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Canadian tax alert

Quebec initiatives regarding tax avoidance

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On November 10, 2017, the Quebec government released two documents - *Tax Havens: Tax Action Fairness Plan* and Information Bulletin 2017-10, *Measures Announced in the Tax Fairness Action Plan*.

These two documents and the underlying initiatives are relevant to many enterprises that carry on business in Quebec from the perspective of income tax law, and the broader impact of potential prohibition from doing business with the Quebec government.

Contacts:

Fatima Laher
Tax Clients & Industry Leader
Tel: 415-601-6570

Albert Baker
National Tax Policy Leader
Tel: 416-643-8753

Eastern Region
Tony Maddalena
Tel: 905-315-5734

Quebec
Philippe Bélair
Tel: 514-393-7045

Tax Havens: Tax Action Fairness Plan

Under the *Tax Havens Tax Action Fairness Plan*, the Quebec government has announced and implemented a set of measures and initiatives "aimed at improving the collection of tax revenue". The government stated:

- *Those measures address the phenomenon of tax havens and their use as a way for both corporations and individuals to avoid income tax.*
- *The measures are also designed to adapt the fight against tax havens and tax evasion to the development of digital transactions, ensuring that the Québec government can collect all the revenue it is owed through sales tax.*

This document is 256 pages long and describes numerous other expected initiatives which are beyond the scope of this tax alert.

Information Bulletin 2017-10 - changes to the Quebec GAAR legislation

In Information Bulletin 2017-10, the government stated that:

> *The tax legislation will be amended to:*
>
> - *raise the existing penalty with respect to a GAAR-based assessment from 25% to 50%;*
> - *raise the existing penalty for the promoter of a transaction or series of transactions in respect of which a GAAR-based assessment is issued from 12.5% of the fees paid to the promoter to 100% of these fees;*
> - *suspend the prescription period for issuing a reassessment, where the reassessment is issued in respect of a taxpayer that is the subject of a formal demand concerning unnamed persons and the assessment is GAAR-based*...

Potential prohibition from doing business with the Quebec government tied to the application of the GAAR

The following comments by the government in *Tax Havens: Tax Action Fairness Plan* indicate that it intends to block taxpayers and their advisors from doing business with the government in situations where taxpayers are subject to a GAAR assessment that is ultimately sustained.

> *The government will incorporate new exclusion criteria regarding the … authorization to enter into contracts.*
>
> *Thus, briefly, a particular taxpayer having carried out a transaction or series of transactions in respect of which a final assessment based on the general anti-avoidance rule (GAAR) is issued will not be able to obtain authorization … to enter into public contracts….*
>
> *This will also be the case for a partnership in respect of one of the members of which such an assessment is issued.*

Toronto
Brian Brophy

Western Region
Markus Navikenas
Tel: 403-267-1859

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> *Likewise, a promoter of a transaction or series of transactions having led to the issue of a final, GAAR-based assessment further to which a penalty is imposed on the promoter will not be able to obtain authorization … to enter into public contracts.*

These initiatives of the Quebec government are very broad, and will introduce risk and uncertainty for taxpayers and tax advisors who carry on business in Quebec. One of the most sensitive aspects is that a GAAR assessment that is sustained could cause a business to be prohibited from doing business with the Quebec government; there is no indication of a de minimis exception, or a link to any particular aspect of the GAAR.

Taxpayers and tax advisors will be required to take these initiatives into account in managing their tax risks and corporate reputational issues, particularly where Revenue Quebec seeks to apply the GAAR to a transaction since the consequences may be broader than the technical tax matter at issue.

Deloitte LLP
Bay Adelaide Centre, East Tower
8 Adelaide Street West, Suite 200
Toronto ON M5H 0A9
Canada