

Consumer Taxes

TVQ. 16-30/R1 **Nominee Agreements**
Date of publication: **December 29, 2011**

Reference(s): *Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 1, 16, 41.0.1, 102, 199, 201, 407, 423, 428 and 438*
Regulation respecting the Québec sales tax (CQLR, c. T-0.1, r. 2), sections 201R1 to 201R5

This version of interpretation bulletin TVQ. 16-30 replaces the version of September 29, 2006. The bulletin was revised to update its content. In addition, a change was made concerning recognition of nominee agreements by Revenu Québec.

This bulletin has effect from July 1, 1992, except with regard to the election provided for in section 41.0.1 of the Act respecting the Québec sales tax, which can be made only in respect of supplies made to a recipient after April 23, 1996, by a nominee who is a Québec sales tax registrant acting on behalf of another person (the mandator).

This bulletin explains the liability of the owner of an immovable and a nominee, under the *Act respecting the Québec sales tax (AQST)*, for payment, collection and remittance of the Québec sales tax (QST) in respect of transactions involving the immovable.

GENERAL

1. According to article 2130 of the *Civil Code of Québec (C.C.Q.)*, a mandate is a contract by which a person, the mandator, empowers another person, the mandatary, to represent the mandator in the performance of a juridical act with a third person, and the mandatary, by accepting, is bound to exercise that power.
2. A nominee agreement is a mandate by which the mandatary acts on behalf of the mandator, but gives the appearance of acting in the mandatary's own name. A nominee agreement is a lawful form of the contract of mandate.
3. Any person may hold property for another under a nominee agreement. To be valid, the agreement must have been entered into on or before the acquisition of the property and must comply with the mandate provisions of the C.C.Q. Furthermore, in order for a nominee agreement

to be recognized for tax purposes, the mandator and the mandatory must disclose the existence of the agreement and reveal its content to Revenu Québec.

4. The following points explain the liability of the parties to a transaction involving an immovable, where one of the parties is a nominee.

APPLICATION OF THE ACT

ACQUISITION OF AN IMMOVABLE BY A NOMINEE

5. Under section 423 of the AQST, a supplier who makes a taxable supply of an immovable by way of sale is not required to collect the QST payable by the recipient of the supply, where the recipient is a QST registrant and is not an individual acquiring a residential complex. In these circumstances, it is the recipient of the supply who is required, under section 438 of the AQST, to pay the QST to the Minister.

6. Where a person acquires a taxable supply of an immovable through a nominee and the supplier of the immovable is unaware that the nominee is a mandatory, the supplier is justified in acting on the basis of the nominee's statements. Where such statements indicate that the nominee is not a QST registrant, the supplier of the immovable must collect the QST in respect of the supply from the nominee and remit it to the Minister, since the nominee, as recipient of the supply, is personally liable for payment of the QST.

7. A nominee who fails to disclose, to the supplier of an immovable, the fact that the nominee is a mandatory is acting in the nominee's own name and becomes personally bound to the supplier to pay the consideration for the supply (article 2157 C.C.Q.). The nominee thus becomes a recipient of the supply, within the meaning of section 1 of the AQST, along with the mandator (article 2160 C.C.Q.).

8. Where instead the nominee is a QST registrant, informs the supplier of the immovable of that fact and provides the nominee's own QST registration number to the supplier, the nominee, as recipient of the supply, is personally liable for payment of the QST in respect of the supply and for remittance of the QST to the Minister, unless the nominee discloses the mandate to Revenu Québec in the manner described in point 3 of this bulletin. In that case, solely the mandator is liable for payment of the QST in respect of the supply and for remittance of the QST to the Minister, regardless of whether the mandator is a QST registrant.

9. It should be noted that even where the nominee, as recipient of the supply of the immovable, is personally liable for payment of the QST, only the mandator can claim an input tax refund (ITR), under section 199 of the AQST, in respect of the acquisition of the immovable, if the mandator uses the immovable or makes a supply of it in the course of the mandator's commercial activities. In that situation, the nominee is not considered to have acquired the immovable in order to use it or make a supply thereof in the course of the nominee's own commercial activities. Rather, the nominee is considered to have acquired the immovable in order to meet the nominee's obligations under the nominee agreement entered into by the mandator and the nominee.

