



**LE PROTECTEUR DU CITOYEN**

Assemblée nationale  
Québec

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## **Report by the Québec Ombudsman**

So that taxpayers' rights are upheld in payment arrangement proposals with Revenu Québec

Québec City, February 27, 2020

# Summary

## Background

Revenu Québec may enter into transactions (settlements) with taxpayers in order to resolve disputes between them and thereby avoid court involvement. In exchange, the people who agree to a settlement must waive all recourse. One of the goals of the Québec Ombudsman's intervention was to ensure that taxpayers' rights are upheld throughout the administrative process leading to the signature of such an agreement.

## Process leading to transactions

Québec's tax system is based on the principle of self-assessment. Every taxpayer must therefore, within legally prescribed deadlines, declare and remit to Revenu Québec payable income tax and collected amounts. It is up to Revenu Québec to examine taxpayers' fiscal situation, then determine, by means of a notice of assessment, the amounts to be received or paid, as well as any interest and penalties. To ensure the accuracy of the elements declared, Revenu Québec may audit files and, depending on its findings, issue new notices of assessment.

In cases in which taxpayers disagree with the new assessment, they may avail themselves of the objection procedure and apply for review of their file. If disagreement persists after the review, they may appeal the decision before a tribunal.

At any time during the process, Revenu Québec or the taxpayer may propose a transaction in order to avoid bringing the case to court. If the negotiations lead to an agreement, a new notice of assessment is issued to reflect the terms. The taxpayer must then waive, in writing, any possibility of appeal.

## The Québec Ombudsman's findings

A number of findings emerged from the investigation by the Québec Ombudsman concerning the handling of files in the context of transactions between Revenu Québec and taxpayers.

### *Circumstances warranting a transaction*

The Québec Ombudsman found that the reference documents specifying the circumstances that may give rise to transactions are such that transactions may perversely compensate for significant flaws in Revenu Québec's handling of a file, for example, lack of or insufficient proof when, in similar situations, the assessment should not have been made or upheld. Such circumstances surrounding transactions violate the principles of impartiality and fairness incumbent on Revenu Québec pursuant to the *Act respecting administrative justice* and the *Charter of Taxpayers' and Mandataries' Rights*. Furthermore, the investigation showed that staff members' interpretation of the circumstances that warrant transactions varies due to lack of clarity about them, even though decision-making must be based on file analysis that is rigorous and properly circumscribed.

### *Free and informed consent*

As with any other kind of agreement or contract, free and informed consent by the parties is crucial. This principle assumes that taxpayers who propose or are proposed a transaction are privy to all the facts surrounding the transaction and understand its consequences. They must

have enough time to decide whether or not to enter into the agreement in full knowledge of the considerations entailed.

According to the information obtained by Québec Ombudsman, certain elements may compromise the free and informed nature of consent, in particular:

- ▶ Explanations about fiscal consequences are at the discretion of the agents responsible for the file. Some agents consider that the onus is on taxpayers to inquire about the consequences of the transaction, while others argue that the consequences are explained in the documents signed by both parties.
- ▶ The information provided does not specify that taxpayers may owe other amounts which are not covered by the terms of the agreement.
- ▶ The question of waiving all recourse is not systematically broached.
- ▶ There is no procedure or work instruction that addresses the question of the consent required and the rules of procedural fairness that Revenu Québec must follow.
- ▶ Revenu Québec has not established means for ensuring that taxpayers' consent is free and informed.

Considering Revenu Québec's privileged position in relation to taxpayers due, among other things, to its familiarity with tax law and the fact that it can access all the information concerned, the Québec Ombudsman feels that the agency is duty-bound to inform and assist taxpayers throughout the process leading to transactions.

### **Contesting transactions**

When taxpayers enter into transactions, they waive any possibility of backtracking or contesting any element they deem unsatisfactory. If taxpayers wish to contest a transaction, their only recourse is to petition the Superior Court of Québec for cancellation. They are then required to prove that they were not legally capable of entering into the agreement or that they did not provide free and informed consent. This is a costly and complex legal undertaking.

### **Conclusion**

Transactions are mechanisms that make it possible to avoid judicial involvement in disputes between Revenu Québec and taxpayers. The Québec Ombudsman is in favour of this approach, provided that the process respects taxpayers' rights.

The rules that Revenu Québec must follow to enter into a valid transaction at the administrative stage are numerous and demanding. Revenu Québec must ensure that:

- ▶ The conditions particular to the transaction are respected;
- ▶ The taxpayers have given free and informed consent to it;
- ▶ The process is carried out in keeping with the duty to act fairly.

Further to the investigation it conducted, the Québec Ombudsman concluded that Revenu Québec had not instituted adequate means for ensuring that these rules are followed. It is crucial that Revenu Québec establish clear guidelines for the transaction process. These guidelines must be built into its policies, directives and other rules of a similar nature. Moreover, so that these rules are known and uniformly applied, Revenu Québec must provide work instructions and reference tools that fulfil these requirements and train the staff authorized to enter into transactions.

## Recommendations and follow-up

Given the results of its investigation and the findings stemming from it, the Québec Ombudsman made eight recommendations to Revenu Québec so that the transactions entered into respect taxpayers' rights.

- R1 Modify fiscal Directive CMO-2976 on transactions and any other work instructions concerning transactions to exclude the possibility of entering into them when:**
- ▶ The evidence on record is insufficient to support Revenu Québec's position;
  - ▶ The work required by Revenu Québec to constitute adequate evidence is disproportionate to the benefits it can derive from it;
  - ▶ Revenu Québec's single goal is to avoid an unfavourable decision.
- R-2 Establish clear guidelines to ensure that taxpayers' rights are upheld throughout the transaction process, which should provide that:**
- ▶ Taxpayers have at hand all relevant and useful information for making an informed decision;
  - ▶ Taxpayers understand this information;
  - ▶ Taxpayers have had the opportunity to complete their file and present their observations;
  - ▶ Taxpayers understand the consequences of the transaction and waiving of judicial recourse;
  - ▶ Taxpayers freely consent to the agreement in the absence of any constraints;
  - ▶ A decision can be rendered on the basis of a complete file if negotiations do not lead to an agreement;
  - ▶ The terms of the agreement comply with the law;
  - ▶ Concessions are reciprocal.
- R-3 Train all staff who are authorized to enter into transactions, including team leaders and managers.**
- R-4 Establish a uniform prior-approval procedure to ensure that files likely to involve transactions are complete and that they can qualify for such a proposal.**
- R-5 Establish an administrative review mechanism for transactions whose validity is questioned by taxpayers.**
- R-6 Establish a file system within each section authorized to enter into such agreements for identifying proposed or finalized transactions.**
- R-7 Produce guidelines within each section authorized to enter into such agreements for documenting proposed or finalized transactions.**
- R-8 Publish the relevant data concerning transactions that have been finalized at the administrative stage.**

The Québec Ombudsman asked Revenu Québec to, by April 30, 2020, send it an action plan and timeline for implementing its recommendations and, subsequently, a copy of the modifications that will be made to Directive CMO-2976 concerning transactions and to any other documents before they take effect.