TaxNewsFlash Canada

Businesses Outside Quebec — Get Ready for New QST Rules

April 6, 2018
No. 2018-19

Businesses located outside of Quebec should prepare to meet new QST obligations in 2019. Many businesses outside of Quebec with no physical or significant presence in Quebec and not currently registered for QST purposes will be required to register and collect QST if they sell intangibles (e.g., downloads of digital music, software, movies, TV shows and games, cloud services) as well as services and certain goods, to certain Quebec customers. Under new measures announced in the Quebec 2018 budget, Canadian businesses outside of Quebec and businesses in foreign countries that sell taxable supplies in Quebec will be required to register and collect QST where they earn $30,000 a year in revenue from certain Quebec customers. Certain digital platforms will also be affected.

As a result of this proposed change, affected Canadian businesses outside of Quebec will be subject to a new mandatory registration program. Canadian businesses outside of Quebec, and businesses that are digital platforms that help these suppliers make taxable supplies of intangibles and services, will have to register and start collecting QST on supplies of services, intangibles and goods made to customers who reside in Quebec and who are not registered for QST purposes (i.e., “specified Quebec consumers”) as of September 1, 2019. Non-resident businesses located outside of Canada that sells services and intangibles to specified Quebec consumers, as well as digital platforms that help these suppliers make these types of supplies, will also have to register under the new mandatory registration program and start collecting QST as of January 1, 2019.

Although Quebec has not yet announced all the details of the upcoming rules, affected businesses should prepare to collect the appropriate information to meet their new QST obligations. Among other requirements, these businesses will have to determine which customers are not registered for QST purposes and whose usual place of residence is located in Quebec.

Background

In its 2018 provincial budget, Quebec proposed new QST rules for certain suppliers outside Quebec (i.e., both Canadian businesses located outside of Quebec and non-resident businesses located outside of Canada) that make taxable supplies to specified Quebec consumers, a term defined under the new QST rules. This change applies to supplies of intangibles (i.e., "incorporeal movable property") and services, and in some case to goods (i.e., "corporeal movable property"). As a result, suppliers outside Quebec will be required to register under a new mandatory QST registration system and to collect QST from specified Quebec consumers.

Under the current rules, a supplier outside Quebec that does not carry on business in Quebec is generally deemed to make supplies outside Quebec and, as such, does not have to register and collect QST (subject to certain conditions). However, consumers located in Quebec that acquire taxable goods and services from these suppliers are required to self-assess QST and remit these amounts to Revenu Quebec. These rules will be amended to reflect the upcoming new QST rules.

Quebec's proposed new QST rules are based on principles developed by the Organization for Economic Co-operation and Development (OECD). Some European regions already apply similar principles. Note that the federal government has not enacted similar rules under the federal GST/HST system. Also, it is unknown at this time if and how these new QST rules fit within the agreement entered into by the federal and provincial governments to keep the rules under the QST systems essentially harmonized with the rules under the GST/HST system.

For details of Quebec's 2018 budget, see *TaxNewsFlash-Canada* 2018-15, "Highlights of the 2018-2019 Quebec Budget".

What suppliers are affected?

The new QST rules affect suppliers outside Quebec that have no physical or significant presence in Quebec and where the total value of the consideration for taxable supplies these suppliers made in Quebec to certain consumers exceeds $30,000 each year.

Canadian businesses located outside of Quebec

Canadian businesses located outside of Quebec that are not registered for QST that sell taxable goods, intangibles or services to specified Quebec consumers in Quebec will have to register under a new mandatory registration system and collect QST effective September 1, 2019.

Non-resident businesses located outside of Canada

Similar requirements apply to non-resident businesses located outside of Canada that are not registered for QST that sell taxable intangibles or services to specified Quebec consumers. These businesses will also have to register under the new mandatory registration system and collect QST, effective January 1, 2019. Note that although the new QST rules may not require suppliers located outside of Canada that sell goods to specified Quebec consumers to register, Quebec has indicated that it intends to work with the federal government to improve the collection of QST on goods at the border.

Digital platforms

Suppliers outside Quebec are not the only entities that will be subject to the new mandatory registration. Digital property and services distribution platforms (i.e., digital platforms) will also be required to register if they control key elements of transactions between suppliers outside Quebec and specified Quebec consumers. This may affect platforms that control such transaction elements as billing, transaction terms and conditions, and delivery terms. However, Quebec has indicated that some digital platforms will not be required to register, if they:

- Supply only a transport service
- Provide only access to a payment system
- Provide only advertising services for suppliers outside Quebec and link customers to the supplier’s website.

