

M.O., 2022**Order of the Minister of Finance dated 15 June 2022**

Taxation Act
(chapter I-3)

Regulation to amend the Mandatory Transaction Disclosure Regulation

THE MINISTER OF FINANCE,

CONSIDERING the first paragraph of section 1079.8.1 of the Taxation Act (chapter I-3) providing among other things that the expression “specified transaction” carried out by a taxpayer or a partnership means a transaction whose form and substance of the facts specific to the taxpayer or the partnership are significantly similar to the form and the substance of the facts of a transaction determined by the Minister;

CONSIDERING the fourth paragraph of section 1079.8.1 of the Taxation Act providing that for the purposes of Book X.2 of Part I of the Act, in relation to a transaction determined by the Minister under the definition of “specified transaction” in the first paragraph of that section 1079.8.1, the Minister also determines which taxpayers will be required, in accordance with section 1079.8.6.2 of the Act, to disclose a specified transaction and which will be the partnerships whose members will be subject to that obligation, if applicable, as well as the day from which the obligation to disclose specified transactions will apply;

CONSIDERING section 1079.8.6.3 of the Taxation Act providing that an information return must be filed in respect of a transaction that an advisor or a promoter commercializes or promotes, if the form and the substance of the facts of the transaction are significantly similar to the form and the substance of the facts of a transaction determined by the Minister;

CONSIDERING paragraph 2 of section 12 of the Regulations Act (chapter R-18.1) providing that a proposed regulation may be made without having been published as provided in section 8 of the Act, if the authority making it is of the opinion that the proposed regulation is designed to establish, amend or repeal norms of a fiscal nature;

CONSIDERING section 13 of the Act providing that the reason justifying the absence of such publication must be published with the regulation;

CONSIDERING section 18 of the Act providing that a regulation may come into force on the date of its publication in the *Gazette officielle du Québec*, where the authority that has made it is of the opinion that the regulation establishes, amends or repeals norms of a fiscal nature, and the reason justifying such coming into force must be published with the regulation;

CONSIDERING the Minister’s opinion that the regulation attached to this Ministerial Order establishes and amends norms of a fiscal nature;

CONSIDERING that it is expedient to amend the Mandatory Transaction Disclosure Regulation (chapter I-3, r. 2) to make amendments of a technical nature;

CONSIDERING that it is expedient to make the Regulation to amend the Mandatory Transaction Disclosure Regulation;

ORDERS AS FOLLOWS:

THAT the Regulation to amend the Mandatory Transaction Disclosure Regulation, attached to this Ministerial Order, is hereby made.

Québec, 15 June 2022

ERIC GIRARD
Minister of Finance

Regulation to amend the Mandatory Transaction Disclosure Regulation

Taxation Act
(chapter I-3, s. 1079.8.1, 1st par., “specified transaction” and 4th par. and s. 1079.8.6.3)

1. Section 1 of the Regulation is amended

(1) by striking out the definitions of “exempt property” and “qualified small business corporation share” in the first paragraph;

(2) by inserting the following definition in the first paragraph after the definition of “Act”:

“associated group” of which a particular person in a taxation year of the person or a particular partnership in a fiscal period of the partnership is a member means all the persons and partnerships that are associated with each other in the taxation year of the particular person or fiscal period of the particular partnership, as the case may be;”

(3) by replacing subparagraph *b* of the second paragraph by the following:

“(b) the provisions of the Act, including Titles I and II of Book I of Part I of the Act, apply for the purpose of determining whether a transaction carried out by a person or a partnership is a specified transaction carried out by the person or partnership, and whether an information return must be filed by an advisor or a promoter pursuant to section 1079.8.6.3 of the Act in respect of a transaction the advisor or promoter commercializes or promotes.”;

(4) by adding the following paragraphs at the end:

“For the purpose of determining whether a person or a partnership is a member of an associated group in a taxation year of a particular person or a fiscal period of a particular partnership, the following rules apply:

(a) a business carried on by an individual, other than a trust, is deemed to be carried on by a corporation all the voting shares in the capital stock of which are owned by the individual at the time referred to in section 21.20 of the Act, referred to as the “particular time” in this paragraph;

(b) a partnership is deemed to be a corporation whose taxation year corresponds to the partnership’s fiscal period and all the voting shares in the capital stock of which are owned at the particular time by each member of the partnership in a proportion equal to the agreed proportion in respect of the member for the partnership’s fiscal period that includes the particular time;

