

Income Tax

IMP. 1033.14-1 Security Required in Respect of Certain Deemed Dispositions of Eligible
Shares of an Individual or a Trust

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Reference(s): *Taxation Act* (CQLR, c. I-3), sections 1033.14 to 1033.27

This bulletin establishes guidelines concerning the security required in respect of certain deemed dispositions of eligible shares of an individual or a trust.

THE ACT

Context

1. The *Taxation Act* (TA) provides for the deemed disposition of all of an individual's property at fair market value in certain circumstances. This is the case, subject to certain exceptions, immediately before an individual's death and every 21 years after the date on which a trust was created.
2. Under sections 1033.14 to 1033.27 of the TA, an individual or a trust can defer, subject to certain conditions and for a maximum period of 20 years, the payment of Québec income tax in respect of a share that is an eligible share at the time of the deemed disposition.
3. To take advantage of this tax relief, the legal representative of the individual or trust must elect to make such a deferral and furnish security satisfactory to the Minister.

The election is made by the individual's legal representative using prescribed form **TP-436.C-V**, *Election to Defer the Payment of Income Tax Attributable to the Deemed Disposition of an Interest in a Qualified Public Corporation Held at the Time of Death*, or, where applicable, by the trust using prescribed form **TP-653.C-V**, *Election of a Trust to Defer the Payment of Income Tax Attributable to the Deemed Disposition of Its Interest in a Qualified Public Corporation*.

The forms are available on our website (www.revenuquebec.ca).

4. If the security is accepted by the Minister, the income tax attributable to the deemed disposition of the eligible shares covered by the election is deemed to be an amount paid by the individual or trust. Accordingly, no interest or penalty applies to the income tax throughout period during which the security is valid.

5. The income tax attributable to the deemed disposition of an eligible share only becomes payable, subject to certain situations that may cause all or part of it to become payable earlier, on the balance-due day of the individual's succession (or a beneficiary of the succession) or the trust (or a beneficiary of the trust) for the taxation year in which the 20th anniversary of the deemed disposition of the eligible share occurs.

APPLICATION OF THE ACT

Deadline to make an election and furnish security

6. The election must be made and security furnished by the legal representative of the individual or trust on or before the balance-due day that applies to the individual or trust for the taxation year in which the deemed disposition occurred.

Amount of security furnished

7. The security cannot be less than 120% of the income tax for which payment is deferred and that is attributable to the deemed disposition of the eligible shares covered by the election.

Nature of the security

8. The security must be satisfactory to the Minister. In this regard, the Minister has full discretion in determining whether the proposed security is satisfactory given the facts of each case.

9. For example, the Minister may accept a conventional movable hypothec on the shares of private or public corporations, if he or she determines that such security is of sufficient value in the circumstances.

10. The Minister may also accept other types of security of sufficient value, such as:

- a) an irrevocable letter of guarantee issued by a financial institution that has its head office or a place of business in Québec;
- b) a conventional immovable hypothec granted by the taxpayer or a third party on an immovable located in Québec.

Obligation to maintain the value of the security – supplemental security

11. The value of the security given may fluctuate during the income tax payment deferral period following the deemed disposition (maximum 20 years).

Throughout this period, the Minister is responsible for ensuring, when and as often as he or she determines is appropriate given the type of security furnished (e.g. a conventional immovable hypothec), that the security remains satisfactory.

12. If the security furnished (e.g. a conventional movable hypothec on shares of a public corporation) significantly increases in value, the Minister can accept, upon request and based on the individual circumstances of each case, to renounce part of the security initially given.

13. In all cases, if the Minister determines, at a particular time, that the security accepted is no longer sufficient to cover 120% of the income tax for which payment has been deferred and that is attributable to the deemed disposition, he or she must notify the legal representative of the individual (or the beneficiary of the individual's succession) or the trust (or the beneficiary of the trust) in writing of the determination.

The legal representative of the individual (or the beneficiary of the individual's succession) or the trust (or the beneficiary of the trust) has 90 days to furnish satisfactory supplemental security for the additional amount determined by the Minister.

14. If the legal representative of the individual (or the beneficiary of the individual's succession) or the trust (or the beneficiary of the trust) fails to furnish the supplemental security, part of the income tax will become payable in proportion to the decrease in the value of the security.