

Netflix Tax in Quebec...

E-commerce: New QST Obligations for Non-resident Suppliers!

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Online Tax Strategies

EFFECTIVE JANUARY 1, 2019: CERTAIN NON-RESIDENTS OF QUEBEC IN THE E-COMMERCE SECTOR WILL BE REQUIRED TO REGISTER FOR QST

Quebec Finance Minister Carlos J. Leitão delivered his 2018-2019 Quebec budget speech on March 27, 2018. The new measures proposed include extending the obligation to register for and collect Quebec Sales Tax (“QST”) to certain foreign suppliers in the e-commerce sector.

Currently, there are no specific rules under the QST system for online sale transactions and, accordingly, the general rules apply. As a result, non-resident suppliers who only make e-commerce sales are not required to collect QST if they do not carry on a business in Quebec.

Generally, the new measures will require these non-residents to register for and collect QST on transactions with specified Quebec designated consumers, that is, recipients who usually reside in Quebec and are QST non-registrants. The concept has commonly been called the “Netflix tax”.

The new requirement will apply to non-resident suppliers, whether or not they are located in Canada. The new measures will also apply to suppliers of digital property and service distribution platforms. The proposed measures are summarized herein.

QST COLLECTION: CONCEPT BROADENED

Suppliers who are non-residents of Quebec, but located in Canada

Non-resident suppliers in Quebec who are located in Canada will generally be required to register for QST and collect and remit QST applicable to the sale of taxable property (tangible and intangible) and services made in Quebec to specified Quebec consumers.

Non-resident suppliers not located in Canada

Non-resident suppliers not located in Canada will generally be required to collect and remit QST applicable to the sale of taxable intangible property and services made in Quebec to specified Quebec consumers.

It should be noted that the rules do not apply to a supplier who is a non-resident of Canada making a supply of corporeal movable property.

Digital platforms that offer services

The measures extending the requirement to collect QST also apply to supplies by non-residents suppliers generated using third party digital property and service distribution platforms.

Specifically, the new measures will apply to suppliers administering digital platforms providing services to non-resident suppliers so they can make taxable supplies in Quebec of intangible property or other services to specified Quebec consumers. It should also be noted that the digital platform rules will not apply if the platform only provides for the supply of corporeal movable property by the foreign supplier (e.g. online application store).

Digital platform service providers will be required to register in order to collect and remit QST on supplies of property/services by the foreign provider on their platform.

Excluded suppliers

The rules regarding digital platforms do not apply to suppliers in the following situations:

- The platform only provides data transmission services;
- The platform only provides access to a payment system;
- The platform only provides an advertising service that informs customers of property or services offered by the non-resident supplier.

It can therefore be seen that these measures essentially apply to suppliers of digital platforms that can control the key components of transactions with Quebec consumers, such as billing, payment terms and condition and delivery methods.

PROOF OF A CONSUMER'S USUAL PLACE OF RESIDENCE

In determining whether or not QST must be collected, suppliers will need to retain the following information indicating the recipients' usual place of residence, to determine whether or not they are "specified Quebec consumers".

- Billing address;
- Individual's address;
- IP address of the device used or another geolocation method;
- Payment-related bank information or the billing address used by the bank;
- Information from a SIM (Subscriber Identity Module) card; or
- The place of the person's landline.

SEPARATE REGISTRATION SYSTEM

Suppliers subject to the new measures must register for and collect QST under a new "specified registration system" specifically for these suppliers.

A foreign supplier can register for the new system online and file "special returns for foreign suppliers". The reporting period will be established on the basis of calendar quarters.

A foreign supplier registered for the specified QST system is not considered to be registered for the general QST system.

The new specified system will be a separate system from the general QST system. Accordingly, the foreign suppliers' special returns will not enable the registrant under this system to claim QST paid on purchases in Quebec.

If the foreign supplier has expenses in Quebec in connection with a commercial activity carried on in Quebec, the foreign supplier may register for the general QST system. The foreign supplier will be required to file regular returns and can then claim any QST payable on its commercial activities.

QST collected in error by a registrant under the specified system

If a foreign registrant under the specified QST system collects QST in error from a Quebec registrant recipient, the Quebec registrant

recipient will not be entitled to an input tax refund (ITR). The tax collected in error will have to be refunded by the foreign supplier and will not be eligible for a refund from Revenu Quebec.

WHO IS REQUIRED TO REGISTER FOR THE SPECIFIED SYSTEM?

Suppliers subject to these measures are essentially non-resident businesses of Quebec that:

- Do not have a physical or significant presence in Quebec requiring them to register for the general QST system;
- **If they are non-residents of Canada:** make sales of taxable intangible property and services directly to specified Quebec consumers.
- **If they are non-residents of Quebec but are located in Canada:** make sales of taxable corporeal real property, intangible property or services directly to specified Quebec consumers;
- Achieve the **\$30,000 threshold**.

Threshold of \$30,000 in supplies

The \$30,000 threshold applies to the following suppliers, as the case may be:

- The total value of the consideration attributable to all taxable supplies made or deemed to be made in Quebec to consumers totals more than \$30,000 in the twelve months preceding a given month;
- Who administer a digital property and service distribution platform and the value of the consideration for all supplies made or deemed to be made in Quebec to consumers via their digital platform totals more than \$30,000.

Specific consideration in calculating the \$30,000 threshold for digital platforms

A foreign supplier who makes taxable supplies to Quebec consumers through a specified digital platform does not have to consider sales made using that platform in calculating the threshold. Because it is the supplier of the digital platform service that is required to collect the QST, the foreign supplier does not have to consider these sales in Quebec in its threshold.

However, if the foreign supplier makes other supplies to Quebec consumers, other than through the digital platform, the total value of the consideration paid for supplies through such other method enters into the calculation of the \$30,000 threshold.

WHEN DO THE MEASURES APPLY?

As of January 1, 2019, all foreign suppliers not resident of Canada subject to the new measures must register for the specified QST system and collect QST.

Suppliers that are non-residents of Quebec but located in Canada must apply the new rules as of September 1, 2019.

Penalties for failure to comply with the new measures

Foreign suppliers and suppliers of digital property and service digital platforms that do not comply with these new measures are liable to penalties.

However, Revenu Quebec provides for a 12-month period following the coming into force of the new rules for the foreign supplier to comply. After December 31, 2019, Revenu Quebec will issue penalties and assessments to foreign suppliers that are not registered for the new specified QST system.

CONCLUSION

Based on the preceding, it is very likely that the practical application of these new provisions will not be easy for any of the players.

Quebec registrant recipients and consumers, as well as foreign suppliers and digital service suppliers must all be vigilant.

Registrants must ensure they do not pay QST to foreign suppliers registered for the specified registration system and ensure that their foreign suppliers collecting QST are actually registered for the general QST system so they can claim any ITRs.

Consumers should also confirm whether the foreign supplier is registered for the specified or the general registration system before paying QST. Revenu Quebec has indicated that a separate specified QST registration verification system will be put into place.

Lastly, Revenu Quebec has stated it will use every means at its disposal and will draw inspiration from other jurisdictions with similar models to ensure that non-resident suppliers meet their tax obligations and to recover the amounts payable by these suppliers. Time will tell whether discussions and collaboration with various jurisdictions will make it possible to recover amounts due to the Quebec government by these foreign businesses.

Do not hesitate to contact your Raymond Chabot Grant Thornton advisor who can help you determine which measures apply to your situation and assist you with the steps needed to benefit from these measures.

For further information, visit our website at rcgt.com.