

## Legal update

### Private contracts: new requirement to hold a Revenu Québec certificate for construction subcontractors and contractors

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**February 2016**

#### **Construction, engineering and infrastructure**

On April 21, 2015, the Quebec government passed Bill 28, *An Act mainly to implement certain provisions of the Budget Speech of 4 June 2014 and return to a balanced budget in 2015-2016*.

One of the purposes of the bill is to fight tax evasion and undeclared work in the construction industry. One of the ways it attempts to achieve this is by amending the *Taxation Act* in order to require construction subcontractors<sup>1</sup> to hold a Revenu Québec certificate (a requirement that already existed for public construction contracts) under certain conditions. The measures set out in the bill will come into force on March 1, 2016.

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#### **Who is subject to the certification requirement?**

This requirement applies to subcontractors and to the contractors who use their services. Basically, subcontractors will now have to hold a valid Revenu Québec certificate confirming their compliance with the following conditions:

- they have filed the returns and reports required under Quebec's tax laws;
- they have no overdue amount payable to the minister of revenue of Quebec or, if they have an overdue amount payable, they have made payment arrangements on which they have not defaulted or recovery of the amount has been legally suspended.

This certificate will be required as of the moment the contractor and the subcontractor enter into a contract together for a value totalling \$25,000 (not including taxes) during either the current calendar year or a previous calendar year. Once this threshold is reached, the requirements under the legislation will remain valid for all subsequent contracts between the two companies, regardless of their value. Contracts entered into before March 1, 2016 will not be considered in the calculation.

The certificate issued by Revenu Québec will remain valid until the end of the month during which it is issued and for the following three months. The certificate expiry date will be indicated on the certificate and the parties will not have to repeat the prescribed procedure during the validity period if they enter into a new contract.

#### **Obligations of the co-contracting parties**

When the above conditions are met, the subcontractor will have to hold a valid Revenu Québec certificate and give a copy to the contractor in the period beginning on the date the bid is submitted and ending on the seventh day after the date construction work begins.

During that same period, the contractor will have to (1) obtain a copy of the certificate from its co-contracting party and (2) ensure that the certificate is valid, not later than on the seventh day after the date work begins. In addition, the contractor will have to verify the authenticity of the certificate with Revenu Québec<sup>2</sup> not later than on the tenth day after the date work begins.

The bill also stipulates that where the subcontractor is a consortium or a partnership, each member of the consortium or partnership will have to hold a valid Revenu Québec certificate in the period starting on the date the bid is submitted and ending on the seventh day after the date construction work begins.

Lastly, the lawmakers adopted an exception to exclude from the above obligations construction contracts entered into because of an emergency that threatens human safety and property.

## Penalties

A contractor or subcontractor that does not fulfill one of its principal obligations will incur a penalty of up to \$2,500 per contract. An additional penalty of up to \$5,000 may also be assessed if payments are made by the contractor or received by the subcontractor while the contractor or subcontractor is not in compliance with the applicable conditions. A contractor that does not meet its obligation to verify the authenticity of a certificate will incur a penalty of up to \$1,250. Before assessing the penalty, the minister will have to give the non-compliant person notice by registered mail.

If a person fails to comply with its obligations more than once during a period of three (3) years, the penalties will be doubled. However, the penal provisions will not come into force until September 1, 2016, to give companies time to adapt to the new obligations.

The bill also provides for much more severe penalties for, among others, any person that falsifies or alters a Revenu Quebec certificate or makes a false certificate.

## Conclusion

These new requirements demonstrate the Quebec government's intention to fight tax evasion in the construction industry. These measures could create administrative difficulties for the companies affected, particularly from the standpoint of the time constraints they impose. It is therefore in their interest to quickly adopt effective practices to avoid penalties.

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## Footnotes

1. Subcontractor means "a person that has an establishment in Québec and carries on a business in Québec in the course of which the person carries out construction work for which the person must hold a licence required under Chapter IV of the Building Act."
2. Such verification must be performed on the Revenu Québec website via the online Mandatory Verification of an *Attestation de Revenu Québec* service (in French only).

For further information, please contact one of the following lawyers:

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