24 months before the transfer of that immovable, the exemption from the payment of transfer duties will be granted at the time of the transfer if the conditions for exemption are met throughout the period beginning on the date of constitution of the partnership and ending on the date of the transfer.

Correlatively, exemptions from the payment of transfer duties that currently apply to a transfer involving a natural person and a partnership⁴ will no longer apply to the transfer of an immovable by several transferors who are natural persons or to several transferees who are natural persons.

⁴ Subparagraphs *a.1)* and *b.2)* of paragraph 1 of section 19 of the Act.

■ Disclosure mechanism applicable when the conditions for exemption cease to be met

The Act currently provides that the transferee of an immovable whose transfer was exempted from transfer duties must notify the municipality in whose territory the immovable is situated when, during the 24-month period following the date of the transfer of the immovable or, if the transferor dies during the 24-month period following the date of the transfer of the immovable, at a particular time during the period preceding the date of death of the transferor and following the date of the transfer, the condition for exemption relating to the share in the partnership's profits or losses ceases to be met.

The Act will therefore be amended, with the necessary adaptations, so that the current disclosure mechanism applies to the new exemption applicable to the transfer of an immovable by a group of transferors where all members are natural persons to a transferee that is a partnership.

■ Exceptions to the obligation to file the notice of disclosure

The Act will also be amended to introduce, in certain circumstances, exceptions to the obligation to file the notice of disclosure applicable when the conditions for exemption cease to be met in the 24-month period following the date of the transfer of the immovable.

More specifically, the Act will be amended so that a partnership that is the transferee of an immovable whose transfer was exempted from the payment of transfer duties under the exemption relating to the transfer of an immovable by a group of transferors where all members are natural persons to a transferee that is a partnership is not required to pay the transfer duties that would have been otherwise payable in respect of that transfer, if, at a particular time in the 24-month period following the date of the transfer of the immovable, the conditions for exemption of the partnership are no longer met by reason of:

- the dissolution of the transferee;
- the transferor's loss of the quality of partner for a fortuitous reason such as the transferor's death or the transferor being placed under protective supervision or becoming bankrupt.

□ Application date

These amendments will apply to the transfer of an immovable made after the date of publication of this information bulletin.

2. Other technical adjustments to certain exemptions

❑ Adjustment to the rules surrounding exemptions applicable to the transfer of an immovable involving a partnership

For the purposes of certain exemptions under the Act,⁵ it is provided that each person, other than the transferor or the transferee, who, at any time, has a right under a contract or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of a legal person or to control the voting rights of such shares, or to cause a legal person to redeem, acquire or cancel any shares of its capital stock owned by other shareholders, is deemed, at that time, to have exercised that right, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of a person.

Moreover, where the transferor or the transferee of the transferred immovable is a partnership, the Act provides that, in order to determine whether the natural person's shares in the partnership's profits or losses is at least 90%, the terms of the contract of partnership applicable at that time must be applied.⁶ In this regard, the Act does not specify whether immediate or future rights, absolutely or contingently, held by persons other than the transferor or the transferee should be taken into account, with the exception of rights that are not exercisable at that time because their exercise is contingent on the death, bankruptcy or permanent disability of a person.

In order to clarify the rules applicable when the transferor or the transferee of the immovable that is the subject of a transfer is a partnership and to align these rules with those applicable when the transferor or the transferee of the transferred immovable is a legal person, the Act will be amended so that each person other than the transferor or the transferee, who at any time has a right under a contract or otherwise, either immediately or in the future and either absolutely or contingently, either to, or to acquire, a share in a partnership's profits or losses, or to cause a partnership to redeem, acquire or cancel shares in the profits or losses belonging to other persons, is deemed, at that time, to have exercised that right, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of a person.

For greater clarity, these rules will also apply to the new exemptions relating to certain transfers of immovables involving several natural persons.

■ Application date

This amendment will apply to the transfer of an immovable made after the date of publication of this information bulletin.

⁵ See the last paragraph of section 19 as well as section 4.3 of the Act.

⁶ See the last paragraph of section 19 of the Act.

