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Partnership Exemption from Québec Transfer Duties

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Québec's Minister of Finance has published Information Bulletin 2017-14 (Bulletin), which addresses the legislative gaps in the *Act respecting duties on transfers of immovables* (Act) – namely, the absence of an exemption from transfer duties when partnerships take part in transfers of immovables.

The Bulletin, which was published on December 20, 2017, announced that the Act will be amended to introduce exemptions from transfer duties applicable to partnerships (namely, general partnerships, limited partnerships and undeclared partnerships) in circumstances similar to the current exemptions applicable to transfers involving corporations.

The newly introduced exemptions apply to transfers of immovables occurring in the province of Québec on or after December 21, 2017, between the following persons:

- The transferor is a natural person, the transferee is a partnership and, immediately after the transfer of the immovable, the transferor's share of the income or losses of the partnership is at least 90%.
- The transferor is a partnership, the transferee is a natural person and, throughout the 24-month period immediately preceding the transfer (or since the date of constitution of the transferor if it has existed for less than 24 months), the transferee's share of the income or losses of the partnership is at least 90%.
- If the transferor and transferee are both partnerships, or a corporation and a partnership, the exemptions from the payment of transfer duties should be similar to the exemptions applicable to transfers between closely related corporations, with the necessary modifications to integrate the above-mentioned 90% test in respect of income or losses of the partnership.

Similarly to the current exemption regime applicable to corporations, for exempt transfers involving partnerships the Act will require the following:

- an obligation to maintain the exemption condition relating to the percentage of income or losses of the partnership for the 24-month period following the transfer date of the immovable;
- a mandatory disclosure mechanism when the exemption condition ceases to be met during the 24-month period following the transfer date of the immovable; and
- exceptions to the mandatory disclosure mechanism if the share of the income or losses of the partnership falls below the 90% threshold as a result of certain cases of dissolution, amalgamation or the loss of quality as partner of the partnership due to an unexpected reason (death, incapacity or bankruptcy).

These amendments will certainly be well-received by real estate owners because they ensure a neutral and equitable tax treatment for common holding structures.

Nevertheless, the new exemptions do not appear to apply to transfers of immovables involving trusts, other than the very limited exemptions currently provided for in the Act.

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