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chapter D-17

LAND TRANSFER DUTIES ACT

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**chapter D-17****LAND TRANSFER DUTIES ACT**

This Act has ceased to apply in respect of transfers of land situated in Québec made after 9 May 1996 (1997, c. 14, s. 3).

**CHAPTER I
INTERPRETATION****Definitions:**

1. In this Act and in the regulations, unless the context indicates a different meaning, the expression

“consideration”;

“consideration” includes:

- (a) the value of any property furnished by the transferee at the time of a transfer;
- (b) money payment;
- (c) the prior claims as well as the hypothecs and other charges encumbering the land at the time of the transfer;
- (d) the amount, in capital, interest and outlays, of the debt which is extinguished when a creditor acquires the right of ownership to the land by the exercise of a taking in payment as the consequence of a real security encumbering the land in his favour, except with regard to municipal and school taxes;
- (e) the market value of land at the time of a transfer consisting of emphyteusis or a lease relating to that land or consisting of the transfer of the right of a lessee on such land;
- (f) the market value of land at the time of the transfer of such land where the transferee has acquired it by gratuitous title or where no consideration was furnished or stipulated in the application for registration of the transfer;

“corporation not resident in Canada”;

“corporation not resident in Canada” means any corporation validly incorporated, whatever be the nature and place of its incorporation,

- (a) of which more than 50% of the shares of its capital stock to which are attached full voting rights are owned by one or more persons not resident in Canada;
- (b) more than one-half of the directors of which are physical persons who are persons not resident in Canada;
- (c) more than one-half of the members of which, in the case of a corporation without capital stock, are persons not resident in Canada; or
- (d) which is controlled directly or indirectly in any manner whatever by one or more persons not resident in Canada;

“land”;

“land” means land

(a) on which no building is erected;

(b) on which a building is erected, including such building if the market value of the building is less than that of the land alone;

(c) on which a building is erected, including such building if the market value of such building is equal to or greater than that of the land alone and the area of the land is greater than reasonably necessary for the use and enjoyment of the building or for the carrying on of a business, other than a farming business, carried on on such land;

“Minister”;

“Minister” means the Minister of Revenue;

“person”;

“person” means a person and a trust, partnership, association, syndicate and any other group of any kind whatever;

“prescribed”;

“prescribed”, in the case of a form or of information to be provided in a form, means prescribed by order of the Minister, and in any other case means prescribed by regulation;

“recreational property”;

“recreational property” means land owned by a physical person and used by him principally for recreational or sports purposes, having an area not greater than 0.5 ha except to the extent that such person establishes that a greater area is necessary for such purposes;

“regulation”;

“regulation” means a regulation made by the Government under this Act;

“residence”;

“residence” means a housing unit, including the land on which such housing unit is built and the contiguous land reasonably necessary for the use and enjoyment of the housing unit as a residence, having an area not greater than 0.5 ha, except to the extent that the owner establishes that a greater area is necessary for such purposes, if that owner is a physical person and he occupies the housing unit himself;

“transfer”;

“transfer” means the transfer of an immovable right as well as a contract of lease and the granting of an option or of a promise of sale; the word “transfer” does not include transfer for the purpose only of securing a debt, nor reconveyance by the creditor, nor the transfer of any right contemplated in section 8 of the Mining Act (chapter M-13.1), nor the transfer or lease of lands in the public domain effected in virtue of the Act respecting the lands in the public domain (chapter T-8.1);

“transferee”.

“transferee” means a transferee who is not resident in Canada;

however, “transferee” excludes

- (a) a corporation which, at the time of the transfer,

i. has actively operated a business in Québec for more than one year,

ii. has had for more than one year at least five full-time employees who report for work to one of its establishments situated in Québec, and

iii. owns capital property situated in Québec, other than land, the aggregate value of which exceeds the value of the consideration; and

(b) a corporation of which at least 90% of the issued shares of the capital stock to which are attached full voting rights are owned by a person referred to in paragraph *a* at the time of the transfer.

History: 1976, c. 23, s. 1; 1976, c. 24, s. 1; 1984, c. 47, s. 213; 1986, c. 108, s. 247; 1987, c. 23, s. 76, s. 92; 1987, c. 64, s. 344; 1989, c. 77, s. 1; 1992, c. 57, s. 570; 1992, c. 57, s. 719; O.C. 712-93; 1994, c. 22, s. 2; 1995, c. 1, s. 1; 1995, c. 63, s. 4; 1997, c. 3, s. 2.

Interpretation.

1.1. In this Act and the regulations, any reference to a spouse shall be construed as if the rules prescribed under section 2.2.1 of the Taxation Act (chapter I-3) applied to this Act, adapted as required.

History: 1994, c. 22, s. 3.

Interpretation.

1.2. In this Act and the regulations, a legal person, whether or not established for pecuniary gain, is designated by the word "corporation".

History: 1997, c. 3, s. 3.

Person deemed to be a person not resident in Canada.

2. For the purposes of this Act and the regulations, a person is deemed to be a person not resident in Canada if he is:

(a) a physical person who is not ordinarily resident in Canada;

(b) a physical person who is ordinarily resident in Canada but is neither a Canadian citizen nor a person lawfully admitted to Canada for permanent residence therein;

(c) a partnership, association, syndicate or any other group more than one-half of the members of which are persons not resident in Canada within the meaning of this section or in which interests representing more than 50% of the total value of the property of the partnership, association, syndicate or other group are owned by such persons;

(d) a trust in which persons who are not resident in Canada within the meaning of this section have more than 50% of the

total value of the capital or income interests, and "trust" also includes the trustee under such a trust; or

(e) a corporation not resident in Canada.

