

## Real Estate

# Quebec looking to join ownership transparency trend

By **Daniel Frajman**



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(April 4, 2019, 9:41 AM EDT) -- As our world becomes more mobile and connected, governments including at the provincial and federal levels in Canada, have taken this as a cue to legislate increased ownership transparency (i.e., to identify beneficial owners and their residence or citizenship in situations where the ownership is acquired through a nominee). This is with a view, among other goals, to combating perceived tax evasion and excessive property speculation.

For example, in regard to residential real estate purchased by non-residents, British Columbia has passed a speculation and occupancy tax and an additional property transfer tax, and Ontario has passed a non-resident speculation tax. B.C. is also implementing a register of pre-closing condominium transfers for residents and non-residents alike.

On a matter relating to businesses generally rather than to real estate only, and to promote transparency of share ownership in private federal corporations, the *Canada Business Corporations Act* (CBCA) will require CBCA corporations to have internal registers (accessible to creditors and it seems also the tax department) by June 13, 2019, that refer to ultimate beneficial owners of corporate shares.

Quebec is now examining possible rules of a similar nature. On Feb. 13, 2019, Quebec released a draft regulation open for public comment for 45 days, that would become part of the Quebec land transfer tax legislation as of October 2020.

The draft regulation does not impose any particular tax (although one wonders if that will change in the future) but would require additional personal information to be filed at the land registry office whenever a deed is tendered for registration.

The additional personal information to be provided under the draft Quebec regulation would differ a bit depending on whether the party in question is an individual, a corporation, a trust or a partnership, but appears aimed at establishing the party's tax jurisdiction information.

Essentially, it would work like this:

- individuals would have to indicate their citizenship or permanent resident status;
- corporations and trusts would have to indicate where they were formed and where they are resident;
- general partnerships would have to indicate where they were formed and whether at least half of the partners are foreign nationals, which might not otherwise be known given Quebec private law basically treats partnerships as a distinct entity; and
- limited partnerships would have to indicate where they were formed and whether the general partner is a foreign national.

Interestingly, the draft regulation would also require transferees of any real estate who are individuals to declare whether the transferee or a member of their family has an intention "to occupy a dwelling in the property as a principal residence", which may be a precursor to a new tax or may simply be meant to attune the transferee to the rules in Canadian tax law concerning the availability (or non-availability) of the capital gains exemption on a subsequent transfer of the principal residence.

This draft Quebec regulation appears to be in an early state that is subject to change. In addition to the draft regulation being the object of a recently ended public consultation, and not yet proposing a tax, the draft notably seems to relate only to registered real estate deeds and not to unregistered transfers which by their nature provide a greater risk of tax evasion. Quebec does have unregistered real estate deeds on its radar as such deeds became subject to disclosure and land transfer tax in March 2016.

Time will tell whether and how the draft regulation is finalized, but it clearly shows that Quebec is addressing the trend toward further ownership transparency. Another recent example of addressing this trend is found in an announcement made by Quebec in its provincial budget released on March 21, 2019.

Bearing in mind that Quebec already has in place a relatively robust public corporate register (known as the enterprise register) that sets out for corporations with activity in Quebec the names and addresses of the directors and the top three registered voting shareholders, and that the federal government, as noted above, is putting into place internal corporate beneficial ownership registers for CBCA corporations, the recent budget spoke to these two matters.

In this regard, Quebec announced in its recent budget that it will begin consultation in 2019 on requiring all enterprises operating in the province (regardless of where the corporation was incorporated) to declare their beneficial owners and to disclose that information to the public Quebec enterprise register (which would go beyond the new federal non-public internal corporate register), and to make it possible to search that public enterprise register by names of directors and officers (currently, a search can only be done by searching a business name).

Finally, the budget indicated that the province will allow the enterprise register to ask for more backup on requested information supplied to it by the public.

These are interesting developments indeed for the province. In its recent budget the Quebec government best summed up the competing interests on the beneficial ownership issue when it indicated that although it wishes to adopt global best practices in identifying beneficial owners, it does recognize that its consultations on this matter must address competing interests, namely improving transparency on the one hand versus the need to reasonably protect personal information and to not unduly increase the administrative compliance burden on businesses.

*Daniel Frajman, dfrajman@spiegelsohmer.com, is a partner at Spiegel Sohmer Attorneys in Montreal. He practises business real estate, financing and M&A, and tax law including the law of non-profit organizations.*

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