

Income Tax

LAF. 14-1/R3 **Distribution of Property – General Principles**

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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), sections 14, 14.0.0.1 and 14.0.1
Regulation respecting fiscal administration (CQLR, c. A-6.002, r. 1), section 14R1

This version of interpretation bulletin LAF. 14-1 (formerly LMR. 14-1) replaces the version of January 31, 2005. The bulletin was updated in view of legislative amendments made since that date. Since the amendments are technical in nature, the position set out in the bulletin remains the same.

This bulletin states the policy of Revenu Québec in cases where a person who controls another person's property distributes that property. It defines the scope of section 14 of the *Tax Administration Act*¹ (TAA).

APPLICATION OF THE ACT

GENERAL POINTS

1. Under section 14 of the TAA, all assignees and other persons who wind up, administer or control the property, business, succession, income or commercial activities of another person on behalf of that other person or a creditor of that other person must, before distributing the property under their control, give the Minister of Revenue notice, by means of a prescribed form, of their intention to make the distribution.
2. Thus, section 14 of the TAA enables the Minister to be informed of a person's distribution of another person's property before the distribution is made. The purpose of this provision is to ensure payment of the tax claim, according to the Minister's rank among creditors, before the other person's patrimony is exhausted and recovery of the State's claim from the other person is jeopardized.

PERSONS SUBJECT TO SECTION 14 OF THE TAA

3. The following persons are among those subject to section 14 of the TAA:

¹ This Act was formerly entitled *An Act respecting the Ministère du Revenu*. The title was changed by section 91 of chapter 31 of the Statutes of Québec 2010.

- (a) Liquidators within the meaning of the Winding-up and Restructuring Act (R.S.C. 1985, c. W-11) or the *Winding-up Act* (CQLR, chapter L-4), or any other persons acting as liquidators, whether or not they are formally appointed.
- (b) Liquidators of successions, whether designated in a will, or by heirs or the court, or any persons who carry out the duties of the liquidator of a succession in accordance with the law.

However, the liquidator of a succession may distribute property worth \$12,000 or less to pay urgent or essential expenses that arise as a direct consequence of the death and to make expenditures in the interest of the succession, before giving the Minister notice of the distribution by means of the prescribed form.

Despite this exception, the liquidator of a succession must still include, on the prescribed form, the value of the property that was so distributed before notice was given to the Minister, even if the total value of the property of the succession is less than \$12,000. A liquidator who fails to do so may be assessed an amount up to the value of the property distributed.

For more details regarding the application of section 14 of the TAA in respect of successions, see the current version of interpretation bulletin LAF. 14-3.

- (c) Directors of corporations within the meaning of the *Business Corporations Act* (CQLR, chapter S-31.1) or the *Canada Business Corporations Act* (R.S.C. 1985, c. C-44), or de facto directors of such corporations.

Furthermore, where a corporation's assets are distributed, all the directors of the corporation, and its agent in the case of a corporation having its principal establishment outside Québec, who are in office on the date on which the notice is sent to the Minister or the distribution takes place are solidarily liable for the payment of the duties, interest, penalties, charges and fees referred to in point 11 below if they assented to, or acquiesced or participated in, the distribution. Whether a director assented to, or acquiesced or participated in, a distribution of property is a question of fact that must be determined on a case-by-case basis.

- (d) Trustees who administer trust patrimonies within the meaning of articles 1260 to 1298 of the *Civil Code of Québec* (CCQ).

As a person administering the property of a trust, a trustee that intends to distribute all or a substantial part of the trust's property must comply with section 14 of the TAA.

However, to avoid interfering with the routine dealings that arise from the administration of a trust, Revenu Québec is more flexible in its application of section 14 of the TAA where trust income is distributed.

Thus, where a trustee distributes income in the normal course of the administration of a trust, Revenu Québec takes the position that the trustee is not required to obtain the

certificate prescribed by section 14 of the TAA, provided the distribution of income does not jeopardize the Minister's recovery of any tax claim from the trust.

(e) Persons who hold the power of attorney of creditors and in whose favour a hypothec is granted to secure payment of bonds or other titles of indebtedness, within the meaning of article 2692 of the CCQ.

(f) Purchasers who distribute the proceeds of a sale of assets.

See points 20 and 21 below for a description of how section 14 of the TAA applies in respect of a sale of a corporation's assets.

