

Income Tax

IMP. 422-1/R1 Disposition of an immovable for inadequate consideration
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Reference(s): *Taxation Act* (R.S.Q., c. I-3), ss. 111, 422 and 424

This version of bulletin IMP. 422-1 supersedes the version of November 30, 1987. The bulletin was revised primarily to include gifts with a charge. Furthermore, some changes were made in respect of style and conformity to ensure technical accuracy.

This bulletin gives the interpretation of the Ministère du Revenu du Québec in cases where a taxpayer disposes of an immovable for inadequate consideration to a person with whom the taxpayer is or is not dealing at arm's length.

APPLICATION OF THE ACT

GENERAL

1. The disposition of an immovable for inadequate consideration by a taxpayer to a person with whom the taxpayer is not dealing at arm's length will trigger the application of section 422 of the *Taxation Act* (TA). The same will occur when such a disposition constitutes a gift, even if the parties are dealing at arm's length.
2. The disposition of an immovable for inadequate consideration may be considered a gift or a sale. To make that determination, the facts of each case must be examined (in particular, the value of the immovable and of the consideration paid, and the intention of the parties). Since the word "gift" is not defined in the TA, it must be given its generally accepted meaning. A gift is defined in article 1806 of the *Civil Code of Québec* as a contract by which a person, the donor, transfers ownership of property by gratuitous title to another person, the donee. A gift implies that the donor has donative intent (*animus donandi*), that is, the firm intention to benefit the donee for no consideration in return, or for inadequate consideration involving the impoverishment of the donor. Such donative intent does not exist in the case of a sale.

GIFT WITH A CHARGE

3. The *Civil Code of Québec* sets out a number of types of gifts, such as indirect gifts, disguised gifts, remunerative gifts and gifts with a charge. With respect to gifts with a charge, article 1810 of

the *Civil Code of Québec* confirms that a gift does not lose its gratuitous character merely because it includes certain charges for the donee. In fact, donative intent may be present where the value of the property given manifestly exceeds the value of the charge and there is consequently an impoverishment of the donor in favour of the donee.

4. Section 422 of the TA, which makes no distinction between a gift that includes a charge and one that does not, applies indiscriminately to both types of gifts. Thus, in a situation where a taxpayer makes a gift of an immovable that, at the time, has a fair market value of \$200,000, with a charge for the donee to pay the \$100,000 balance of the hypothecary loan, the proceeds of disposition for the donor are deemed equal to \$200,000, pursuant to paragraph *c* of section 422 of the TA, and the acquisition cost of the immovable for the donee is deemed equal to \$200,000, pursuant to paragraph *a* of section 422 of the TA.

DISPOSITION FOR ONE DOLLAR

5. Where a deed of sale indicates that the price of the property transferred is one dollar (\$1.00), the amount indicated is purely symbolic. There is every reason to believe that this is a gift and not an act by onerous title. However, where the price of one dollar (\$1.00) and other good and valuable consideration is mentioned, it may be a true sale. In such a case, it is not necessarily a gift; it could be a sale in which the price is not disclosed.

Gift

6. Where a taxpayer disposes of an immovable for one dollar (\$1.00), to a person with whom the taxpayer is or is not dealing at arm's length, and the disposition is in fact a gift, the disposition and acquisition of the property are deemed to be made at the fair market value of the property at the time of the disposition or acquisition, in accordance with paragraphs *a* and *c* of section 422 of the TA.

Sale

7. Where a taxpayer disposes of an immovable for one dollar (\$1.00) and other good and valuable consideration, to a person with whom the taxpayer is not dealing at arm's length, and the disposition is in fact a sale, the value of the consideration paid by the purchaser must be determined. If the consideration is less than the fair market value of the immovable, the proceeds of disposition of the property for the vendor are deemed equal to the fair market value of the immovable at the time of the disposition, in accordance with paragraph *c* of section 422 of the TA, and the acquisition cost of the immovable for the purchaser is equal to the amount paid by the purchaser. However, if the consideration paid by the purchaser is greater than the fair market value of the immovable, the proceeds of disposition of the property for the vendor are equal to the consideration received by the vendor, and the acquisition cost of the immovable for the purchaser is deemed equal to the fair market value of the immovable at the time of the acquisition, in accordance with paragraph *b* of section 422 of the TA.

8. Where a taxpayer disposes of an immovable for one dollar (\$1.00) and other good and valuable consideration, to a person with whom the taxpayer is dealing at arm's length, and the disposition is

a sale, the proceeds of disposition of the immovable for the vendor are equal to the consideration received by the vendor, and the acquisition cost of the property for the purchaser is equal to the consideration paid by the purchaser for the property.

TAX CONSEQUENCES

9. The disposition of an immovable for inadequate consideration may have various tax consequences. For example, the transferor may realize a capital gain if the proceeds of disposition of the property are greater than the adjusted cost base of the property. If the property disposed of is depreciable property, an amount may be included in computing the transferor's income, as recapture of capital cost allowance, where the proceeds of disposition or the capital cost of the property disposed of, whichever amount is lower, exceeds the undepreciated capital cost of the property of the class in which the property is included. Furthermore, if the transferor is a corporation and the purchaser is a shareholder of the corporation, the proceeds of disposition for the corporation may be deemed equal to the fair market value of the immovable under subsection 1 of section 424 of the TA, even though the parties are dealing at arm's length. A benefit may have to be included in computing the shareholder's income, under section 111 of the TA (see the current version of interpretation bulletin IMP. 111-1).