History: 1976, c. 23, s. 2; 1997, c. 3, s. 6.

Person deemed to be ordinarily resident in Canada.

3. For the purposes of this Act or the regulations, a physical person is deemed to be ordinarily resident in Canada if at the time such expression is being considered,

(a) he has sojourned in Canada for a period of or periods the aggregate of which is 366 days or more during the 24 months immediately preceding that time;

(b) he is a member of the Canadian Armed Forces;

(c) he is an ambassador, minister, high commissioner, officer or servant of Canada, or an agent-general, officer or servant of a province, and was resident in Canada immediately prior to appointment or employment by Canada or the province;

(d) he is performing services in a country other than Canada under a prescribed international development assistance program and was resident in Canada at any time in the three month period preceding the day on which such services commenced;

(e) he is the spouse of an individual described in paragraph *b*, *c* or *d* living with him; or

(f) he is the child less than 18 years of age of a person described in paragraph *b*, *c* or *d*.

History: 1976, c. 23, s. 3.

CHAPTER II

LIABILITY FOR DUTIES AND PROCEDURE

Liability for duties and rate.

4. Every transfer made after 11 May 1976 relating to land situated in Québec requires the transferee to pay duties at the rate of 33% of the value of the consideration.

History: 1976, c. 23, s. 4.

Transfer made pursuant to a deemed transfer.

5. No obligation to pay duties on a transfer relating to land exists if such transfer is made pursuant to a transaction deemed to be a transfer relating to land and the duties on such deemed transfer have been paid.

History: 1976, c. 23, s. 5.

Joint and several liability of transferees.

6. Where the transfer is made to several transferees, or both to several transferees and to a person resident in

Canada, the transferees are jointly and severally liable for payment of the duties.

History: 1976, c. 23, s. 6.

Transfer made in part to a person resident in Canada and in part to another person.

7. Where the transfer is made in part to a person resident in Canada or to a transferee exempt from the payment of duties and in part to another transferee, the latter is required to pay the duties on that portion only of the consideration which corresponds to the part of the transfer made to him.

History: 1976, c. 23, s. 7.

Time of the payment.

8. Payment of the duties must be made at the time of the transfer.

History: 1976, c. 23, s. 8.

Collection.

9. The registrar shall collect payment of the duties at the time of registration of the transfer except where they have already been paid to the Minister; in the case of a deemed transfer, the Minister shall collect payment of the duties.

Applicability.

The first paragraph does not apply in the case of exemption from payment of the duties or where payment of the duties is deferred.

History: 1976, c. 23, s. 9; 1994, c. 22, s. 4.

Duties of the registrar.

10. The registrar shall refuse to register a transfer if he notes that the application for registration of the transfer does not contain the particulars required in sections 17 and 18 or if payment of the duties is not made except, in the last case, where there is an exemption or payment is deferred.

Powers of the registrar.

The registrar may refuse to register the transfer if he has reasonable cause to believe that duties must be paid and that payment has not been made.

Duties of the registrar.

The registrar shall, however, register the transfer on the presentation of a receipt of the Minister or of another registrar attesting the payment of the duties relating to the same transfer.

History: 1976, c. 23, s. 10; 1976, c. 24, s. 2; 1994, c. 22, s. 5; 2000, c. 42, s. 162; O.C. 1066-2001.

Payment by certified cheque.

11. Payment of the duties shall be made by certified cheque to the order of the Minister.

History: 1976, c. 23, s. 11.

Powers of the Minister.

12. Notwithstanding any provision to the contrary, the Minister may, at all times, establish duties and require payment thereof.

History: 1976, c. 23, s. 12.

Liability of transferor.

13. The transferor shall be jointly and severally liable for payment of the duties with the transferee in the following cases:

(a) where the application for registration of the transfer has not yet been tendered to the registrar;

(b) if the consideration furnished by the transferee exceeds the amount of the consideration mentioned in the application for registration of the transfer, but only for the portion of the duties applicable to the amount in excess;

(c) if the transferor is guilty of an offence under section 62 of the Tax Administration Act (chapter A-6.002).

History: 1976, c. 23, s. 13; 1994, c. 22, s. 6; 2010, c. 31, s. 175.

Several deeds evidencing the same transfer.

14. Where several deeds evidence the same transfer, the obligation to pay duties arises from the making of the first deed. No obligation to pay duties shall exist if the other deeds do not effect any new transfer inasmuch as the duties arising from the first deed have been paid or payment thereof has been deferred, or in the case of an exemption.

Deed of transfer affecting a previous deed.

A deed of transfer affecting a previous deed between the same parties gives rise to the payment of duties as if it were a separate transaction, except to the extent that the rights of the transferee and the consideration remain unchanged.

History: 1976, c. 23, s. 14.

Inadequate consideration.

15. Where the Minister is of opinion that the value of the consideration is less than the market value of the property transferred at the time of such transfer, the value of such consideration, notwithstanding the particulars of the application for registration of the transfer, shall be deemed equal to such market value.

History: 1976, c. 23, s. 15; 1994, c. 22, s. 7.

Value of the consideration reduced for a transfer made pursuant to an involuntary disposition.