4. The following persons are not subject to section 14 of the TAA:

(a) trustees in bankruptcy; and

(b) persons who, in the course of their duties, act for and on behalf of a person who is subject to section 14 of the TAA. In such cases, it is the person subject to that section who is responsible for compliance with its provisions.

5. Whether a person is subject to section 14 of the TAA depends on the particular facts of each case.

NOTICE OF DISTRIBUTION

6. Where property of a succession is to be distributed, a person subject to section 14 of the TAA must give prior notice of the distribution by means of form MR-14.A-V.

Where any other property is to be distributed, a person subject to section 14 of the TAA must give prior notice of the distribution by means of form MR-14.B-V.

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

7. On receiving the notice, the Minister may require that the person subject to section 14 of the TAA file any document prescribed by regulation (see the Appendix to this bulletin), the return referred to in section 1002 of the *Taxation Act* (CQLR, chapter I-3) and any return or report that the other person was required to file under any fiscal law.

8. The Minister will then give written notice of any duties, interest and penalties that, under any fiscal law, are owing by the other person or will become so in the 12 ensuing months. The Minister will also give notice of any charges or fees that are owing by the other person in respect of the recovery of a tax debt or the refusal of a negotiable instrument by a financial institution.

CERTIFICATE ISSUED BY THE MINISTER

9. The Minister issues a certificate to allow the distribution of all or part, as applicable, of the property of a succession or of any other property. In the case of a partial distribution, once the analysis of the file has been completed, a final certificate is issued authorizing the distribution of the remainder of the property, where appropriate.

The certificate that is issued authorizes the full distribution of the property where

- (a) no amount is owing by the other person;
- (b) all amounts owing have been paid;
- (c) security for the full payment of all amounts owing has been accepted in accordance with section 10 of the TAA.

The certificate that is issued authorizes a partial distribution of the property where

- (a) the notice given to the Minister refers to a partial distribution and no amount is known to be owing at the time the certificate is issued;
- (b) the notice given to the Minister refers to a partial distribution and the amounts known to be owing at the time the certificate is issued have been paid;
- (c) the notice given to the Minister refers to a full distribution, but the total of the amounts that, under any fiscal law, are owing or will become so in the ensuing 12 months cannot be established. In that case, sufficient funds to cover the estimated balance of the tax debt are taken into account in calculating the value of the property whose distribution may be authorized;
- (d) security for partial payment of the amounts owing has been accepted in accordance with section 10 of the TAA;
- (e) a creditor has priority of rank over the State's claim, in which case the certificate indicates the name of the creditor and the amount of the creditor's claim. It is then noted on the certificate that the distribution is to be made only to that creditor, up to the amount of the creditor's claim.

10. Refusal by the Minister to issue a certificate or the fact of not following up a notice of distribution referred to in point 6 above within 90 days of the mailing date is equivalent to a decision confirming a notice of assessment under section 93.1.6 of the TAA. The person who gave notice may appeal the decision to the Court of Québec under sections 93.1.10 to 93.1.25 of the TAA.

SCOPE OF LIABILITY OF A PERSON SUBJECT TO SECTION 14 OF THE TAA

11. Any person subject to section 14 of the TAA who distributes property without obtaining a certificate becomes personally liable, up to the value of the property distributed, for any duties, interest and penalties that, under any fiscal law, are owing by the other person or will become so in the 12 ensuing months and for any charges or fees that are owing by the other person in respect of the recovery of a tax debt or the refusal of a negotiable instrument by a financial institution. The value of the property distributed is determined at the time of distribution, regardless of what value is indicated in the notice of distribution.

Under section 14.0.1 of the TAA, a person who acts as a receiver within the meaning of section 310 of the *Act respecting the Québec sales tax* (CQLR, chapter T-0.1) is not, however, personally liable for the amounts that, under that Act, said person must pay or remit, as a receiver,

on behalf of another person for a reporting period subsequent to the one during which the distribution was made.

12. A person subject to section 14 of the TAA who fails to obtain a certificate before distributing property becomes personally liable as soon as the distribution is made and cannot remedy the failure by obtaining a certificate after the property has been distributed.

13. Where a person subject to section 14 of the TAA fails to obtain a certificate before distributing property, no liability attaches to the person in respect of the part of the property distributed to one or more creditors having priority of rank over the State's tax claim.

