

Income Tax

IMP. 280-1/R2 Expropriation Indemnities and Interest Received on Such Indemnities
Date of publication: December 29, 2011

Reference(s): *Taxation Act* (CQLR, c. I-3), sections 87 (par. (c)), 93 (1st par., subp. (f)), 248, 251 and 280

This version of interpretation bulletin IMP. 280-1 supersedes the version of May 29, 1992. While the position expressed in the bulletin remains unchanged, the scope of the bulletin was broadened to better cover the various components of expropriation indemnities. Editorial changes and changes to ensure conformity and technical accuracy were also made. Lastly, some accessory considerations were also added.

This bulletin gives Revenu Québec's interpretation concerning the time of disposition of expropriated property, the nature of an expropriation indemnity and the interest paid on an expropriation indemnity.

CONTEXT

1. Certain entities enjoy powers of expropriation, whereby the owner of a property is forced to turn over said property to an entity demanding ownership of the property in exchange for an indemnity. Municipalities and governments, for example, have such powers.
2. A number of laws provide for and set limits to such powers of expropriation, and each such law establishes specific procedures or conditions. In Québec, the main legislation on the subject is the *Expropriation Act* (CQLR, chapter E-24), which, briefly put, establishes the following procedure for expropriation proceedings:
 - (a) the expropriating party files with the Administrative Tribunal of Québec a plan and description of the property to be expropriated signed by a land surveyor;
 - (b) a notice of expropriation is served on the owner of the property;
 - (c) the expropriated party appears before the Administrative Tribunal of Québec;
 - (d) the expropriating party registers the notice of expropriation in the land register;

- (e) the expropriating party and the expropriated party file a declaration showing in detail the amount offered by the former and the amount claimed by the latter;
- (f) a notice of transfer of title is served on the expropriated party;
- (g) the provisional indemnity is paid to the expropriated party or deposited on that party's behalf with the office of the Superior Court;
- (h) the notice of transfer of title is registered in the land register;
- (i) after its registration, the notice of transfer of title is filed with the Administrative Tribunal of Québec.

3. In general, transfer of title to expropriated property is made by registration of the notice of transfer of title, subject to certain conditions.

4. As for expropriation indemnities, the Administrative Tribunal of Québec has jurisdiction to fix the amount of such indemnities and to rule on recourse relating to the fixing of such indemnities. Thus, where the parties to the expropriation are in disagreement, the final expropriation indemnity is fixed following recourse instituted in that regard.

GENERAL CONSIDERATIONS

5. Pursuant to subparagraph (a) of the first paragraph of section 248 of the *Taxation Act* (TA), the disposition of property includes any transaction or event entitling to proceeds of disposition of the property.

6. Moreover, pursuant to sections 93 and 251 of the TA, the proceeds of disposition of property include, *inter alia*, the following amount referred to in subparagraph (f) of the first paragraph of section 93 of the TA:

“iv. compensation for property appropriated by a person under statutory authority or in respect of which he has given notice of his intention to appropriate;”.

7. In light of the foregoing, the expropriation of a property results in a disposition of property for tax purposes.

TIME OF DISPOSITION OF EXPROPRIATED PROPERTY

8. In matters of expropriation, section 280 of the TA determines, for the purposes of Part I of the TA, the deemed time of expropriation, and therefore the time when the expropriation must be recognized. In other words, the deemed time does not necessarily correspond to the actual time of the disposition of a property as determined by the expropriation procedure.

General rule

9. More specifically, pursuant to section 280 of the TA, the time of disposition of the expropriated property and the time when the proceeds of disposition of the property become receivable by the taxpayer are deemed to be the earliest of the following times:

- (a) the day the taxpayer agrees to an amount as final compensation for that property;
- (b) where a claim or other proceeding has been taken before a competent court or tribunal, the day on which the compensation is finally determined by that tribunal or court;
- (c) where a claim or other proceeding referred to in point 9(b) has not been taken within two years of the event giving rise to the compensation, the day that is two years following the day of that event;
- (d) the time at which the taxpayer is deemed, under sections 433 to 451 or subparagraph (b) of the first paragraph of section 785.2 of the TA, to have disposed of the property;
- (e) where the taxpayer is a corporation other than a subsidiary referred to in section 556 of the TA, the time immediately before the winding-up of the corporation.

Pre-expropriation and post-expropriation sale

10. Given that the expropriation process essentially begins with a notice of expropriation being served on the owner of the property to be expropriated, Revenu Québec considers that the sale by a taxpayer of a property owned by the taxpayer to an expropriating authority prior to the serving of such a notice of expropriation constitutes an *indicium* that the transaction is a sale by agreement rather than an expropriation. Consequently, the rule described in point 9 of this bulletin and provided for in section 280 of the TA does not apply in determining the time of disposition of the property. The same is true where the expropriating authority notifies the owner that it has abandoned its intention to expropriate the property and the owner later sells the property to the expropriating authority.

Provisional expropriation indemnities

11. In general, expropriation proceedings provide for payment of a provisional expropriation indemnity. However, the date on which such an indemnity is received has no bearing in determining the time of disposition of the expropriated property. A provisional indemnity merely constitutes an advance of the final indemnity to be received by the expropriated party.

Claims or other proceedings

12. For the purposes of point 9(b) of this bulletin, Revenu Québec considers that a claim or other proceeding has been taken where the expropriated party asks a competent court or tribunal to settle a disagreement over the amount of the indemnity.

13. Revenu Québec also considers that the day on which the indemnity is finally determined by that tribunal or court is the day following the last day of the period for appealing the decision of the competent court or tribunal that fixed the indemnity. However, where the parties reach an agreement on the amount of the indemnity before the appeal period lapses, the day on which the indemnity is finally determined by that tribunal or court is considered to be the day of such agreement.

