REVENU QUÉBEC

INTERPRETATION AND ADMINISTRATIVE BULLETIN CONCERNING THE LAWS AND REGULATIONS

Income Tax

IMP. 80-7/R2 **Nominee Agreements**
Date of publication: **December 29, 2011**

Reference(s): *Taxation Act* (CQLR, c. I-3), sections 80 and 424

This version of interpretation bulletin IMP. 80-7 supersedes the version of June 29, 2007. The bulletin was revised to clarify certain points.

This bulletin sets forth Revenu Québec's policy concerning nominee agreements.

DEFINITION AND 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 under which a mandatary acts on behalf of a 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 nominee 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 mandatary must disclose the existence of the agreement and reveal its content to Revenu Québec when they file their income tax return for the year during which the agreement was entered into.

EFFECTS OF A NOMINEE AGREEMENT

4. Mandates are based on the principle of representation. Thus, a mandatary is not entitled to the income collected by the mandatary, given that the mandatary is required to account for that income to the mandator. For example, dividends and interest received by a mandatary are the property of the mandator and constitute income for the mandator.

5. Where income-producing immovable property is held by a mandatary, the income derived or arising therefrom is the mandator's and, in accordance with section 80 of the *Taxation Act* (TA),

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must be included in computing the mandator's income. A person who purchases immovable property on behalf of a third party is no more indebted for the price paid than that person is the owner of the immovable property. The true owner is the mandator, and the obligation of the mandatary-nominee is to account to the mandator for what is collected on the mandator's behalf and to surrender it to the mandator. For the mandator, the disposition of the immovable property may produce income or a loss, a capital gain or a capital loss, or a recapture of capital cost allowance. However, when the mandatary surrenders the immovable property to the mandator, there is no disposition of property on the mandatary's part. Furthermore, if the mandatary is a corporation and the mandator is a shareholder of that corporation, surrender of the immovable property to the shareholder-mandator does not give rise to the application of section 424 of the TA.

6. However, Revenu Québec does not recognize the effects of a nominee agreement that is used by the parties in an attempt to play the tax situation from two different angles, as was the case in *Québec (Sous-ministre du Revenu)* c. *Dussault-Zaidi*,[1] or that constitutes a sham. In that respect, failure by the parties to disclose the existence of the nominee agreement in compliance with point 3 of this bulletin may constitute an indication that the parties have attempted to play the tax situation from two different angles or have created a sham.

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1 (27 September 1996), Montréal 500-09-000846-931 (Qc. C.A.), online : Court of Appeal of Québec <http://www.tribunaux.ca/c-appel/Jugements/jugements.html>

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