July 2019

Bulletin

Commercial and Real Estate Practice Group of *Mercier Leduc L.L.P.*

Mercier Leduc s.e.n.c.r.l. ▪ avocats l.l.p. ▪ attorneys

New mandatory disclosure of nominee agreements

In order to combat tax planning that compromises the integrity and fairness of the Quebec tax system, the Quebec Ministry of Finance will amend its tax legislation. In this regard, the Information Bulletin 2019-5 was published on May 17, 2019. It is stipulated that a new mandatory disclosure mechanism will be introduced regarding nominee agreements.

What is a nominee agreement?

A nominee agreement is a contract under which a person, acting as a mandatary of another person, intervenes in a contract as if such person was acting on its own behalf, without revealing its identity. Such contracts are typically, although not exclusively, used in real estate transactions.

Mandatory disclosure of nominee agreements

According to the Information Bulletin 2019-5, all nominee agreements concluded as part of a transaction or a series of transactions must be disclosed to the attention of the Quebec Ministry of Finance. The information return must be made through the form prescribed by Revenue Quebec. Furthermore, only one of the parties to the agreement must file the return, such disclosure to be deemed to have been made by the other party as well.

Although the prescribed form is not yet available, but will soon be, it should be noted that the information which must be disclosed shall contain:

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

Effective date

Firstly, the parties who have concluded a nominee agreement prior to May 16, 2019, for which the tax consequences resulting from the transaction or the series of transactions are continuing after that date, will need to disclose the information by no later than September 16, 2019.

Secondly, regarding the nominee agreements entered into after May 16, 2019, the parties will have 90 days to file their return following the conclusion of the agreement.

Penalty for non-compliance

In the event of failure to comply with the disclosure measures, the parties will be subject to a monetary penalty. Indeed, they may be held solidarily to pay a penalty of $1 000 and an additional penalty of $100 per day, starting on the second day of the non-compliance, up to a maximum amount of $5 000.

Prescription period extended

In addition, in the event of failure to file the return, the applicable prescription period for a taxation year for a person involved in a nominee agreement will be suspended for that year, with respect to the tax consequences arising from the transaction or the series of transaction under that nominee agreement.

****

Given the new tax requirements, it is important to identify and to ensure the availability of a hard copy and/or an electronic copy of the nominee agreements and any arrangements related thereto that need to be disclosed to Revenue Quebec. Mercier Leduc remains available to assist you in taking steps in order to meet the new requirements. Please do not hesitate to contact a member of our team for any queries you may have.