16. (1) The value of the consideration furnished by the transferee for a transfer relating to land acquired in replacement of an immovable right conveyed by him at the time of an expropriation or which he conveyed to a person pursuant to a notice of expropriation from such person, must be reduced, for the purposes of computing the duties, by an amount equal to the proceeds of disposition which may reasonably be attributed to such immovable right.

Conditions relating to the reduction.

(2) The reduction contemplated in subsection 1 shall not be made unless:

(a) the land acquired as a replacement is used for purposes similar to those of the replaced immovable right; and

(b) the land acquired as a replacement is acquired before the end of the second year following

- i. the day of the transfer of the replaced immovable right, or
- ii. if the immovable right was expropriated, the first of the following days:

(A) the day the transferee has agreed to an amount as full compensation for that immovable right;

(B) where a claim or other proceeding has been taken before a tribunal of competent jurisdiction, the day on which the amount of the compensation is finally determined by that tribunal;

(C) where a claim or other proceeding referred to in paragraph B has not been taken within two years after the event giving rise to compensation, the day that is two years following the day of that event.

(3) The reduction contemplated in subsection 1 does not apply if the replaced immovable right was intended for purposes of speculation.

History: 1976, c. 23, s. 16.

Particulars to be inserted in a deed of transfer relating to land.

17. The application for registration of a transfer relating to land to a transferee must contain the following particulars in the prescribed manner:

- (a) the name of the transferor and of the transferee;
- (b) the dates of birth of the transferor and transferee, in the case of a physical person;
- (c) the address of the principal residence of the transferor;
- (d) the address of the principal residence of the transferee;

(e) a statement by the transferee indicating that he is a non-resident person within the meaning of this Act;

(f) a statement by the transferor and the transferee establishing the value of the consideration furnished by the transferee or the value of that part of the consideration which is referred to in section 7;

(g) the amount of the duties;

(h) the particulars required by sections 32, 40 to 44.1 and 47, if such is the case;

(i) any other particular prescribed.

History: 1976, c. 23, s. 17; 1989, c. 5, s. 2; 1994, c. 22, s. 8.

Particulars to be inserted in a deed of transfer relating to immovable rights.

18. The application for registration of a transfer relating to immovable rights to a transferee other than an application contemplated in section 17 must contain, in the prescribed manner, the particulars contemplated in paragraphs *a, b, c, d, e, f* and *i* of section 17.

History: 1976, c. 23, s. 18; 1994, c. 22, s. 9.

19. (Repealed).

History: 1976, c. 23, s. 19; 1994, c. 22, s. 10; 1995, c. 33, s. 23; 2000, c. 42, s. 163; O.C. 1066-2001.

Documents to be remitted to the Minister by the registrar.

20. The registrar shall notify the Minister of every transfer by transmitting to him, at the prescribed intervals, a copy of the application for registration, together with a copy of the accompanying document if the application is in the form of a summary.

History: 1976, c. 23, s. 20; 1994, c. 22, s. 11; 2000, c. 42, s. 164; O.C. 1066-2001.

Cheques and statement to be remitted to the Minister by the registrar.

21. The registrar shall remit each day to the Minister the cheques representing the payment of the duties together with a statement by him in the prescribed form.

History: 1976, c. 23, s. 21; 1994, c. 22, s. 12.

Refund of duties.

22. The Minister shall refund the duties paid under this Act where the transferee establishes, within three years of the date of transfer, that he could have been exempted from payment of the duties if the conditions provided for had been met.

History: 1976, c. 23, s. 22; 1986, c. 15, s. 7.

Refund of duties.

23. The Minister shall refund an amount equal to the amount of duties paid in excess of the amount that should have been paid where the transferee establishes, before the expiry of three years after the date of transfer, that the value of the consideration furnished by him would have been reduced by an amount greater than that granted in application of section 16, if the proceeds of disposition contemplated in the said section had been finally fixed at the time the duties were paid.

History: 1976, c. 23, s. 23; 1986, c. 15, s. 7.

**CHAPTER III
DEEMED TRANSFERS**

Transactions deemed to be a transfer.

24. (1) Every following transaction is deemed to be a transfer relating to land to a transferee:

(a) the issue or transfer of shares of the capital stock of a corporation of which at least 50% of the property, at any time after 11 May 1976 and within the two years immediately preceding the issue or transfer, consists of land, where, following such issue or transfer, one or more persons not resident in Canada who did not control the corporation previously control it directly or indirectly in any manner whatever;

(b) the amalgamation of two or more corporations, where at least 50% of the property of one of such corporations, at any time after 11 May 1976 and within the two years immediately preceding the amalgamation, consists of land, and the control over such land is exercised directly or indirectly in any manner whatever, after the amalgamation, by one or more persons not resident in Canada who did not control it previously;

(c) the transfer or change which occurred after 11 May 1976 of an interest or share in a partnership, association, syndicate, or any other group which owns land or capital or income interests in a trust which itself owns land, where, pursuant to such transfer or such change, the partnership, association, syndicate, group or trust becomes a person not resident in Canada.

Extension of the word “land”.

(2) For the purposes of subsection 1, the word “land” includes the rights on land arising from emphyteusis and from a contract of lease, providing that the period running from the date of the transfer to that of the termination of the contract of lease, including any extension or renewal mentioned therein, is 40 years or longer.