❑ **Addition of an exemption applicable to the acquisition by a natural person, as a consequence of a death, of an immovable belonging to a partnership**

Briefly, the Act provides⁷ that there is an exemption from the payment of transfer duties when the transfer of an immovable is made by a transferor that is a legal person to a transferee who is a natural person if the following conditions are met:

- the transferee acquires ownership of shares of the transferor's capital stock as a consequence of a death at any time during the 24-month period immediately preceding the transfer or, where the transferor has been constituted for less than 24 months on the date of the transfer, the transferee acquires ownership of shares of the capital stock as a consequence of a death at any time during the period beginning on the date of constitution of the transferor and ending on the date of the transfer;
- immediately after the particular time, the transferee owns shares of the capital stock of the transferor carrying at least 90% of the voting rights that may be exercised under any circumstances at the annual meeting of shareholders;
- the transfer is not covered by an exemption under the Act.⁸

However, no equivalent rule is provided for when the transferor is a partnership. The Act will therefore be amended to introduce an exemption from the payment of transfer duties applicable when the transferor of an immovable is a partnership and the transferee is a natural person, if the following conditions are met:

- the transferee acquired shares of the transferor's profits or losses as a consequence of a death at any time during the 24-month period immediately preceding the transfer or, where the transferor has been constituted for less than 24 months on the date of the transfer, the transferee acquires shares in the transferor's profits or losses as a consequence of a death at any time during the period beginning on the date of constitution of the partnership and ending on the date of the transfer;
- immediately after the particular time, the transferee owns at least 90% of the shares in the transferor's profits or losses;
- the transfer is not covered by an exemption under the Act.⁹

■ **Application date**

This amendment will apply to the transfer of an immovable made after the date of publication of this information bulletin.

⁷ S. 19, para. 1, subpara. b.1).

⁸ For greater clarity, the transfer must not be a transfer covered by the exemption provided for in subparagraph b) of the first paragraph of section 19 of the Act.

⁹ For greater clarity, the transfer must not be a transfer covered by the exemption provided for in subparagraph b.2) of the first paragraph of section 19 of the Act.

❑ **Concordance adjustment to the exemption from payment of transfer duties applicable to the transfer of an immovable that is part of a registered agricultural operation**

The Act provides¹⁰ that there is an exemption from the payment of transfer duties if the transferee declares that in the year that follows the registration of the transfer, the immovable will form part of an agricultural operation registered in his name.¹¹

However, the Act provides¹² that the transferee of an immovable must declare the transfer by means of:

- an application for registration in the land register of the deed evidencing the transfer; or, failing that,
- a notice of disclosure of the transfer of the immovable filed with the municipality in whose territory the immovable is situated.

No exemption from the payment of transfer duties is provided for when the transfer of an immovable that will form part of an agricultural operation in the following year is declared by notice of disclosure.

The Act will therefore be amended so that the exemption from payment of transfer duties relating to a registered agricultural operation is also granted when the transferee declares that the immovable will form part of such an agricultural operation in the year following the filing of a notice of disclosure.

■ **Application date**

This amendment will apply to the transfer of an immovable made as of March 18, 2016.

However, in the event that a transferee paid transfer duties in connection with the transfer of an immovable made between March 18, 2016, and the date of publication of this information bulletin, and that transfer now meets the conditions to qualify for the exemption from transfer duties relating to a registered agricultural operation, the transferee of the immovable will only be eligible for this exemption with respect to the transfer of the immovable if they submit a written application for a refund of transfer duties with the municipality no later than July 31, 2026.

In addition, interest on the amount that will be refunded to the transferee of the immovable will only begin to accrue on the date on which the municipality receives the request for a refund.

To obtain information on this information bulletin, contact the Secteur du droit fiscal, de l'optimisation des revenus et des politiques locales et autochtones, at secteurdroitfiscalitdelafiscalite@finances.gouv.qc.ca.

The English and French versions of this bulletin are available on the Ministère des Finances website, at www.finances.gouv.qc.ca.

¹⁰ S. 17.1.

¹¹ In accordance with section 36.0.1 of the *Act respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation* (CQLR, chapter M-14).

¹² S. 6.