10. The prescribed information referred to in section 201 of the AQST may be contained in more than one document, provided the documents clearly refer to one another. Thus, for the purposes of that section of the AQST and the *Regulation respecting the Québec sales tax* (RQST), the contract of sale entered into by the supplier of the immovable and the nominee, as well as the contract of mandate entered into by the mandator and the nominee for the acquisition of the immovable, are both required in order to establish that the mandator is the recipient of the supply.

MANAGEMENT OF AN IMMOVABLE BY A NOMINEE

11. Where a nominee is entrusted with the management of an immovable by its owner and empowered to represent the owner for the purposes of entering into leases and collecting rents, which are juridical acts, supplies of immovables made by way of lease through the nominee are considered to have been made by the owner of the immovable.

12. The general rules of civil law governing mandates apply in that situation. Under those rules, a supply made by a person acting as a mandatary of another person (the mandator) must be considered to have been made by the mandator and not by the mandatary.

13. If the supplies of immovables made by way of lease through the nominee are taxable supplies, the nominee collects the QST in respect of the supplies according to the terms of the nominee agreement entered into by the owner of the immovable and the nominee. However, the QST so collected by the nominee must still be included in determining, under section 428 of the AQST, the net tax of the owner of the immovable.

14. With regard to the information that the recipient of a taxable supply of an immovable made by way of lease must obtain, pursuant to section 201 of the AQST, to claim an ITR, it should be noted that, under the RQST, documents bearing the name and QST registration number of the registrant who acts as the supplier's mandatary (nominee) with respect to the supply may be used as supporting documentation for the ITR claim.

15. Furthermore, the owner of the immovable and the nominee may make a joint election under section 41.0.1 of the AQST, so that the QST payable in respect of supplies of immovables made by way of lease through the nominee may be included in determining the nominee's net tax. The election may be made only if the nominee is a QST registrant who makes the supplies as a mandatary in the course of a commercial activity of the nominee.

16. The election is made by completing the prescribed form (FP-2506-V). The completed form should not be filed with Revenu Québec but rather kept by the owner of the immovable and the nominee in their files.

17. Where the owner of the immovable and the nominee make such an election, they are solidarily liable for all obligations that arise upon or as a consequence of the QST becoming collectible or any failure to account for or remit the QST.

REGISTRATION

18. Where a mandator-mandatary relationship exists between the owner of an immovable and a nominee at the time the nominee performs juridical acts relating to the immovable that is the

subject of the mandate, it is the owner of the immovable and not the nominee who is considered to be engaged in commercial activities relating to the immovable. Consequently, where so required, under section 407 of the AQST, the owner of the immovable must register for QST purposes.

SALE OF AN IMMOVABLE BY A NOMINEE

19. Where a taxable supply of an immovable is made by way of sale by the owner of the immovable through a nominee and section 423 of the AQST does not apply, the nominee collects the QST in respect of the supply according to the terms of the nominee agreement entered into by the owner of the immovable and the nominee. However, the QST so collected by the nominee must still be included in determining, under section 428 of the AQST, the net tax of the owner of the immovable. In that situation, the general rules of civil law referred to in point 12 of this bulletin apply.

20. As indicated in point 15 of this bulletin, pursuant to section 41.0.1 of the AQST, the owner of the immovable and the nominee may jointly elect to have the QST payable in respect of the supply of the immovable made by way of sale through the nominee included in determining the nominee's net tax. Where such an election is made, the owner of the immovable nevertheless remains solidarily liable with the nominee for all obligations that arise upon or as a consequence of the QST becoming collectible or any failure to account for or remit the QST.

TAX STATUS OF THE SUPPLY

21. The AQST provides for certain exemptions with regard to supplies of immovables, some of which depend on who makes the supply. For example, a supply of an immovable made by way of sale by an individual or a personal trust may, in certain circumstances, be exempt under section 102 of the AQST.

22. Therefore, where a supply of an immovable is made by way of sale by the owner of the immovable through a nominee, the recipient of the supply may benefit from such an exemption, where applicable, only if the nominee's mandate is disclosed at the time of the transaction.