History: 1976, c. 23, s. 24; 1976, c. 24, s. 3; 1994, c. 22, s. 13; 1997, c. 3, s. 6.

Rules to establish if at least 50% of the property of a corporation consists of land.

25. The following rules apply in establishing if at least 50% of the property of a corporation consists of land at a particular time:

(a) such percentage is computed by establishing the ratio between the amounts representing the market value of the land owned by the corporation and the amounts representing the market value of all the property owned by the corporation, after making the deduction provided for in paragraph c;

(b) for the purposes of paragraph a, the land of the corporation includes the land owned by another corporation which is controlled directly or indirectly in any manner whatever by the corporation;

(c) where the market value of the property of the corporation, other than land, is attributable in whole or in part to the market value of land which is included in the land of such corporation in virtue of paragraph b, the market value of the property of the corporation must be reduced by an amount equal to the market value of such land.

History: 1976, c. 23, s. 25; 1997, c. 3, s. 6.

Deemed transferee.

26. The person who is the owner of land situated in Québec immediately after the deemed transfer contemplated in paragraphs a, b, and c of section 24 is deemed to be the transferee of such land.

Deemed transferee.

The same applies to the corporation which is the owner of land situated in Québec comprised in the land of another corporation pursuant to paragraph b of section 25 providing, however, that at least 50% of the property of the corporation, at any time after 11 May 1976 and within the two years preceding the date of the deemed transfer, consists of land.

Deemed consideration.

The transferee contemplated in this section is deemed to have furnished a consideration equal to the market value of the land at the time of the deemed transfer.

History: 1976, c. 23, s. 26; 1997, c. 3, s. 6.

Statement to be filed at the time of a deemed transfer.

27. The transferee shall, at the time of a deemed transfer, furnish the Minister with a statement in duplicate and in the prescribed form containing the following particulars:

(a) the name and the address of the principal residence of each of the persons contemplated in section 24 and of the transferee, as the case may be;

- (b) the designation of the land;
- (c) the market value of the land at the time of the transfer;
- (d) the detailed computation of the percentage contemplated in section 25;
- (e) the amount of the duties;
- (f) the particulars required by sections 33, 46 and 47, if such is the case;
- (g) any other particular prescribed.

History: 1976, c. 23, s. 27.

CHAPTER IV DEFERRED PAYMENT

Rules relating to deferred payments.

28. Payment of the duties shall be deferred in the cases and on the conditions provided for by this chapter.

History: 1976, c. 23, s. 28.

Where the transferee undertakes to reside in Canada.

29. (1) Payment of the duties shall be deferred in the case where the transferee undertakes,

- (a) if he is a physical person who is a Canadian citizen, to reside in Canada before the expiry of five years after the date of transfer;
- (b) if he is a physical person who is not a Canadian citizen, to reside in Canada before the expiry of two years after the date of transfer;

(c) if it is a corporation not resident in Canada, to reside in Canada before the expiry of five years after the date of transfer.

(2) For the purposes of paragraph c of subsection 1, where the corporation is a corporation not resident in Canada because shares of its capital stock are directly or indirectly owned by a physical person not resident in Canada, the latter shall undertake that the corporation will reside in Canada before the expiry of five years after the date of transfer, if such physical person is a Canadian citizen, and before the expiry of two years after the date of transfer if he is not a Canadian citizen.

History: 1976, c. 23, s. 29; 1997, c. 3, s. 6.

Where the transferee acquired the land for the purposes of establishing thereon his principal residence or his principal recreational property.

30. Payment of the duties shall be deferred in the case where the transferee who is a physical person states that he acquired the whole of the land,

(a) if he is a Canadian citizen, for the purposes of establishing thereon, before the expiry of ten years after the date of transfer, his principal residence or his principal recreational property;

(b) if he is not a Canadian citizen, for the purposes of establishing thereon, before the expiry of five years after the date of transfer, his principal residence or his principal recreational property, provided that he states furthermore, in the manner prescribed:

i. that he has been lawfully admitted into Canada;

ii. that he is lawfully in Canada as an immigrant admitted for permanent residence or for the purpose of carrying on or holding a business, employment or office therein within the meaning of section 1 of the Taxation Act (chapter I-3);

iii. that he is not in Canada as a tourist or visitor or on his way to another country or as a student admitted into Canada under the provisions of subparagraph f of subsection 1 of section 7 of the Immigration Act (Revised Statutes of Canada, 1985, chapter I-2);

iv. the nature of the business, office or employment contemplated in subparagraph ii, if such is the case;

v. where the case is such, the number and expiration date of the visa relating to an employment and issued under the Immigration Act, and the length of time during which he intends to carry on or hold, as the case may be, the business, employment or office for which he was admitted into Canada.

History: 1976, c. 23, s. 30; 1995, c. 63, s. 5.

Land not situated in a reserved area.

