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REM: who picks up the bill?

On May 1, 2018 the *By-law respecting transportation dues regarding the Réseau express métropolitain* (the “**By-law**”) came into force. The purpose of this By-law is to finance the construction of the Réseau express métropolitain (the “**REM**”) by subjecting certain work to transportation dues (the “**Dues**”) which shall be paid by the owner of a building subject to the work upon receipt of obligatory construction permits.¹

The By-law will be revoked on the earlier of the date on which the \$600,000,000 financing target will be reached or fifty years after the coming into force of the By-law.²

Subjected work

The Dues are levied on works following four cumulative characteristics: the type of work, the value of the work, the floor area affected by the work and the location of the building.

First, only certain types of work are subject to the Dues: the erection of a building, the rebuilding of a building³, the increase of the floor area of a building or the change of use of a building⁴, even partial.

In addition, only the work exceeding \$750,000 in value is subject to the payment of the Dues.⁵ This amount is adjusted by operation of law on January 1st of each year by a rate corresponding to the variation in the overall average Quebec consumer price index, without alcoholic beverages and tobacco products.⁶

Upon issuing the construction permit, the municipality establishes the value of the work subject to the Dues, which includes the excavation and backfilling costs and costs for the supply and installation of all material and equipment integrated into the building, including those relating to architecture, structure, mechanics and electricity. Costs relating to the supply and installation of devices used in connection with industrial production and taxes are however excluded.⁷

Furthermore, only work affecting a floor area greater than 186 square meters (approximately 2,002 square feet) is subject to the payment of the Dues.⁸ The floor area of work comprises the sum of each floor area covered by the work, which is measured from the outside surface of the external walls.⁹

To avoid fragmentation of the worksites in order to avert payment of the Dues, assessment of whether the thresholds are met must take into consideration the floor area and the value of the constructions, the works and the movables incorporated, previously authorized by municipal by-laws or by the By-law since its coming into force and in the 48 months since the last authorization, for a building owned by the same owner.¹⁰

Ultimately, the work is only subject to the Dues if the building is wholly or partly located in a zone that lends itself to coordination of urbanization and shared transportation services (a “**Zone**”).¹¹ The Zones correspond to a 1-kilometer circle extending outward from each station, with the exception of Édouard-Montpetit, Gare Centrale and McGill stations, for which the Zones correspond to a 500 meters radius circle.¹²

Rate and Assessment

The Dues are estimated by the municipality at the time the relevant permit is issued and are calculated according to the floor area covered by the work, at a rate of \$107.64 per square meter (approximately \$10 per square feet).¹³ The rate is adjusted by operation of law on January 1st of each year by a rate corresponding to the variation in the overall average Quebec consumer price index, without alcoholic beverages and tobacco products.¹⁴ The rate is however gradually imposed, i.e. at 50% until December 31, 2018, at 65% until December 31, 2019 and at 80% of the rate applicable until December 31, 2020.¹⁵

Powers of the municipality

From now on, municipalities will require permits to carry out work subject to the payment of the Dues, even if said work could, under municipal by-laws, be carried out without a permit. The issuance of this permit is conditional on the payment of the Dues, as estimated by the issuing municipality following the information provided in the permit application.¹⁶

In order to assess whether the work is subject to the Dues, the issuing municipality may require from any person applying for a permit, certain plans, documents and information, including the value and the surface of the work.¹⁷

If the municipality becomes aware that the location of the building, the floor area affected by the work or the value of the work is different from that established at the time the authorizing permit was issued, the Dues are adjusted, entailing a supplement or a reimbursement.¹⁸ The Dues collected are reimbursed if the permit to which they are related is cancelled.¹⁹

The Dues must be paid by the owner of the building to the municipality in whose territory a Zone is located. A person holding the right of ownership in an immovable, a person possessing an immovable as the emphyteuta or as the usufructuary, a person holding a right of superficies in an immovable, the occupant of an immovable belonging to a person that is not subject to the payment of the Dues²⁰ or a syndicate of co-owners are considered owners for the purpose of the By-law.²¹

Conclusion

Anyone who refuses or fails to pay the Dues is guilty of an offence and is liable to a fine equal to the sum of the amount of the Dues and an additional amount of up to \$10,000 in the case of a natural person and \$20,000 in all other cases.²²

It is therefore essential for businesses and individuals to assess the liability of future work to the Dues and to consider the payment of such fees when drafting and negotiating contracts. Parties wishing to contractually modify the provisions of the By-law as to the debtor of the Dues must do so in a clear manner in order to ensure that the contract is drafted in accordance with the parties' intention. We would be pleased to assist you in drafting an effective commercial contract corresponding to your needs.

5. *Act respecting the Autorité régionale de transport métropolitain*, CQLR, c.A-33.3, s. 97.2, al.1.
6. *Ibid*, s. 97.2, al.5.
7. *Supra* note 1, s. 5.
8. *Supra* note 5, s. 97.2, al.4.
9. *Supra* note 1, s. 6.
10. *Ibid*, s. 9.
11. *Ibid*, s. 3.
12. *Ibid*, s. 11.
13. *Ibid*, Schedule C.
14. *Ibid*, s. 3.
15. *Act respecting the Réseau électrique métropolitain*, CQLR, c. R-25.02, s. 85.
16. *Supra* note 5, s. 97.6, al.1.
17. *Ibid*, s. 97.8, al.2.
18. *Supra* note 1, s. 16.
19. *Supra* note 5, s. 97.6, al.3.
20. No transportation dues are payable by a public body, a childcare center, a non-profit body, a mandatory of the State or a community action body. *Supra* note 1, s. 7(5) and *Supra* note 5, s. 97.12.
21. *Supra* note 1, s. 7.
22. *Ibid*, s. 19.

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

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1. *By-law respecting transportation dues regarding the Réseau express métropolitain*, s. 1 and 2.
2. *Ibid*, s. 20.
3. Subject to an exception for floor area reconstruction following a loss that occurred in the preceding 24 months. *Ibid*, s. 4.
4. Constitutes a change of use, the passage, even partial, from one category to another, which are described in Schedule D of the By-law. *Ibid*.