(c) a trust is deemed to be a corporation all the voting shares in the capital stock of which:

i. in the case of a testamentary trust under which one or more beneficiaries are entitled to receive all of the income of the trust that arose before the date of death of one or the last surviving of those beneficiaries, in this subparagraph *c* referred to as the “distribution date”, and under which no other person can, before the distribution date, receive or otherwise obtain the enjoyment of any of the income or capital of the trust:

(1) are owned at the particular time by such a beneficiary, if that beneficiary’s share of the income or capital of the trust depends on the exercise by any person of, or the failure by any person to exercise, a power to appoint, and the particular time occurs before the distribution date; or

(2) are owned at the particular time by such a beneficiary in a proportion equal to the proportion that the fair market value of the beneficial interest in the trust of the beneficiary is of the fair market value of the beneficial interests in the trust of all the beneficiaries, if subparagraph 1 does not apply and the particular time occurs before the distribution date;

ii. in the case where a beneficiary’s share of the accumulating income or capital of the trust depends on the exercise by any person of, or the failure by any person to exercise, a power to appoint, are owned at the particular time by the beneficiary, unless subparagraph i applies and the particular time occurs before the distribution date;

iii. in any case where subparagraph ii does not apply, are owned at the particular time by the beneficiary in a proportion equal to the proportion that the fair market value of the beneficial interest in the trust of the beneficiary is of the fair market value of all beneficial interests in the trust, unless subparagraph i applies and the particular time occurs before the distribution date; and

iv. in the case of a trust referred to in section 467 of the Act, are owned at the particular time by the person referred to in that section from whom property of the trust or property for which property of the trust was substituted was directly or indirectly received.

For the purposes of the definition of “associated group” in the first paragraph, where it may reasonably be considered that one of the main reasons for the separate existence of two or more entities, each being a corporation, trust or partnership, in a taxation year or a fiscal period, as the case may be, is to have the entity avoid the obligation to disclose a specified transaction, the entities are deemed to be associated with each other in the year or fiscal period, as the case may be.”.

2. Transaction 2 in Schedule A to the Regulation is amended

(1) by replacing subparagraph i of subparagraph *a* of the first paragraph by the following:

“i. in the case of a person, the person is subject to tax under Part I of the Act for a particular taxation year in which the transaction occurs.”;

(2) by striking out subparagraph ii of subparagraph *a* of the first paragraph;

(3) by striking out subparagraph *b* of the first paragraph;

(4) by replacing subparagraphs i and ii of subparagraph *c* of the first paragraph by the following:

“i. the other person at any time in the particular taxation year or particular fiscal period, as the case may be, is resident in a country with which the Government of Québec or of Canada at that time has not entered into a tax agreement; or

“ii. the other partnership at any time in the particular taxation year or particular fiscal period, as the case may be, carries on a business in a country with which the Government of Québec or of Canada at that time has not entered into a tax agreement; and”;

(5) by replacing subparagraph *d* of the first paragraph by the following:

“(d) the particular person or the particular partnership deducts in computing income under Part I of the Act for the particular taxation year or particular fiscal period, as the case may be, a particular amount paid or payable to another person or another partnership referred to in subparagraph *c*, other than an amount paid or payable as consideration for the acquisition of corporeal property.”;

(6) by replacing the fourth paragraph by the following:

“The particular person or the members of the particular partnership are required to disclose a specified transaction in relation to a transaction referred to in the first paragraph if the aggregate of all amounts, each of which is an amount meeting the following conditions, is at least equal to \$1,000,000:

(a) it is a particular amount referred to in subparagraph *d* of the first paragraph; and

(b) it is deducted:

i. by the particular person or particular partnership in computing income for the particular taxation year or particular fiscal period, as the case may be; or,

ii. if the particular person or particular partnership is a member of an associated group in the particular taxation year or particular fiscal period, as the case may be, by another member of the associated group in computing income for that member’s taxation year or fiscal period that ends in the particular taxation year or particular fiscal period.”.

3. (1) Transaction 3 in Schedule A to the Regulation is amended

(1) by replacing subparagraph *a* of the first paragraph by the following:

“(a) an individual subject to tax under Part I of the Act, a trust or a partnership disposes of a share of the capital stock of a Canadian-controlled private corporation;”;

(2) by replacing the third paragraph by the following:

“The individual referred to in subparagraph *c* of the first paragraph is required to disclose a specified transaction in relation to a transaction referred to in the first paragraph.”;

(3) by replacing subparagraphs *a* and *b* of the fourth paragraph by the following:

“(a) if subparagraph i of subparagraph *d* of the first paragraph applies and:

i. the day of the transfer or loan is before the day on which the share referred to in subparagraph *a* of that paragraph is disposed of, the day of the disposition; or

ii. the day of the transfer or loan is the day on which the share referred to in subparagraph *a* of that paragraph is disposed of or is later than that day, the day of the transfer or loan; or

“(b) if subparagraph ii of subparagraph *d* of the first paragraph applies, the day on which the share referred to in that subparagraph ii is acquired.”.