31. (1) Payment of the duties shall be deferred in the case where the transferee declares that the land subject to the transfer is not situated, in whole or in part, in a reserved area or in an agricultural zone established in accordance with the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1), except where the Commission de protection du territoire agricole du Québec has authorized its use for purposes other than agriculture, and that he has acquired the whole of the land for one of the following purposes, provided that the area and value of the land are reasonable, all things considered:

Establishment, expansion or relocation of a business;

(a) the establishment, expansion or relocation, before the expiry of two years after the date of transfer, of a commercial or industrial business, other than a farming business, that is or is intended to be actively carried on by the transferee;

Erection of a building for the purposes of lease or sale;

(b) in the case of land on which no building is erected, the erection thereon of a building for the purposes of lease or

sale, provided, however, that the laying of the foundation or of other seating of the building is begun before the expiry of two years after the date of transfer, the construction of the building is completed before the expiry of five years after such date, the cost of the building is at least equal to the market value of the land on such date and the building is leased or sold before the expiry of two years after the date on which its construction is completed;

Lease or sale of a renovated or a replacement building;

(c) in the case of land on which a building is erected, the lease or sale,

i. before the expiry of two years from the date of transfer, of that building, if it has been renovated and the renovation costs represent an amount at least equal to the amount by which the market value of the land exceeds the market value of the building before renovation; or

ii. before the expiry of two years from completion of construction of a building replacing a building erected on the land, of the replacement building if the building replaced has been acquired to be demolished, provided that the laying of the foundation or of any other seating of the building is begun before the expiry of two years after the date of transfer, the construction of the building is completed before the expiry of five years after such date and the cost of the building is at least equal to the market value of the land on such date;

Sale or assignment of land to an employee.

(d) where the transferee has acquired the land in the normal course of operations of a business he actively carries on,

i. the sale of the land, before the expiry of two years after the date of transfer, by the transferee to his employee, to the spouse of the latter or to that employee and his spouse, in order that the employee establish his principal residence thereon;

ii. the assignment of the land, before the expiry of two years after the date of transfer, by the transferee, for the use of his employees for the purposes of establishing their principal residence thereon.

Extension of delays.

(2) The Minister may, upon application of the transferee, extend the delays provided for by subsection 1.

History: 1976, c. 23, s. 31; 1976, c. 24, s. 4; 1979, c. 38, s. 37; 1987, c. 67, s. 1; 1996, c. 26, s. 85; O.C. 739-97.

Particulars to be inserted in the deed of transfer.

32. The transferee shall not be permitted to defer payment of the duties unless

(a) the application for registration of a transfer contemplated in section 17 contains the following particulars:

i. the undertaking contemplated in section 29 or the statement contemplated in section 30 or 31;

ii. a stipulation of hypothec on the land, by the transferee in favour of the Minister, for the amount of the duties of which payment is deferred; and

(b) the stipulation of hypothec referred to in subparagraph ii of paragraph a is published.

History: 1976, c. 23, s. 32; 1994, c. 22, s. 14.

Particulars to be inserted in the statement to be filed at the time of a deemed transfer.

33. In the case of a deemed transfer, the transferee shall not be permitted to defer payment of the duties unless

(a) the statement contemplated in section 27 is by notarial act *en minute* and contains the following particulars:

i. the undertaking contemplated in section 29 or the statement contemplated in section 31;

ii. a stipulation of hypothec on the land, by the transferee in favour of the Minister, for the amount of the duties of which payment is deferred; and

(b) the stipulation of hypothec contemplated in subparagraph ii of paragraph a is published and transmitted with a certified statement of registration to the Minister.

History: 1976, c. 23, s. 33; 1976, c. 24, s. 5; 1994, c. 22, s. 15; 2000, c. 42, s. 165; O.C. 1066-2001.

Release of hypothec and surrender of rank.

34. The Minister may, when he considers it appropriate, release, in whole or in part, the hypothec contemplated in sections 32 and 33, or surrender the rank thereof, and may require, as a condition for the release or surrender, that other securities be furnished.

Duties paid.

The Minister must release the hypothec if the duties have been paid or if the obligation to pay them is extinguished.

History: 1976, c. 23, s. 34.

Notice of assessment.

35. Where the payment of duties is deferred, the Minister shall determine the amount of the duties so deferred and shall send a notice of assessment to the transferee.

History: 1976, c. 23, s. 35.

Where the conditions are fulfilled.

36. Where payment of the duties has been deferred and the conditions provided for in this chapter have been fulfilled within the delay provided, as the case may be, the Minister shall make a new assessment cancelling the obligation to pay the duties in question.

History: 1976, c. 23, s. 36.

Where the conditions are not fulfilled.

37. Where payment of the duties has been deferred and the conditions provided for by this chapter have not been fulfilled, the Minister shall immediately collect payment of the duties, and the interest payable on such duties from the date of transfer.

Notice of payment.

The Minister shall then send a demand for payment to the transferee; such demand shall be deemed to be a notice of assessment, for the purposes of sections 87, 88 and 95 of the Tax Administration Act (chapter A-6.002), subject to this Act and the regulations.

History: 1976, c. 23, s. 37; 1976, c. 24, s. 6; 2010, c. 31, s. 175.

New assessment cancelling the obligation to tax duties.

37.1. Notwithstanding section 37, where a transferee has obtained the deferment, under section 31, of the payment of the duties relating to the transfer of land, whether because that land was not, at the time of the transfer, situated in whole or in part in a reserved area or in an agricultural zone established in accordance with the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1), or because, at the date of expiry of the delay provided for by that section 31, the land is situated in whole or in part in such an area or in such a zone and the transferee has been unable, owing to the application of the Act respecting the preservation of agricultural land and agricultural activities, to fulfil the conditions provided for by that section 31 within the delay provided for therein, the transferee is deemed to have fulfilled these conditions within the delay provided for and the Minister shall, upon the application of the transferee, make a new assessment cancelling the obligation to pay the duties in question.

History: 1979, c. 38, s. 38; 1996, c. 26, s. 85; O.C. 739-97.

