

E-Commerce in Canada by Non-Residents: New GST/HST Obligations on Sale of Digital Products and Services

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Online Tax Strategies

As of July 1, 2021, certain non-residents of Canada providing digital products (intangibles) and services to Canadian consumers could be required to register for Goods and Services Tax and Harmonized Sales Tax (GST/HST) purposes.¹

On November 30, 2020, the Deputy Prime Minister and Minister of Finance of Canada, the Honourable Chrystia Freeland, tabled the Fall Economic Statement 2020 which proposes to broaden the obligation to register for and collect GST/HST for certain foreign suppliers working in e-commerce.²

Currently, the GST/HST system provides that only one person making taxable supplies in Canada in connection with a commercial activity or business that the person operates is required to register for and collect the GST/HST. Additionally, a consumer or any person who acquires intangibles or taxable services in Canada outside the person's commercial activity is required to self-assess and pay applicable GST/HST directly to the Canada Revenue Agency (CRA).³ Currently, the GST/HST is not collected on the purchase of intangibles or services from non-resident vendors and is not paid by consumers who do not self-assess.

Generally, the new measures proposed will require that non-resident suppliers register for and collect GST/HST when they provide digital products or services to consumers in Canada. These new rules will also apply to digital platforms that facilitate third-party sales.

With the announcement of these new measures, the federal government has put in place similar rules to those that went into effect on January 1, 2019 for the purposes of Quebec Sales Taxes (QST), which are in line with market trends, as recommended by several international jurisdictions. Here is a brief overview of the proposed measures.

GST/HST COLLECTION: BROADER CONCEPT

Sales to non-registered persons

Non-resident suppliers in Canada will generally be required to collect the GST/HST on the supply of digital products or services made to "specified Canadian recipients".

While the primary intent is to target sales to Canadian consumers, it should be noted that a specified Canadian recipient is limited to a person whose ordinary place of residence is Canada and who has not provided the supplier or specified distribution platform operator with satisfactory proof of registration for GST/HST purposes. Accordingly, sales to consumers that are not registered for GST/HST purposes will be targeted by this obligation.

Sales via a digital platform

The broadening of GST/HST collection measures also applies to supplies made to non-resident suppliers via a "distribution platform" managed by a third party.

More specifically, the "distribution platform operator" is generally a person that:⁴

- Controls or sets the essential elements of the transaction between the supplier and the recipient;
- Is involved, directly or through arrangements with third parties, in collecting, receiving or charging the consideration for the supply and transmitting all or part of the consideration to the supplier.

¹ The GST and HST are two value added taxes that apply to supplies made in Canada. The rules are the same for both taxes and either of these taxes will apply based on the place of supply.

² This statement also proposes measures related to the supply of housing through housing platforms and the qualifying supply of tangible personal property in Canada

through a specified distribution platform. These rules are described in separate documents. Legislation must be adopted before any of **these measures come into force**.

³ Revenu Québec is responsible for collecting for residents of Quebec.

⁴ Other persons could eventually be added by regulation.

Excluded from the definition of digital platform are electronic interfaces whose sole purpose is to process payments or other prescribed platforms.⁵

Similar to other indirect tax plans, it is through a set of presumptions that supplies will generally be attributed to the platform operator for GST/HST collection purposes.

As applicable, it is generally these distribution platform operators who will have to register in order to collect and remit GST/HST on the sale of digital products or supplies of services to Canadian consumers from a non-resident supplier, as long as these are facilitated by the platform. This operator will then be deemed as not having rendered services to the non-resident supplier.

PROOF OF A CONSUMER'S USUAL PLACE OF RESIDENCE

In order to determine whether they need to collect the GST/HST, suppliers will have to determine whether the recipients are Canadian consumers. To this end, the following indicators, demonstrating the usual residence of the recipients, will have to be used to determine the place of consumption:⁶

- 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.

SEPARATE REGISTRATION SYSTEM

Suppliers subject to the new measures must register for and remit GST/HST collected by a Canadian consumer under a new simplified registration system specifically for these suppliers.

GST/HST registration and payments by non-resident suppliers will be made via an online portal.

Non-resident suppliers using the simplified registration system will not be able to claim the GST/HST paid on their purchases in Canada. If the non-resident supplier has expenses in Canada in connection with a commercial activity carried on in Quebec, the non-resident supplier may register for the general GST/HST system. The non-resident supplier will be required to file regular returns and can then claim any GST/HST payable on its commercial activities.

GST/HST collected in error by a registrant

If a corporation registered for GST/HST purposes provides its registration number to the non-resident supplier registered in the Simplified System and the non-resident supplier still charges the GST/HST to the corporation, the corporation will not be entitled to an input tax credit (ITC) and will not be able to claim a refund of tax paid in error from the tax authorities. The corporation will have to request a refund of the GST/HST paid in error directly to the non-resident supplier.

WHO IS REQUIRED TO REGISTER FOR THE SIMPLIFIED SYSTEM?

The suppliers affected by these measures will essentially include non-resident corporations of Canada that have \$30,000 or more in taxable supplies.

Threshold of \$30,000 in supplies

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

- A non-resident vendor whose total taxable supplies of digital products or services made to consumers in Canada exceed, or are expected to exceed, \$30,000 over a 12-month period. A non-resident vendor must not include in this calculation supplies that are facilitated by a distribution platform operator that is registered for the GST/HST and that is deemed to have made the supply.
- A non-resident distribution platform operator whose total taxable supplies of digital products or services made to consumers in Canada, including supplies by non-resident vendors to consumers in Canada who are facilitated by the operator, exceed, or are expected to exceed, \$30,000 over a 12-month period.

WHEN DO THE MEASURES APPLY?

The proposed new rules would apply to supplies of digital products or services to the extent that the consideration for the supply becomes due on or after July 1, 2021.

COMMENTS AND 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.

Recipients registered in Canada will also have to be vigilant to ensure that they do not pay GST/HST to these non-resident suppliers registered for the simplified registration system. If a non-resident supplier collects the GST/HST, they will have to make sure that they are truly registered for the regular GST/HST in order to allow for the recovery of ITCs, as applicable.

Non-resident suppliers making supplies of intangible personal property and services to unregistered persons and platform operators will be required to register and comply with their new obligations with respect to customers who are specified Canadian recipients. They will also be required to put in place a tracking system to obtain and retain proof of registration for their business clients who are not subject to the proposed measures and to avoid collecting GST/HST from them in order to limit errors in claiming refunds from their clients.

Non-resident suppliers will also have to review their control process and ensure to comply with the prescribed tax obligations for the purposes of other laws on provincial sales taxes. Quebec's plan is very similar to the federal plan and has been in effect since January 1, 2019. The provinces of British Columbia, Saskatchewan and Manitoba also have specific rules for foreign suppliers.

⁵ No regulations have been published to support the measures proposed in the Economic Statement.

⁶ Some exceptions to this general rule for determining the place of consumption based on the consumer's usual place of residence may apply.

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. Get in touch with one of our advisors today!

You can contact us for more information on this topic.

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