

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 80

**An Act to amend the Succession Duty Act and
to again amend the Taxation Act**

First reading
Second reading
Third reading

M. MICHEL CLAIR
Ministre du revenu



EXPLANATORY NOTES

The object of this bill is to follow up a policy statement of the Finance Minister.

The bill contains amendments to the Succession Duty Act to clarify the application of certain rules concerning the deemed transmission of property by reason of death and to establish the market value, at the time of the death of the donor, of property given within three years prior to the death, if the property was alienated by the donee in favour of a person with whom he was dealing at arm's length.

It also contains amendments designed to exempt certain bodies from the payment of duties when the usufructuary or user of the property is the consort of the deceased person and to introduce an exemption of \$75 000 in favour of the consort if he is not otherwise exempted from the payment of duties on the property transmitted to him and in favour of the father or mother of the deceased person or of his consort.

The bill contains other amendments to the period for prescription respecting an assessment and limits the application of the Succession Duty Act to trusts and substitutions created after 18 April 1978.

Finally, it contains certain sections providing for the repeal of the provisions of the Taxation Act which allow the levying of duties on gifts from the distribution of the capital of a trust.

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to again amend the Taxation Act

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

1. Section 8 of the Succession Duty Act (1978, c. 37) is replaced by the following section:

“8. Where the deceased has disposed of property by a deed which has taken effect more than three years prior to his death for a consideration then smaller than its market value and, prior to these three years, he had not absolutely divested himself of his right of ownership in the entirety of the said property or of any property substituted therefor, of his right to prescribe the utilisation or destination thereof or of his right to receive any consideration whatever therefor in lieu of any revenue that might arise therefrom, such property or any property substituted therefor is deemed transmitted owing to the death of the deceased but only in such proportion of its market value at the time of death as is equal to that existing between the excess of the market value at the time of disposition over the consideration then received and the market value of the property at that time.”

2. Section 10 of the said act is replaced by the following section:

“10. Where a person has disposed of a property gratuitously and has not, within three years prior to his death, absolutely divested himself of his right of ownership in the entirety of the said property or of any property substituted therefor, of his right to prescribe the utilization or destination thereof or of his right to receive any consideration whatever therefor in lieu of any rev-

enue that might arise therefrom, such property is deemed to be transmitted owing to the death of such person.”

3. Section 15 of the said act is replaced by the following section:

“**15.** Every property situated outside Québec and transmitted owing to or upon the death of a person resident or domiciled in Québec to a corporation not resident in Québec is deemed transmitted owing to the death of that person to any shareholder of the corporation who is resident in Québec, in proportion to his direct equity in the corporation represented by the ratio between the number of shares directly or indirectly held by him in the capital stock of the corporation and the total number of issued shares of the capital stock of the corporation; any such property so transmitted to a corporation not resident in Québec is deemed, as the case may be, transmitted to any such shareholder of a corporation that directly or indirectly controls the corporation to which the property is so transmitted, in proportion to his indirect equity in the corporation, represented by the percentage then obtained when that shareholder’s direct equity percentage in any corporation is multiplied by that corporation’s direct equity percentage in the corporation to which the property is transmitted.

The same rule applies to a debt situated outside Québec receivable by such person from a corporation not resident in Québec at the time the cancellation of such debt occurs owing to or upon the death of such person.”

4. Section 16 of the said act is amended by adding the following paragraph:

“When the property is contemplated in paragraph *d* of section 7 and has, prior to the death, been the object of an alienation between persons dealing at arm’s length within the meaning of the Taxation Act (R.S.Q., c. I-3), the market value of that property is then equal to the proceeds of its alienation.”

5. Section 23 of the said act is replaced by the following section:

“**23.** Any public body established in Canada for cultural purposes, any charitable organization or Canadian amateur athletic association prescribed by regulation and any Canadian municipality or urban community, designated in this section by the word “body”, to which property is transmitted in absolute ownership owing to death, is exempt from the payment of duties, subject to section 5.

However, this exemption is terminated as soon as the property ceases to be used by the body for the purposes for which it was established, and that body must then pay the duties that would otherwise have been payable by it on this property owing to such death.

Notwithstanding the first paragraph, a body is exempt from the payment of duties in respect of a property if the usufructuary or user of the property is the consort of the deceased person.”

6. Section 26 of the said act is replaced by the following section:

“**26.** Subject to section 5, where the beneficiary is the consort of the deceased, he is exempt from the payment of duties on any property transmitted to him in absolute ownership owing to death except, however, any property in trust which does not entitle the consort to receive, for his lifetime, all the revenues from the trust and receive or otherwise obtain, to the exclusion of any other person, the enjoyment of the revenue or capital of the trust.

If the consort of the deceased is not exempt from the payment of duties in respect of certain property by virtue of the first paragraph, he may deduct in computing the taxable value of the aggregate of such property transmitted to him owing to death, an amount not exceeding \$75 000.”

7. The said act is amended by inserting, after section 26, the following section:

“**26.1** If the beneficiary is the father or the mother of the deceased or of his consort, he may deduct in computing the taxable value of the property transmitted to him owing to death, an amount not exceeding \$75 000.”

8. Section 45 of the said act is amended by replacing the third paragraph by the following paragraph:

“Interest at the rate fixed under section 28 of the Act respecting the Ministère du revenu (R.S.Q., c. M-31) must be paid on any instalment so paid for the period extending from the date on which the duties would otherwise have been payable until the day of payment.”

9. Section 47 of the said act is replaced by the following section:

“**47.** Notwithstanding section 95 of the Act respecting the Ministère du revenu, the Minister may issue a notice of assess-

ment or reassessment until the expiry of two years following the time he becomes aware of any information relating to any property or debt, not included in the declaration contemplated in section 50 and required by this act, if that time is subsequent to the issuance of a first notice of assessment or following the period of seven years provided for in sections 37 and 39.”

10. Section 74 of the said act is amended by replacing the second paragraph by the following paragraph:

“Notwithstanding the first paragraph, section 6 does not apply to the beneficiary of a trust or of a substitution created before 19 April 1978 to whom property is transmitted after 18 April 1978.”

11. Section 897*b* of the Taxation Act, enacted by section 77 of chapter 37 of the statutes of 1978 and amended by section 31 of chapter 38 of the statutes of 1979, is repealed.

12. Section 897*c* of the said act, enacted by section 77 of chapter 37 of the statutes of 1978, is repealed.

13. Sections 897*d* and 897*e* of the said act, enacted by section 32 of chapter 38 of the statutes of 1979, are repealed.

14. Sections 3, 4, 5, 7, 9 and 10 apply from 19 April 1978.

15. Sections 11 and 12 apply from 22 December 1978.

16. Section 13 applies from 31 May 1979.

17. Sections 1, 2 and 6 apply from (*insert here the date of the tabling of Bill 80*).

18. This act comes into force on the day of its sanction.