New assessment cancelling or reducing the obligation to pay duties.

37.2. Notwithstanding section 37, where the payment of duties has been deferred and the conditions provided for by this chapter have not been fulfilled, the Minister may, on request by a transferee establishing that he was unable to fulfill the conditions provided for herein owing to circumstances independent of and beyond the transferee's

control, make a new assessment cancelling or reducing the obligation to pay the duties in question.

History: 1995, c. 1, s. 2.

Decision of Minister.

38. Where the circumstances of a transfer relating to land allow it to be believed that the payment of duties will be deferred pursuant to section 31 or that there will be an exemption from the payment of duties under section 44.1, the Minister shall, if the transferee applying therefor establishes the merits of the application, send him a decision attesting that the conditions of section 31 or section 44.1 will be fulfilled if the facts are as described in the application.

History: 1976, c. 23, s. 38; 1987, c. 67, s. 2.

**CHAPTER V
EXEMPTIONS**

Rules relating to exemptions.

39. There shall be an exemption from the obligation to pay duties in the cases and on the conditions provided for by this chapter.

History: 1976, c. 23, s. 39.

Transferee whose business consists in the lending of money on the security of real property.

40. There shall be an exemption from the payment of duties where the business of the transferee consists in the lending of money on the security of real property, provided the application for registration of the transfer mentions that the following conditions have been fulfilled:

(a) the transfer relating to land to the transferee must result from the exercise of a right to take in payment or must have been effected in any other manner for the purpose of extinguishing a debt secured by real property or ensuring the protection of such security or of any claim;

(b) the transferee must not be a person related to the transferor within the meaning of section 19 of the Taxation Act (chapter I-3); and

(c) the transferee must not have acquired the land pursuant to one or more transactions made mainly for the purpose of avoiding or evading payment of the duties.

History: 1976, c. 23, s. 40; 1976, c. 24, s. 7; 1992, c. 57, s. 571; 1992, c. 57, s. 719; O.C. 712-93; 1994, c. 22, s. 16; 1997, c. 3, s. 4.

Insurance corporation, subsidiary.

41. (1) There shall be an exemption from the payment of duties where the transferee is a person described in subsection 2, provided the application for registration of the transfer mentions the description of such person that appears in the said subsection and the fact that he fulfills one of the conditions provided for in subsections 3 to 6.

Enumeration of persons entitled to exemption.

(2) The person contemplated in subsection 1 is:

(a) an insurer authorized under the Insurers Act (chapter A-32.1) or a corporation authorized under an Act of a jurisdiction other than Québec to carry on insurer activities elsewhere in Canada;

(b) a corporation of which at least 90% of the issued shares of the capital stock, to which are attached full voting rights, are owned by an insurance corporation which is a person not resident in Canada described in paragraph *a*;

(c) a partnership, association, syndicate or any other group which is not resident in Canada solely by the fact that a corporation described in paragraph *a* or *b* is a member thereof; or

(d) a corporation that is not resident in Canada solely by the fact that one or more corporations not resident in Canada described in paragraph *a* or *b* are owners of shares of the capital stock of one of such corporations.

Conditions relating to the exemption.

(3) Where the transferee is an insurance corporation other than an insurance corporation incorporated in Canada,

(a) if the corporation has made the election provided for in section 825 of the Taxation Act (chapter I-3), all its gross investment income from the land in question must be included in computing its income under the said Act;

(b) if the corporation has not made the election described in paragraph *a*, the land in question must be held in trust in accordance with the prescribed rules.

Conditions relating to the exemption.

(4) Where the transferee is an insurance corporation incorporated in Canada, the land in question must not form part of the property of the corporation excluded by regulation.

Conditions relating to the exemption.

(5) Where the transferee is a corporation of which at least 90% of the issued shares of the capital stock to which are attached full voting rights are owned by an insurance corporation not resident in Canada described in paragraph *a* of subsection 2, the latter corporation must certify that the land in question will be considered by the transferee to be an investment made and held in favour of the business the insurance corporation carries on in Canada.

Conditions relating to the exemption.

(6) Where the transferee is a corporation not resident in Canada or a partnership, association or syndicate or any other group that is not resident in Canada solely by the fact that

one or more corporations not resident in Canada described in paragraph *a* or *b* of subsection 2 are the owners of shares of the capital stock of one of such corporations or are members of such transferee, such corporation or corporations must certify, after reasonable inquiry, that the transferee would not be a person not resident in Canada were it not for the fact that such corporation or corporations are such owners or members.

History: 1976, c. 23, s. 41; 1974, c. 70, s. 473; 1994, c. 22, s. 17; 1997, c. 3, s. 6; 2018, c. 23, s. 756 and 811(2).

Transfer between closely related corporations.

42. There shall be an exemption from the payment of duties in the case of a transfer between closely related corporations provided that the application for registration of the transfer mentions the fact that the transferor and the transferee are closely related corporations.

Closely related corporations.

For the purposes of the first paragraph, a particular corporation and another corporation are closely related to each other at any time if the other corporation is a corporation not less than 90% of the issued shares of the capital stock having full voting rights of which are owned

(a) by the particular corporation;

(b) by a qualifying subsidiary of the particular corporation;

(c) by a corporation of which the particular corporation is a qualifying subsidiary;

(d) by a qualifying subsidiary of a corporation of which the particular corporation is a qualifying subsidiary; or

(e) any combination of the corporations or subsidiaries referred to in subparagraph *a* to *d*.