(2) Where a share is acquired, after 16 March 2021 and before the date of publication of this Regulation in the *Gazette officielle du Québec*, by an individual in the circumstances described in subparagraph ii of subparagraph *d* of the first paragraph of Transaction 3 in Schedule A to the Mandatory Transaction Disclosure Regulation, and the transaction as part of which the acquisition is made has not been disclosed by the individual in accordance with section 1079.8.6.2 of the Taxation Act (chapter I-3) before the date of that publication, the information return to be filed under that section in respect of the transaction is deemed to have been sent to the Minister of Revenue within the time provided in section 1079.8.10.1 of that Act, if the transaction is disclosed by the individual in accordance with the first paragraph of section 1079.8.9 of that Act within 120 days after the date of that publication.

4. Transactions 4 in Schedule A to the Regulation are amended

(1) by replacing the portion of subparagraph i of subparagraph *b* of the first paragraph before subparagraph 1 by the following:

“i. a person or a partnership, referred to as the “purchaser” in this paragraph and in the fourth paragraph, acquires, directly or indirectly in any manner whatever.”;

(2) by replacing subparagraphs iv and v of subparagraph *b* of the first paragraph by the following:

“iv. if the specific taxpayer carried on a business before the beginning of the transaction, any of the following conditions is met:

(1) the specific taxpayer ceases to carry on the business or begins to carry on a new business as part of the transaction;

(2) the specific taxpayer, in the course of the transaction, earns income from property the taxpayer acquired as part of the transaction, or held immediately before the beginning of the transaction and was not using to earn income from property at that time; or

(3) the specific taxpayer realizes a capital gain from the disposition of property acquired as part of the transaction;

“v. the use of the tax attribute to which subparagraph iii refers is one of the results derived, directly or indirectly, from the acquisition by the purchaser of the share, the right to a share, an interest or the right to an interest referred to in subparagraph i, or from the transfer or loan of property to the specific taxpayer, as part of the transaction, by the purchaser or by a person or partnership with which the purchaser does not deal at arm’s length at the time of the transfer or loan.”;

(3) by replacing subparagraphs *a* and *b* of the third paragraph by the following:

“(a) a taxpayer in respect of which section 21.0.6 of the Act applies in the course of the transaction in relation to the tax attribute referred to in that subparagraph *a*; and

“(b) a taxpayer with which the particular taxpayer is affiliated throughout the period that begins immediately before the beginning of the transaction and ends at the time of the last use of the tax attribute in connection with the transaction.”;

(4) by replacing the fourth paragraph by the following:

“For the purposes of subparagraph *b* of the first paragraph, “tax-exempt taxpayer” means:

(a) a taxpayer in respect of which section 21.0.6 of the Act applies in the course of the transaction in relation to the tax attribute referred to in that subparagraph *b*;

(b) a taxpayer with which each of the purchasers is affiliated throughout the period that begins immediately before the beginning of the transaction and ends at the time of the last use of the tax attribute in connection with the transaction.”;

(5) by inserting the following after the fourth paragraph:

“For the purposes of subparagraph *b* of the third and fourth paragraphs, the following rules apply:

(a) a corporation, trust or partnership that is constituted or begins to exist, otherwise than by reason of an amalgamation or merger, at a particular time as part of the transaction is deemed to have existed throughout the period that begins immediately before the beginning of the transaction and ends at the time immediately preceding the particular time and to have had throughout that period the same shareholders, beneficiaries or members, as the case may be, as those it has at the particular time, those shareholders, beneficiaries or members being deemed to hold, throughout that period, the shares of the capital stock of the corporation, interests in the trust or in the partnership, as the case may be, they hold at the particular time;

(b) where, at a particular time, two or more particular corporations amalgamate or merge to form a new corporation and the new corporation and the particular corporations would have been affiliated with each other throughout the period that begins immediately before the beginning of the transaction and ends at the time immediately preceding the particular time, if, throughout that period, the new corporation had existed and had had the same shareholders as those it has at the particular time, the new corporation is deemed to have existed throughout that period and to have had, throughout that period, the same shareholders as those it has at the particular time, those shareholders being deemed to hold, throughout that period, the shares of the capital stock of the corporation they hold at the particular time;

(c) section 21.0.4 of the Act does not apply.”.

5. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

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