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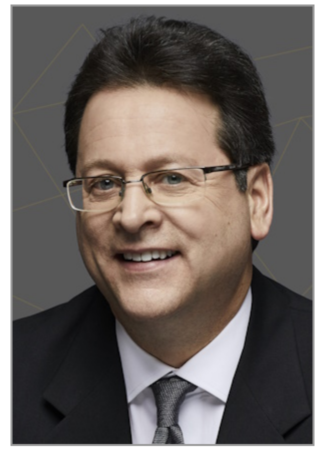
Long-term commercial leases in Quebec: Developments concerning land transfer duties

By **Daniel Frajman**



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Law360 Canada (June 30, 2026, 12:41 PM EDT) -- For those involved in commercial real estate in Quebec, and in particular in helping commercial landlords and tenants under long-term leases deal with Quebec's land transfer tax regime, and deal with Quebec's voluntary disclosure regime for missteps in land transfer tax compliance, there are some noteworthy developments in 2026, briefly referred to below.

Land transfer tax background

Quebec has for many years charged a land transfer tax (known essentially in the legislation as a land transfer duty, or LTD) when real estate (i.e., immovable property) is transferred and the transfer is registered at the public land registry office. The LTD is essentially calculated as a percentage of the greater of the sale price and the municipal value of the immovable, with graduated rates of LTD that increase as the price or value increases, and with the current LTD rate being very roughly two to three per cent, or two to four per cent in Montreal.

Over 10 years ago, the LTD regime underwent a major change, when effective as of an announcement made in the Quebec provincial budget of March 17, 2016 (the 2016 Announcement), transfers of immovable properties subject to LTD were greatly expanded to go beyond publicly registered transfers to also include any transfer; in other words, to also include unregistered off-title transfers as being subject to LTD. (Off-title transfers are often used for example as a way to easily transfer title when multiple owners of an immovable seek administrative efficiency, or in tax planning-driven transfers; off-title transfers are subject to the same income tax as on-title transfers.) This new regime for LTD was set out in detail in the 2016 Announcement, and it is notable that 10 years later, Revenu Québec (RQ) released an interpretation letter (number 25_071094_001 of Aug. 28, 2025, published on Jan. 29, 2026) (the 2026 Interpretation Letter) that refers to the LTD regime and in effect helps summarize the regime when read with the 2016 Announcement.

This summary of the LTD regime is briefly stated as follows: (i) LTDs, at the above-mentioned rate, are payable when the municipality where the property is located issues an invoice to the transferee of the immovable; (ii) the municipality will know of the transfer and issue the invoice because the province will send to the municipality data on registered deeds of transfer, and because of a new disclosure rule for unregistered transfers, namely a new rule in effect as of the 2016 Announcement requiring the transferee to send data on the unregistered transfer to the municipality in question no later than 90 days after the transfer; (iii) the long-standing exemptions to payment of LTD (the LTD Exemptions), mostly relating to a variety of related-party transactions such as transfers among family members (descendants, ascendants, spouses) or among 90 per cent shareholders or partners and the corporation or partnership in question, which have applied to registered transfers of immovable properties, also apply to unregistered transfers; (iv) apparently to motive transferees under unregistered transfers to comply with the obligation to report transfers to the municipality within the 90-day delay, the penalties for non-compliance (because of late or no disclosure of the unregistered transfer) are severe, being firstly that the amount of the LTD is increased to a "special duty" of 150 per cent of the original amount, plus interest (or, apparently at the discretion of RQ, to a special duty of as low as 125 per cent of the original amount, plus interest, if a voluntary disclosure of the non-compliance is made with RQ), and secondly that all LTD Exemptions that would otherwise apply are lost.

Therefore, to the extent that a reconfirmation was needed, it has been underlined to the commercial real estate community through the 2026 Interpretation Letter that the above-mentioned changes to LTDs made in the 2016 Announcement do exist and are found in the legislation subsequently enacted, principally at ss. 6 and 10.1 of the main LTD legislation, the *Act respecting duties on transfers of immovables* (Quebec) (the LTD Act), and at s. 1129.33.0.3 of the *Taxation Act* (Quebec).

Commercial leases

Long-term commercial leases become relevant in the LTD context because of the long-standing inclusion (pre-dating the 2016 Announcement) of so-called 40-year leases in the LTD Act's definition of a "transfer" of an immovable. That definition includes, among others, in addition to standard immovable transfers such as the transfer of "ownership," the establishment or transfer of a "contact of lease of a property, provided the period running from the date of transfer to the expiry of the term of the contact of lease, including any extension or renewal mentioned therein, exceeds 40 years" (a 40-Year Lease). 40-Year Leases are relatively common — for example, a successful small business or larger institutional-type business that has leased the same location for many years.

