

Income Tax

IMP. 80-7/R3

Nominee Contracts

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Reference(s): *Taxation Act* (CQLR, c. I-3), sections 80, 424, 1079.8.6.4, 1079.8.13.3, 1079.8.14 and 1079.8.15.1

This version of interpretation bulletin IMP. 80-7 replaces the version of December 29, 2011. The bulletin was revised to reflect legislative amendments since that date. Stylistic changes and changes to ensure consistency were also made.

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

DEFINITION AND GENERAL

1. According to article 2130 of the *Civil Code of Québec* (CCQ), 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 contract 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 contract is a lawful form of the contract of mandate.
3. Any person may hold property for another under a nominee contract. To be valid, the nominee contract must have been entered into on or before the acquisition of the property and must comply with the mandate provisions of the CCQ. Furthermore, in order for a nominee contract to be recognized for tax purposes, the mandator and the mandatary must disclose its existence and reveal its content to Revenu Québec in the prescribed form.

EFFECTS OF A NOMINEE CONTRACT

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), 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 contract 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 contract 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.

INFORMATION RETURN

7. Section 1079.8.6.4 of the TA sets out that a taxpayer who is a party to a nominee contract entered into in a transaction having tax consequences or who is a member of a partnership that is a party to such a contract must disclose the contract and the transaction to the Minister using the prescribed form on or before the 90th day after the date the contract was entered into.

8. Nominee contracts that are entered into in transactions that have no tax consequences are not subject to the disclosure obligation. An example of a contract that does not need to be disclosed is one where a parent buys a car in the name of their child, as the nominee, but there are no tax consequences associated with the purchase.

9. The notion of "tax consequences" refers to income tax consequences only. However, it must be interpreted more broadly to cover income, expenses and the creation of tax attributes.

10. The disclosure obligation does not extend to a nominee contract between an individual and a related person at the request of a financial institution when financing the purchase of an immovable intended only for personal use by the individual, provided the related person did not co-sign for more than 50% of the fair market value of the immovable.

11. The exception aims to shield from the disclosure obligation a parent who gives the appearance of being a co-purchaser of their child's residence solely so their child can obtain financing from the bank.

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>>

12. The information return and the nominee contract, if one was entered into in writing, must be sent to the Minister under separate cover by registered mail.

13. A disclosure made by one party to a nominee contract is deemed to have been made by any other party to the contract. For a limited partnership, the disclosure obligation applies only to the general partners.

14. The obligation applies to nominee contracts entered into after May 16, 2019, and to nominee contracts entered into before May 17, 2019, if the tax consequences of the transaction under which the contract was entered into continue after May 16, 2019. If the nominee contract was entered into before September 24, 2020, the information return must have been sent to the Minister by December 23, 2020.

SUSPENSION OF PRESCRIPTION

15. Under section 1079.8.15.1 of the TA, when a taxpayer party to a nominee contract or a member of a partnership party to a nominee contract fails to send the information return referred to in the previous section for a taxation year for which tax consequences result from a transaction under which the nominee contract was entered into, the Minister may, despite the expiry of the time limits provided for in section 1010 of the TA, redetermine the tax, interest and penalties or any other amount under the TA and make a redetermination, reassessment or additional assessment for the taxation year in respect of the taxpayer or member of the partnership, within three, four, six or seven years after the day on which the information return is sent to the Minister.

16. If a duly completed copy of the prescribed form disclosing a nominee contract made in a transaction or series of transactions is not filed by the deadline, the prescription period otherwise applicable to a taxation year of a taxpayer who is a party to the contract or a member of a partnership that is a party to the contract is suspended for the transaction or series of transactions. Late disclosure of the nominee contract will cancel the suspension of prescription.

PENALTY

17. Section 1079.8.13.3 of the TA sets out that if the parties to a nominee contract do not file a duly completed copy of the prescribed form disclosing the contract by the deadline, they are solidarily liable to a \$1,000 penalty plus, as of the second day, an additional \$100 penalty for every day the disclosure is not filed, up to \$5,000.