However, in such a case, the person remains liable for an amount up to the value of the part of the property that the person distributed without respecting the priority of rank of the State's tax claim.

ACCEPTANCE OF SECURITY

14. By virtue of the third paragraph of section 14 of the TAA, real or personal security may be given to the Minister to guarantee payment of the duties, interest, penalties, charges and fees referred to in point 11 above.

15. Where, in accordance with section 10 of the TAA, such security is accepted by the Minister, an agreement establishing the terms and conditions for the payment of the amounts owing may be entered into with the person subject to section 14 of the TAA.

This way of proceeding may be useful where, for example, the person subject to section 14 of the TAA does not have sufficient liquid assets to immediately pay the amounts owing to the Minister.

ASSESSMENT

16. Subject to point 13 above, a person who fails to comply with section 14 of the TAA may be assessed the amounts referred to in point 11 above, up to the value, at the time of distribution, of the property distributed.

17. Where the Minister makes an assessment in respect of a person subject to section 14 of the TAA, the Minister may recover the tax claim from either that person or the other person.

18. The other person's bankruptcy does not release the person subject to section 14 of the TAA where the latter has already been assessed under that section. Likewise, the other person's release does not prevent the Minister from issuing an assessment in respect of the person subject to section 14 of the TAA, even where that assessment is made after the other person's release.

19. The Minister may, within four years after the date on which the property is distributed, make an assessment or a reassessment in respect of a person subject to section 14 of the TAA who fails to comply with that section.

However, the Minister may, at any time, make such an assessment where the aforementioned person

- (a) has made a false representation of the facts through voluntary omission or has committed fraud; or

(b) has filed with the Minister a waiver in prescribed form.

Sections 25.2 and 25.3 of the TAA apply, with the necessary modifications, to the assessments referred to in the second paragraph of this point.

SALE OF A CORPORATION'S ASSETS

Liability of the corporation's directors

20. Where assets owned by a corporation are sold, section 14 of the TAA applies to any director who, for and on behalf of the corporation, distributes its property. Furthermore, any director who assents to, or acquiesces or participates in, the sale is also subject to section 14 of the TAA and may be held liable by the Minister under the conditions set out in paragraph (c) of point 3 above.

Thus, all of the corporation's directors referred to in paragraph (c) of point 3 above must meet the requirements of section 14 of the TAA when they sell the corporation's property. If they fail to meet those requirements, Revenu Québec may assess them as directors.

Therefore, as a rule, it is the corporation's directors who must obtain the distribution certificate prescribed by section 14 of the TAA before a sale of assets.

Liability of the purchaser of the corporation's assets

21. Where it appears that none of the corporation's directors proceeded with, assented to, or acquiesced or participated in the distribution, Revenu Québec applies section 14 of the TAA to the person who controlled the property and actually distributed it.

However, in such a situation, if the purchaser of the corporation's assets is the one who actually distributed the proceeds of the sale to one or more of the corporation's creditors, then it is the purchaser who was required to obtain the certificate prescribed by section 14 of the TAA and who may be assessed for failing to do so.

Whether the purchaser or another person distributed the property in this context is a question of fact that must be determined by Revenu Québec on a case-by-case basis.

APPENDIX

In addition to the documents referred to in point 7 of this bulletin, the documents prescribed by regulation, which the Minister of Revenue may require in respect of the person whose property is distributed and in respect of the property distributed, are

- a proof of citizenship;
- an official document establishing the death;
- a copy, authentic if the case so requires, of the will and every codicil relating thereto, or a copy, certified by the clerk of the court, of the documents referred to in article 890 of the *Code of Civil Procedure*;
- a description of each property indicating, in particular, its location, its fair market value and, where applicable, its adjusted cost base;
- a description of the debts;
- all official documents, if any, establishing marital status and the matrimonial regime or the status of de facto spouse;
- a copy, authentic if the case so requires, of the instrument of conveyance for an immovable, a partnership agreement, a shareholder agreement, an act of transmission of property or, in the case of a succession, a trust deed in which the deceased participated;
- a copy of all insurance contracts;
- a list of the beneficiaries of the distribution of property, including each one's name, address, social insurance number and kinship, and the proportion of the property that devolved to each one;
- for every immovable, proof of its municipal assessment;
- for every asset, a copy of the appraisal report, if any; and
- a copy of all pending legal proceedings.