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Québec Bill 112: Significant Changes to Duties on Transfers of Immovables

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The Québec 2016-2017 Budget tabled by Finance Minister Carlos Leitão on March 17, 2016, announced significant changes to the *Act respecting duties on transfers of immovables* applicable to all transfers of immovables in the province of Québec as of March 18, 2016.

On November 15, 2016, Bill 112: entitled *An Act to give effect mainly to fiscal measures announced in the Budget Speech delivered on 17 March 2016* (Bill 112) was tabled in the National Assembly, introducing the much-anticipated proposed legislation in respect of such changes. For the most part, the proposed amendments are consistent with the Budget announcement.

Under the former rules, transfer duties were payable only upon *registration* of the transfer at the land registry. The new rules introduce a significant change to this regime, transfer duties now being payable as of the *transfer date* of an immovable (real property), whether or not the transfer is registered.

Bill 112 also provides for a tightening of the statutory exemptions, some of which (e.g. transfers of immovables between related companies) were previously based on an ownership test of 90% of the voting shares or 90% of the fair market value of the shares. The new rules notably provide for the following:

- a single ownership test of 90% of the votes attached to the issued shares (as opposed to the former test based on the number of voting shares, which did not take into account the number of votes attached to each share), which votes may be exercisable “*under any circumstances at an annual meeting of shareholders*”; and
- the obligation to maintain the applicable exemption conditions for 24 months following the transfer of the property.

These criteria are more restrictive than the former rules, which applied to transfers made prior to March 18, 2016.

Lastly, the new rules establish a mandatory disclosure mechanism to enable municipalities to collect applicable transfer duties when:

- the deed of transfer of the property is not registered at the land registry; or
- the exemption condition relating to the ownership of 90% of the voting rights ceases to be satisfied within the 24-month period following the exempted transfer.

The new rules do not include exemptions for transfers to or from a partnership (whether limited or general), and do not apply to transfers of shares (subject to the 24-month restriction discussed above), or of interests in partnerships or trusts.

The new rules also introduce corresponding amendments to the *Taxation Act*. The transferee of an immovable who does not file the aforementioned mandatory notice of disclosure within 90 days of a transfer will be required to pay special duties equal to 150% of the transfer duties, plus interest. These special duties must be paid within 30 days of a notice of assessment being issued. Note that transfers made prior to March 18, 2016 on an exempt basis remain subject to the acquisition of control rules.

Bill 112 must next be passed by the National Assembly of Québec. The new rules remain subject to change until such time.