

Focus REAL PROPERTY

Quebec tax snares unregistered land transfers

Case law suggests partnership may be one way to shield transfers from the new levy



Daniel Frajman

Completing a real estate transaction can become complicated due to unforeseen traps, such as new tax rules. One example is the new set of rules in Quebec for the land transfer tax chargeable to purchasers and other transferees of real estate.

In Quebec's 2016 budget, effective March 18, land transfer tax (at rates that remain unchanged of 1.5 per cent at the top rate, or a top rate of 2.5 per cent for properties in the City of Montreal) on the transfer of real estate will now be payable in relation to off-title or unregistered transfers of real estate (known as immovable property in Quebec).

This article will describe the main new rules for off-title transfers and also refer to previous case law (apparently untouched by the budget) that suggests that a group of people owning real estate through a partnership (rather than a co-ownership) possibly shields them from land transfer tax (known as land transfer duties in Quebec) in certain situations.

Until this change, the Quebec rules essentially provided that there would be land transfer tax only after a deed constituting the transfer of the real estate would be registered at the land registry office. Therefore, in cases when a deed constituting true ownership (a.k.a., beneficial ownership in the common law provinces) was not registered and an agent or mandatary was used on title (for any number of reasons, such as privacy concerns, convenience, or possibly with a goal of saving the land transfer tax), there was the possibility of an effective off-title transfer of ownership between the parties (which would be reported and taxed for income tax purposes) that would not be subject to land transfer tax. Ontario amended its laws in 1989 to apply its land transfer tax to transfers of beneficial ownership in addition to transfers of registered ownership.

Quebec is taking an approach similar to Ontario, in that subject to limited exceptions, land transfer tax is henceforth payable as of the date that the real estate is transferred, whether



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off-title or on-title, rather than only when the transfer is registered. For registered transfers, the registry office will continue to inform the municipality of the transfer, and the municipality will send to the transferee in due course a bill for land transfer tax. For unregistered transfers, the transferee now has an obligation to inform the municipality by written notice within 90 days that the transfer has occurred, and the municipality then sends the land transfer tax bill. (Compare to the Ontario rule, where a payment is required even earlier, as the transferee of unregistered beneficial ownership must self-assess and pay land transfer tax to the province within 30 days of the transfer.)

If a transferee of off-title ownership in Quebec does not provide notification of the transfer within the abovementioned 90 days, a 50 per cent penalty applies to the land transfer tax, and interest begins to run. The penalty, however, may be reduced to 25 per cent through Quebec's voluntary disclosure program.

If henceforth land transfer tax is paid on an off-title transfer, the transferee will not be required to pay the land transfer tax again if the off-title transfer is later registered.

How does the partnership concept enter into the equation? What seems relevant for a group of co-owners or partners is the difference at private law in Quebec between a co-ownership and a partnership. At private law, a co-owner has a direct undivided interest in the real estate. Registered changes regarding a co-owner therefore have been and continue to be

subject to land transfer tax. Henceforth, the same appears to be the case for off-title transfers of a co-ownership interest.

Compare to a partnership interest. In Quebec (although seemingly not in Ontario), recent case law characterizes a partnership (limited or general) at private law as having a separate "patrimony" (akin to being a separate entity, similar to a trust), distinct from that of its

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partners, such that partners do not have any ownership rights in the partnership property, and a transfer of a partnership interest is not a transfer of the underlying property owned by the

partnership. (Examples of this recent Quebec case law are the Quebec Court of Appeal decision of *Ferme C.G.R.* 2010 QCCA 719, and the Quebec Court of Appeal decision of *9197-6837 Québec inc. v. Terrebonne (Ville de)* 2015 QCCA 1492.)

It therefore appears, based on this recent case law, that regardless of whether a partnership's interest in real estate is on or off-title, a transfer of an interest in the partnership is, firstly, not something that should be registered on-title, and an off-title transfer of a partnership interest should not be a transfer that is subject to land transfer tax. This could be a powerful advantage for investors moving in and out of the partnership, as long as using a partnership rather than a co-ownership is tax neutral from an income tax point of view (which would often be the case).

There is therefore a new landscape for land transfer tax for unregistered real estate transfers in Quebec; a complication that has to be taken into account.

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Parrot with foul mouth the only witness

Pets are fun, until they accuse you of murder. The parents of Martin Duram, who was shot and killed in his Michigan home in May, 2015, believe his pet parrot knows who the murderer is, reports washingtonpost.com. Duram's body was found near his wife Glenna, who had a gunshot wound to the head but has recovered. She says she remembers nothing. His parents have a video of their African grey parrot, Bud, mimicking what sounds like two people arguing culminating in a male voice screaming, "Don't f---ing shoot!" Duram's father, Charles Duram, has said: "I personally think he was there, and he remembers it and he was saying it." Prosecutor Robert Springstead said that although he has heard about the talking parrot, he's waiting for Michigan State Police to finish the investigation before deciding whether to file charges, noting that "there's some evidence to support" the idea that Glenna Duram killed her husband. At this point she has not been charged. Michigan attorney Michael Walsh said the bird's testimony would be inadmissible because there's no way to trace his dirty mouth.—STAFF