“Qualifying subsidiary”.

For the purposes of the second paragraph, “qualifying subsidiary” of a particular corporation means another corporation not less than 90% of the issued shares of the capital stock having full voting rights of which are owned by the particular corporation.

History: 1976, c. 23, s. 42; 1988, c. 4, s. 3; 1994, c. 22, s. 18; 1997, c. 3, s. 6; 1997, c. 14, s. 2.

Transfer between a physical person and a corporation.

43. There shall be an exemption from the payment of duties, in the following cases, provided the application for registration of the transfer mentions the fact that:

(a) the transfer is made by a transferor who is a physical person to a transferee who is a corporation not resident in Canada of which 90% of the issued shares of its capital stock

to which are attached full voting rights are owned by such transferor immediately after the transfer; or

(b) the transfer is made by a transferor that is a corporation to a physical person not resident in Canada, if such person is, immediately before the transfer, the owner of at least 90% of the issued shares to which are attached full voting rights, of the capital stock of the transferor.

History: 1976, c. 23, s. 43; 1994, c. 22, s. 19; 1997, c. 3, s. 6.

Exemptions:

44. There shall be an exemption from the payment of duties in the following cases, provided the application for registration of the transfer mentions the fact that:

Consideration less than \$500;

(a) the amount of the consideration furnished by the transferee is less than \$500;

Contract of lease for less than 40 years;

(b) the deed of transfer is in relation to the lease of land or to the transfer of the right of a lessee on land, provided that the period which runs from the date of the transfer to that of the termination of the contract of lease, including any extension or renewal mentioned therein, does not exceed 40 years;

Transfer from a trust to a corporation;

(c) the deed is in relation to a transfer to a corporation not resident in Canada and the transferor is a trust which was created for the sole purpose of acquiring and holding the land temporarily until such corporation is incorporated;

Transfer to a trust governed by a jurisdiction of common law;

(d) the deed is in relation to the transfer of land by a transferor that is a physical person or a trust to a transferee that is a trust not resident in Canada, governed by a jurisdiction of common law and the transfer does not entail a change in the beneficial ownership of the land;

Transfer in the direct line, between spouses;

(e) the deed relates to the transfer of land to an ascendant or descendant in the direct line, between spouses, between the father or mother of an individual and the spouse of the individual, or between the spouse of an individual and the son or daughter of the individual;

Acquisition of land by a transferee who carried on on 11 May 1976 a farming business in Québec;

(f) the deed relates to the transfer of land to a transferee not resident in Canada who carried on on 11 May 1976 and has carried on without interruption, from such date till the date of the transfer, a farming business in Québec having an agricultural production for market of an annual value of

\$20,000 or more, provided the land is used immediately after the transfer for the carrying on of such business;

Transfer of land assigned to the carrying on of a business;

(g) the deed is in relation to the transfer of land the whole of which was assigned to the active carrying on of a commercial or industrial business by the transferee who, on 11 May 1976, occupied, and from that date till the date of transfer, continuously so occupied it, provided the area and value of the land are reasonable, all things considered;

Exchange of land intended mainly for purposes of public utility;

(h) the deed is in relation to the transfer of land by a transferor that is a public agency to a transferee who receives the land in exchange for other land of equal market value which is intended mainly for purposes of public utility; or

Transfer arising after a death.

(i) the deed is in relation to the transfer of land devolved under the will or other act or testamentary disposition of the deceased or under the deceased's intestate succession.

History: 1976, c. 23, s. 44; 1976, c. 24, s. 8; 1989, c. 5, s. 3; 1994, c. 22, s. 20; 1995, c. 1, s. 3; 1997, c. 3, s. 6.

Difference in market value.

44.01. For the purposes of paragraph *h* of section 44, where the market value of the land transferred to the transferee is greater than that of the land acquired by the transferor, duties shall be payable on only such difference in value.

History: 1989, c. 5, s. 4.

Exemptions.

44.1. (1) There shall be an exemption from the payment of duties where the application for registration of the transfer mentions that the following conditions have been fulfilled:

(a) the transferee is actively carrying on a commercial or industrial business other than a farming business;

(b) the land is acquired for the purposes of expansion of the transferee's business, provided the area and value of the land are reasonable, all things considered;

(c) the land acquired is adjacent or nearly so to the installations of the transferee's business and is neither wholly nor partly situated in a reserved area or agricultural zone established pursuant to the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1), except where the Commission de protection du territoire agricole du Québec has authorized its use for purposes other than agriculture.

Restriction.

(2) Notwithstanding subsection 1, where the transferee referred to therein alienates the land or part of it before the land or that part of it has been used for the expansion of the business, he shall pay to the Minister the duties relating to the land or the part of the land alienated, together with the interest payable on the duties from the date of acquisition of the land.

Notice of assessment.

The Minister shall in the case of this subsection send a notice of assessment to the transferee.

Construction or renovation of a building.

(3) Notwithstanding subsection 2, there shall be an exemption from the payment of duties where the transferee uses the land for the construction or renovation of a building for lease or sale, on the following conditions:

- i. the construction or renovation of the building shall be completed within five years after the work begins;
- ii. the cost of the building shall be at least equal to the market value of the land on the date, in the case of construction, of the laying of the foundation or other seating of the building or, as the case may be, on the date the renovation work begins;
- iii. the land and the building shall be sold or leased within two years of the construction or renovation of such building; and
- iv. the area and value of the land shall be reasonable, all things considered.