There is apparently no material case law dealing with how to deal with a 40-Year Lease in the LTD context. Some attorneys have, both before and after the 2016 Announcement, been faced with a commercial tenant client wanting to have their lease registered at the land register, for the sole reason for which such registration is permitted, namely to comply with the rule (at Article 1887 of the *Civil Code of Quebec*) that prevents a new owner of an immovable, if a lease has previously been registered, from terminating the lease subject to statutory notice. (The registration of a commercial lease is therefore done in a different context as compared to the standard registration of a transfer of ownership.) When the registry office has noticed that such leases being registered have a term, including past or future extensions or renewals, exceeding 40 years, they have required the tenant to declare in the registration an amount of LTD owing, but in a relatively low amount that logically was typically calculated (usually confirmed in advance through a telephone call to the land registry office) by multiplying the usual LTD for that immovable by a quotient equal to the relative area of the leased space compared to the area of the entire immovable.

The author has noticed an apparent change in approach in 2026 as regards 40-Year Leases. Firstly, telephone calls to the City of Montreal finance department to inquire as to how to calculate the LTD for a lease have received the response that one calculates the LTD for a lease by applying the tax rate to all past and future rent payable under the lease (which results in a significantly higher tax than the apparent past approach of looking at relative area of the leased space).

There appears to be no specific jurisprudential support for such a new approach, and there may be a need to point to potentially helpful case law in analogous situations, such as for emphyteutic leases (a kind of land lease that provides a real right or right *in rem* and usually an obligation to build to the tenant), where the case of *4053532 Canada Inc. v. Ville de Longueuil,* 2013 QCCA 1428 indicated that the LTD relating to an emphyteutic lease would have to be calculated in an equitable manner.

Secondly in 2026, the author has noticed that some commercial landlords are beginning to take the position, as a corollary of the 2016 Announcement that extends LTD to unregistered transfers of immovable properties that usually relates to ownership transfers, that LTD applies also to an unregistered commercial lease once that lease attains an age of 40 years through present or future renewals or extensions (notwithstanding that registration of a commercial lease arises in a different context compared to standard ownership transfers). Such landlords support their interest in taking a position on the issue by pointing to legislative provisions (for example, arguably s. 12 of LTD Act referring to a legal hypothec) that may provide the municipality with a secured right over the immovable to collect LTD, even though the primary debtor for payment of the LTD is the transferee (the commercial tenant) in question.

This puts the commercial tenant and landlord in a potentially difficult situation that poses questions with often no clear answer: Are unregistered 40-Year Leases subject to LTD? How does one calculate LTD for a lease? When does one conclude that a 40 Year-Lease exists: is it as soon as an original lease or an extension or renewal is signed that provides for the potential of a total present or future term of greater than 40 years? For unregistered leases, does one include or not the period prior to the 2016 Announcement when calculating the 40 years?

What is a new lease (of presumably less than 40 years) compared to an older 40-Year Lease? If a related party tenant is introduced in a new lease, does that risk anti-avoidance penalties under s. 23 of the LTD Act? (There is no material case law on that anti-avoidance provision.) Are commercial landlords justified in for example asking for indemnities in relation to possible LTD from their tenants under 40-Year Leases, and should liability under such indemnities be divided among the landlord and tenant?

Voluntary disclosure developments

On March 31, 2026, after much anticipation, RQ issued a new Interpretation Bulletin on voluntary disclosure of tax missteps, bulletin ADM.4/R9 (the 2026 Interpretation Bulletin). This bulletin in fact made no changes to the above-mentioned potential relief (to as low as 125 per cent of the LTD rather than 150 per cent for the special duty applicable on non-timely disclosure of an unregistered transfer of an immovable, as referred to in the 2016 Announcement).

In essence, the 2026 Interpretation Bulletin sets out an updated regime for disclosures concerning deficient income tax filings (with varying penalty and interest forgiveness basically depending upon whether the disclosure is unprompted or prompted, and also spontaneous, i.e., and broadly stated, not made in response to a government audit or investigation), but with no changes concerning LTD, and with late disclosure of an unregistered transfer of an immovable having to be spontaneous as in the past (see para. 22 of the 2026 Interpretation Bulletin).

Conclusion

Significant developments in 2026 in commercial real estate in Quebec include RQ’s above-mentioned 2026 Interpretation Letter and 2026 Interpretation Bulletin, as they relate to land transfer tax (land transfer duties) concerning long-term commercial leases of greater than 40 years including extensions or renewals, and the apparent current administrative position of the City of Montreal as regards the method for calculating land transfer duties for such leases. There are unanswered questions in this area, and this merits the attention of commercial landlords and tenants.

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