

Sequential liability places great burden on shoulders of principal

Did you know that as a principal you can also be held liable for the social and/or fiscal debts of contractors or subcontractors?

Since the beginning of 2008, every principal has been responsible for the social and/or fiscal debts of contractors or subcontractors at the start of a project and upon payment of an invoice in the context of the building agreement.

In order to optimise this system, subsidiary joint and several liability, or 'sequential liability' was introduced for contractors and subcontractors at the beginning of 2012. If contractors or subcontractors fail to fulfil their obligations, the NSSO and/or the tax authorities can collect social security contributions and/or fiscal debts piecemeal higher in the supply chain.

The recently introduced programme law means that sequential liability has now been extended to include the principal. As a result, the principal is not only responsible for the debts of the main contractor, but also for those of the other contractors and subcontractors.

What does this mean in concrete terms?

A contractor who fails to include the necessary deductions on the invoices of a subcontractor with debts can in turn be liable for such debts.

Should this contractor fail to pay the notice of default due to liability within 30 days, the contractor will be notified of its obligation to withhold contributions and taxes¹. The debts of the subcontractor lower in the supply chain shall then be discharged through the transferred withholding of deductions.

Should this obligation to withhold contributions and taxes prove to be insufficient to pay the outstanding amounts, a contractor higher up the chain can be called upon to do so. In the event of all previous payments proving to be insufficient, then the commissioning party or principal² can also be called upon to pay the outstanding amounts.

Can you protect yourself contractually?

As a commissioning party, you are no longer responsible for the debts of your immediate contractor or subcontractor provided that there is a correct withholding on the invoices of your disputed co-contractor (35% social security and 15% fiscal contributions) and payment to the NSSO and tax authorities.

Would you like to find out more?

Contact our specialist at construction@vanbreda.be or call + 32 3 217 55 53.

- 1 You can find a tool at www.socialsecurity.be to determine whether a contractor falls under these regulations and whether you have to withhold the deductions. We advise you to print out the results of your search and save them with your invoices.
- 2 Individuals acting solely for private purposes do not fall under this obligation to withhold contributions and taxes.