History: 1983, c. 49, s. 1; 1987, c. 67, s. 3; 1989, c. 5, s. 5; 1994, c. 22, s. 21; 1996, c. 26, s. 85; O.C. 739-97.

Deferred payment.

44.2. Notwithstanding section 37, where payment of duties relating to the transfer of land for the purposes of expansion is deferred by virtue of section 31 and paragraphs *a*, *b* and *c* of subsection 1 of section 44.1 may apply to the land or part thereof, the transferee is deemed to have been exempted, from 21 December 1983, by virtue of the said section 44.1, from payment of the duties relating to the land or that part of the land and the Minister shall, upon the application of the transferee, make a new assessment cancelling the obligation to pay the duties in question.

History: 1983, c. 49, s. 1.

Special exemptions in the case of a deemed transfer.

45. In the case of a deemed transfer of land, sections 40 to 44.1 do not apply. However, there shall be an exemption from the payment of duties in the following cases of deemed transfers, provided the statement provided for in section 27

mentions the fact that the control of the transferee, if the transferee is a corporation, or the interest or share contemplated in subparagraph *c* of subsection 1 of section 24, if the transferee is a partnership, trust, association, syndicate or any other group, has been acquired, directly or indirectly, in any manner whatever,

(a) by reason of a transfer of shares or an interest, as the case may be, to an ascendant or descendant in the direct line, or between spouses, between the father or mother of an individual and the spouse of the individual, or between the spouse of an individual and the son or daughter of the individual;

(b) by a person who was a non-resident person at the time of the transfer and who carried on on 11 May 1976 and has carried on without interruption from such date till the date of the deemed transfer, a farming business in Québec having an agricultural production for market of an annual value of \$20,000 or more, provided the land is used immediately after the deemed transfer for the carrying on of such business; or

(c) by reason of a transfer of shares, interest or participation, as the case may be, devolved under the will or other act or testamentary disposition of the deceased or under the deceased's intestate succession.

History: 1976, c. 23, s. 45; 1983, c. 49, s. 2; 1994, c. 22, s. 22; 1995, c. 1, s. 4; 1997, c. 3, s. 6.

**CHAPTER VI
FINAL PROVISIONS**

Written agreement made before 12 May 1976.

46. There shall be an exemption from duties in the case where it is established, to the satisfaction of the Minister, that a written agreement existed between the transferor and the transferee before 12 May 1976 in relation with a transfer, except if such transfer is not made within a reasonable time after 11 May 1976.

Requirements.

The application for registration of a transfer contemplated in section 17 or the statement contemplated in section 27 must mention the agreement, which must be annexed to the application or to the statement.

History: 1976, c. 23, s. 46; 1994, c. 22, s. 23.

Powers of Government regarding regulations.

47. The Government may make regulations to:

(a) require the inclusion of certain particulars in the deeds, statements, notices or other documents contemplated by this Act;

(b) establish rules for the disclosure of the consideration furnished for a transfer and of the market value of any property;

(c) facilitate the collection of the duties and appoint persons, other than registrars, to collect the duties;

(d) establish the procedure for refunding duties, deferring payment and granting exemptions;

(e) generally prescribe the measures required for the application of this Act.

History: 1976, c. 23, s. 47; 1994, c. 22, s. 24.

Coming into force of a regulation.

48. A regulation made under this Act shall come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date fixed therein; it may also, once published and if it so provides, apply to a period prior to its publication but not prior to the current year.

History: 1976, c. 23, s. 48; 1997, c. 3, s. 5.

Powers of Government to ratify what has been done between 12 May 1976 and 31 August 1976.

49. The Government may make regulations to determine the form and content of deeds and statements, the mode of payment of the duties and the procedure relating to deferred payments or exemptions respecting deeds of transfer made after 11 May 1976 and before 1 September 1976.

Effect.

Such regulations shall have effect notwithstanding any contrary provision of this Act; they may be retroactive but only to ratify what has been done.

History: 1976, c. 23, s. 49.

Application ceases.

49.1. This Act ceases to apply in respect of transfers of land situated in Québec made after 9 May 1996.

History: 1997, c. 14, s. 3.

Application of Act.

50. The Minister of Revenue shall have charge of the application of this Act.

History: 1976, c. 23, s. 50.

51. (*This section ceased to have effect on 17 April 1987*).

History: 1982, c. 21, s. 1; U.K., 1982, c. 11, Sch. B, Part I, s. 33.

REPEAL SCHEDULE

In accordance with section 17 of the Act respecting the consolidation of the statutes (chapter R-3), chapter 23 of the statutes of 1976, in force on 31 December 1977, is repealed, except section 51, effective from the coming into force of chapter D-17 of the Revised Statutes.

UPDATES

Bill 38 - 1992, c. 57; O.C. 712-93.

Bill 15 - 1994, c. 22.

Bill 38 - 1995, c. 1;
Bill 67 - 1995, c. 33;
Bill 108 - 1995, c. 63.

Bill 23 - 1996, c. 26; O.C. 739-97.

Bill 42 - 1997, c. 3;
Bill 81 - 1997, c. 14.

Bill 115 - 2000, c. 42; O.C. 1066-2001.

Bill 107 - 2010, c. 31.

Bill 141 - 2018, c. 23.