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Tax Alert – Canada

New Quebec corporate transparency rules

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

The 2020-21 Quebec budget tabled on 10 March 2020 introduced new rules and procedures regarding business registration to increase corporate transparency in Quebec.¹ These measures are expected to be implemented one year after the implementing bill is given Royal Assent, to give businesses time to adapt.

The budget documents state that an implementing bill will be tabled “in the coming months.”

These rules will allow the public more access to information on individuals listed in the Quebec enterprise register.

Background - the Quebec enterprise register

Quebec maintains a business registry (the REQ) that is freely accessible to the public via a web portal.

Generally, all businesses constituted or operating in Quebec are required to register and provide information on their places of business, as well as all the names under which they conduct business.

¹ See [EY Tax Alert 2020 No. 10](#)

In addition and among other things, partnerships are required to disclose their members and corporations are required to disclose their directors, officers and a minimum of three shareholders² (unless there are fewer), as well as whether a unanimous shareholders' agreement restricting or withdrawing the directors' powers applies to the corporation. In general, individuals must disclose the address of their domicile, although many choose to supply their office address instead.

Searches for individuals and improvement of information quality

Currently, only investigative bodies have the ability to search the REQ by the name or address of an individual unless they have registered voluntarily under their own name, subject to certain exceptions.³

Consequently, the public has no current ability to directly search for whether an individual is registered as a shareholder or director of a corporation or a member of a partnership. However, Quebec proposes to allow the public to search the REQ by the first name, family name or address of an individual.

In addition, Quebec intends to introduce verification mechanisms to enforce quality standards on the information contained in the REQ and impose measures to penalize declaration of inaccurate information.

Beneficial ownership of a business

One of the new corporate transparency measures announced by Quebec will require businesses to disclose the identity of the individuals who are their ultimate beneficial owners.⁴

To determine who is a beneficial owner of a business, Quebec intends to harmonize its proposed definition of beneficial owner with the federal definition of "individual with significant control" (ISC) under the *Canada Business Corporations Act* (CBCA), as CBCA corporations have similarly been required to keep a register of their ISCs since 2019 (see [EY Tax Alert 2019 No. 29](#)).

Accordingly, for corporations, an individual is a beneficial owner if they, *inter alia*, hold directly or indirectly 25% of the voting shares of a corporation, whether measured by quantum or fair market value, or have de facto control over the corporation by any other means. This means an individual can be a beneficial owner even if the shares are held or control is exercised via the intermediary of another corporation controlled by the individual.

In a manner similar to the federal measures, the budget documents refer to situations where individuals "hold jointly a proportion of shares or exercise control" together. Although more guidance is required, this appears to refer to non-arm's-length individuals acting together, a

² Per subsection 35(5) of the *Act respecting the legal publicity of enterprises* (CQLR, c. P-44.1), it is the three shareholders controlling the greatest number of votes, in order of importance.

³ Subsection 21(1) of the *Act respecting the legal publicity of enterprises* (CQLR, c. P-44.1) specifically exempts natural persons (individuals) who operate a business under a name that includes their first and last name from REQ registration. However, this exemption does not apply to individuals operating a tobacco retail outlet or a tanning salon.

⁴ Note that the requirement to transmit information on beneficial owners to the REQ will not apply to publicly traded legal persons and legal persons established in the public interest.

concept similar to that under the definition of “joint ownership or control” in subsection 2.1(2) of the CBCA, which effectively deems two or more individuals who jointly exercise significant control to be ISCs, even if individually they would not be ISCs. Although the application of the CBCA provision has not been tested in court, it is likely to be a factual test that will apply in analyzing the closeness of the relationship between the individuals, and it will be interesting to see how the Quebec legislation will address this question.

These rules will also apply to partnerships and trusts with adaptations as required (*mutatis mutandis*). For example, where ownership or control is ultimately through a trust, the names of the settlor, the trustee and the beneficiaries of the trust will have to be disclosed.

Beneficial owners will have to provide the REQ with their full name, month and year of birth, residential address and address for service, and the type and percentage of control held.

Restricted access to the public

The public will have access to this information with some qualifications. For example, the proposals allow individuals to have the REQ indicate a mailing address instead of their domicile in some circumstances, and the REQ will not publish information in respect of minors who are beneficiaries of a trust. The REQ will also maintain the right to prevent consultation of personal information if it poses “a serious threat to the safety” of the beneficial owner.

Learn more

For more information, please contact your EY or EY Law advisor or one of the following professionals:

Michael Citrome

+1 514 879 6893 | michael.citrome@ca.ey.com

Marie-Claude Marcil

+1 514 879 8208 | marie-claude.marcil@ca.ey.com

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