

## IMPACT OF QUEBEC'S REQUIRED PLANNING DISCLOSURE REACHES BEYOND THE PROVINCE

Quebec's [Bill 42](#), which became law in September 2020, has broadened the mandatory disclosure rules to cover specified transactions. These include transactions for which the form and substance are the same or very similar to transactions listed in [regulations](#) promulgated on March 17, 2021. Revenu Québec has also provided [examples](#) of specified transactions. Further regulations and examples are expected.

A taxpayer who carries out a specified transaction, or who is a member of a partnership carrying out such a transaction, is required to disclose it by filing a 17-page form ([TP-1079.DI-V](#)). The late-filing penalty is up to \$100,000 plus 50 percent of the tax benefit that resulted from the transaction. An adviser or promoter who commercializes a specified transaction must also disclose it by filing a 9-page form ([TP-1079.CP-V](#)), subject to a late-filing penalty of up to \$100,000 plus 100 percent of the consideration received.

These new compliance requirements affect taxpayers outside Quebec. First, the new rules apply to advisers and promoters regardless of where they reside. Second, although taxpayers carrying out specified transactions must be Quebec residents to be affected by the new rules (except for the first transaction type described below), any taxpayer involved in a transaction with a Quebec resident may wish to consider the impact of the rules on that resident.

The regulations identify four transaction types, each of which has its own filing and disclosure deadline. The deadlines are the same for both taxpayers and advisers or promoters. These transaction types can be described essentially as follows:

- Planning to circumvent the deemed disposition of all trust property at certain times (including the 21st anniversary of the day the trust was created) and thereby defer tax on the accrued gain. This provision applies where a trust resident in Quebec distributes property to another trust, either directly or indirectly. The latter is not required to be a resident of Quebec. Both parties must disclose the specified transaction. The deadline is the later of (1) 60 days following the distribution and (2) July 15, 2021 (that is, 120 days following March 17, 2021).
- Payment of at least \$1 million between entities who do not deal at arm's length, where the payer (a Quebec entity) carries on business in Quebec and the payee is a foreign entity located in a non-treaty country. Only the payer bears the responsibility of disclosing the specified transaction. The deadline is the later of (1) the filing-due date otherwise applicable to the payer and (2) July 15, 2021.

- Multiplication of the capital gains deduction through the use of facilitators, where the proceeds of disposition of the shares essentially revert to the entrepreneur. Where attribution rules are manipulated, the new rules also target the entrepreneur's spouse. The facilitator or the spouse must disclose the transaction. Where a facilitator is involved, the deadline is the later of (1) 60 days following the disposition of the qualified small business corporation shares or the date when the proceeds of disposition are granted to the entrepreneur, whichever occurs later, and (2) July 15, 2021. Where the entrepreneur's spouse is involved, the deadline is the later of (1) 60 days following the disposition of such shares to the spouse and (2) July 15, 2021.
- The use of certain tax attributes (for example, unused operating losses or tax credits) following the acquisition of control by non-affiliated persons. Revenu Québec provides two examples where disclosure will be mandatory: (1) situations where tax attributes are traded between non-affiliated persons; and (2) situations where a profitable entity capitalizes another entity with tax attributes (such as operating losses) to ultimately carry on a new business, and it is established that the capitalization is linked to the use of such tax attributes. The person using the tax attributes bears the responsibility of disclosing the specified transaction. The deadline is the later of (1) the filing-due date otherwise applicable to those persons and (2) July 15, 2021.

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