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# Draft Legislation Confirms Exemptions from Transfer Duties for Partnerships

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The Québec government recently provided greater certainty for situations in which a partnership (a limited partnership, general partnership or undeclared partnership) is involved in the transfer of an immovable in Québec.

On February 26, 2019, Bill 13, *An Act to amend the Taxation Act, the Act respecting the Québec sales tax and other legislative provisions* (Bill 13), was introduced into the National Assembly. Bill 13 amends, among other things, the *Act respecting duties on transfers of immovables* (CQLR, c D-15.1) (Act) to add an exemption from the payment of transfer duties when the transfer involves partnerships under circumstances similar to those for which a legal person is currently exempt. Bill 13 follows the publication of Information Bulletin 2017-14 by the Québec Department of Finance on December 20, 2017.

Bill 13 extends the exemptions for closely related legal persons to partnerships so that the transfer of an immovable between two partnerships or between a partnership and a legal person will be exempt if certain conditions are met.

For the purpose of the exemption (which is based on the holding of 90% of the voting rights), the units of a partnership are deemed to be voting shares and each partner is deemed to hold a number of shares proportionate to its interest in the partnership's profits and losses. As is currently the case for legal persons, entities separated by several levels of ownership may not be considered closely related and it is therefore important that transfers between such entities be carefully analyzed to be sure the exemption applies.

Bill 13 also provides for an exemption from the payment of transfer duties in respect of transfers of immovables among the following persons:

- the transferee is a partnership and the transferor is a natural person who, immediately after the transfer, holds at least a 90%share in the profits or losses of the transferee;
- the transferor is a partnership and the transferee is a natural person who, throughout the 24-month period immediately preceding the transfer (or since the establishment of the transferor if it was constituted less than 24 months before the transfer), held at least a 90% share in the profits or losses of the transferor.

Bill 13 also provides the following for partnerships, as is currently the case for legal persons:

- the obligation to maintain the exemption condition concerning the percentage of profits or losses during the 24-month period following the transfer of the immovable;
- a mandatory disclosure mechanism when the exemption condition ceases to be met during the 24-month period;
- exceptions to the disclosure requirement when the share in the profits or losses of the partnership falls below 90% due to the dissolution of the transferee or the loss of the transferor's quality of partner for an unexpected reason (death, incapacity or bankruptcy).

As expected, these new provisions apply with respect to transfers of immovables carried out after December 20, 2017. Bill 13 will be welcomed by property owners since it ensures a neutral and fair tax treatment regardless of the legal holding structure chosen.

It is unfortunate that an additional exemption was not included for situations in which a trust takes part in the transfer of an immovable, other than in the very limited cases currently provided for in the Act.

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