Claims or other proceedings not taken

14. For the purposes of point 9(c) of this bulletin, Revenu Québec considers the event giving rise to indemnity to be the transfer of title to the expropriated property. As previously stated, transfer of title to expropriated property is generally made by registration of the notice of transfer of title.

Death or departure from Canada

15. As discussed in point 9(d) of this bulletin, a taxpayer who dies (sections 433 to 451 of the TA) or ceases to be resident in Canada at a particular time (subparagraph (b) of the first paragraph of section 785.2 of the TA) is deemed to have disposed of the property then owned by the taxpayer. The provisions of these sections have precedence over section 280 of the TA.

16. Therefore, where a taxpayer dies or ceases to be resident in Canada before the end of the expropriation proceedings to which the taxpayer is a party and, as a result, the time of disposition of the property to be expropriated has not yet been determined pursuant to section 280 of the TA, the legislative provisions relative to death or departure from Canada, as applicable, will apply in determining the deemed time of disposition of the taxpayer's property.

Winding-up of a corporation other than a Canadian subsidiary

17. Once again, specific legislative provisions, namely those relative to the winding-up of a corporation other than a Canadian subsidiary, have precedence over section 280 of the TA. Therefore, where a corporation other than a Canadian subsidiary referred to in section 556 of the TA (winding-up of a Canadian subsidiary) is wound up before the end of the expropriation proceedings to which the corporation is a party and, as a result, the time of disposition of the property to be expropriated has not yet been determined pursuant to section 280 of the TA, the legislative provisions relative to winding-up will apply in determining the deemed time of disposition of the corporation's property.

COMPONENTS OF EXPROPRIATION INDEMNITIES

18. Under section 58 of the *Expropriation Act*, expropriation indemnities are fixed according to the value of the expropriated property and the damage directly caused by the expropriation. Given that fact, such indemnities have, by their very nature, a broad scope and can be composed of more than one amount fixed for different reasons. For example, an expropriation indemnity can be fixed taking into account the inconvenience, disorder and disruption resulting from expropriation or the fees and expenses associated with moving or with the expropriation process itself. In some cases, an additional indemnity can be paid to cover one or more of the above-mentioned elements.

19. Revenu Québec considers that the aggregate of the amounts received by a taxpayer for the expropriation of a property generally constitute the expropriation indemnity referred to in the definition of proceeds of disposition of property in point 6 of this bulletin. Not only is it impossible to give an exhaustive definition of the damage directly caused by expropriation, as such damage applies to myriad situations, but the amounts paid to cover such damage are, by definition, tied to the expropriation itself and must be given the same consideration as the indemnity paid for the expropriated property and based on said property's value.

20. In fact, the only situations where an amount paid in the context of an expropriation could be considered anything other than an expropriation indemnity are the following:

- (a) the amount paid is not in the nature of an indemnity, i.e., it is not paid to cover damage, loss or inconvenience;
- (b) the damage, loss or inconvenience meant to be compensated by the amount paid is in no way related to the expropriation or the expropriated property;
- (c) the amount paid is subject to a particular tax treatment pursuant to another provision of the TA.

21. In order to determine whether a particular amount is to be distinguished from the expropriation indemnity for one of the reasons given in point 20 of this bulletin, one must determine the nature of the amount paid, as well as the intended purpose of the payment of said amount. To do so, one must refer to the legislation under which the expropriation is made, as well as to the agreement between the parties to the expropriation or to the decision of the competent court or tribunal that fixed the amount of the final indemnity.

INTEREST PAID ON AN EXPROPRIATION INDEMNITY

22. The term “interest” is not defined in the TA. The term must therefore be understood in its usual dictionary sense of “money paid for the use of money lent, or for delaying the repayment of a debt” or “a charge for borrowed money, generally a percentage of the amount borrowed”.

23. The term is, however, defined in case law as “the return or consideration or compensation for the use or retention by one person of a sum of money, belonging to, in a colloquial sense, or owed to, another.”

24. To determine whether a portion of an amount received as a result of an expropriation constitutes interest within the meaning of points 22 and 23 of this bulletin, one must refer to the legislation under which the property was expropriated, which determines the time at which the expropriating authority contracted a debt towards the expropriated party, i.e., the time at which an amount receivable was determined. Thus, where a portion of an amount received by the expropriated party consists of damages arising from late payment of the debt, even if the actual amount of the indemnity was determined after the time at which the debt was contracted, that portion of the indemnity constitutes interest that must be included in computing the expropriated party’s income, pursuant to paragraph (c) of section 87 of the TA.

25. In some cases, a portion of the amount received as a result of the expropriation represents an amount described and computed as interest accrued to the time of the decision fixing the indemnity. Such portion represents an additional indemnity—not interest—where it is paid, for example, because of delays in the expropriation proceedings that are not attributable to the expropriated party, because of an offer by the expropriating party that is relatively low compared to the final indemnity paid, or to account for inflation and the devaluation of the Canadian dollar during the period between the date of the legal taking of possession and the date of payment of the indemnity. Such an indemnity does not constitute interest within the meaning of paragraph (c) of

section 87 of the TA, as it was not paid because of the use or retention, by the expropriating party, of the amount representing the indemnity, which amount belongs to the expropriated party.

26. For example, the third paragraph of section 68 of the *Expropriation Act* provides for the payment of an additional indemnity, the amount of which is computed as interest. This amount, however, does not necessarily constitute interest within the meaning of paragraph (c) of section 87 of the TA, but rather, generally speaking and as stated earlier, constitutes a component of the expropriation indemnity itself.