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Bill 37 and Preventive Disclosure of Tax Planning: Why and How?

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Bill 37, now known as the *Act mainly to establish the Centre d'acquisitions gouvernementales and Infrastructures technologiques Québec*, SQ 2020 c. 2, was assented to on February 21, 2020.

In particular, this act makes significant changes to the *Act respecting contracting by public bodies*, CQLR c. C-65.1, and its regulations. Our partners Laurence Bich-Carrière (civil and commercial litigation) and Marie-France Dompierre (tax litigation) have already discussed the impact of these changes in a publication, Bill 37: What changes can be expected for Public Contracts? published on October 29, 2019.

New tax measures – Deadline to file a late preventive disclosure

From now on, a penalty on a final assessment under the general anti-avoidance rule against a company or a person related to the company in respect of an abusivetax avoidance transaction[1] will result in the company being added to the Register of Enterprises Ineligible for Public Contracts (the "REIN") for a period of **five years**. The promoter of such a transaction may also be added to the REIN if subject to the same penalty.

In order to avoid being added to the REIN, taxpayers who have engaged in tax planning that may be deemed aggressive by the tax authorities normally had **until April 21, 2020**, to make a late preventive disclosure to the Minister of Revenue[2] by filing the form *Mandatory or preventive disclosure of tax planning* (TP-1079.DI) and a letter[3] indicating that it is a late preventive disclosure.

However, due to the present crisis caused by the COVID-19 pandemic, Revenu Québec has postponed certain deadline to **June 1, 2020**, specifically including preventive and mandatory disclosures of aggressive tax planning.

The constitutionality of similar measures is currently being debated before Quebec courts.

Sections 1079.13.1 and 1079.13.2 of the *Taxation Act*, CQLR c. I-3.
Section 1079.8.7.1 of the *Taxation Act*, CQLR c. I-3.
Section 44 of the *Act mainly to establish the Centre d'acquisitions gouvernementales and Infrastructures technologiques Québec*, SQ 2020 c. 2.

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