While the $30,000 threshold also applies for digital platforms, its calculation is slightly different. For a digital platform that controls the key elements of transactions with specified Quebec consumers, the threshold will include the consideration for taxable supplies facilitated by the digital platform made in Quebec of suppliers outside Quebec. Quebec has also provided different rules to calculate the $30,000 threshold for suppliers outside Quebec that make taxable supplies through a digital platform, or through both a digital platform and other means.

The effective date of the new QST rules for digital platforms may vary based on whether the suppliers that use the digital platforms are located in Canada or outside Canada.

KPMG observations
As Quebec only provided general guidelines of the new mandatory registration system, some uncertainty remains.

Also, although Quebec notes that consumers will be able to verify a supplier's registration status under the new registration system, it is unclear whether they will be required to do so before completing a transaction with the supplier.

What do affected businesses have to do?

Register, collect and remit QST

Affected suppliers outside Quebec will be required to enroll in Quebec's new mandatory QST registration system and collect QST. Once registered, affected businesses will be required to file a QST return and remit QST collected each calendar quarter. Suppliers outside Quebec registered under the new mandatory registration system will be required to file a return and remit the QST collected within one month after the calendar quarter ends.

Some suppliers outside Quebec will be able to choose to enroll in the current general QST registration system rather than the new mandatory registration system, subject to certain conditions. However, Quebec notes that, in this case, the supplier will be required to also register for GST/HST.

KPMG observations
Quebec has not yet addressed issues such as the registration process and related documentation requirements, as well as whether Quebec will require any security.

Identify specified Quebec consumers

To determine whether QST must be collected, suppliers outside Quebec will have to determine whether any of its customers in Quebec meet the definition of specified Quebec consumers. To do so, the suppliers will have to determine the customer's "usual place of residence" and whether the customer is registered for QST purposes. As part of this determination, suppliers outside Quebec will be required to maintain two non-contradictory pieces of information related to each consumer's usual place of residence, such as the person's billing or personal address, a device's IP address or payment-related bank information.

Invoices and tax paid in error

Note that, under the new registration system, customers that are registered for QST and that pay QST in error to a supplier outside Quebec that is registered under the new registration system will not be entitled to claim an input tax refund (ITR) for that QST from Quebec. Instead, these customers will be required to request a refund of the tax paid in error from the supplier. Quebec adds that invoices issued by such a supplier will not meet the QST documentation requirement for ITRs. However, a specified Quebec consumer (i.e., a person who has it usual place of residence in Quebec and who is not registered for QST purposes) that pays QST in error to a supplier registered under the new registration system will be eligible to request a refund from the supplier or from Revenu Quebec.

KPMG observations
Under the proposed measures, suppliers outside Quebec registered under the new mandatory registration system cannot simply charge and collect QST from all their customers, regardless of whether they qualify as specified Quebec customers. Doing so would create issues for both the suppliers, who will have to refund the QST paid in error, and their customers, who will not be able to claim an ITR for QST paid in error to the supplier even if the supplies relate to their commercial activities. As noted previously, suppliers outside Quebec will have to carefully determine whether each of their customers is a specified Quebec customer.

Additional administrative requirements

Suppliers outside Quebec registered under the new mandatory registration system will be able to remit QST collected with the help of a new online service, which is expected to include a list of foreign exchange rates. Based on proposed changes, these suppliers may also be able to pay QST collected in a currency other than the Canadian dollar. Suppliers outside Quebec will also have to retain their books and records, as well as any supporting documents, for six years after the year to which they relate.

KPMG observations
The new mandatory registration system may create some confusion for businesses that do not have processes in place to recognize QST paid to suppliers outside Quebec registered under the new QST rules. Businesses will have to be vigilant and determine whether their suppliers are registered for QST under the new mandatory registration system or under the current general registration system.

Although the new rules should no longer require specified Quebec consumers to self-assess QST on supplies received from suppliers outside Quebec, these self-assessment rules will continue to apply to other customers in Quebec that purchase supplies from suppliers outside Quebec. For example, an entity who is registered for QST purposes may still have to self-assess QST on supplies purchased from non-resident suppliers if those supplies are not inputs into the entity's commercial activities. Also, depending on how the rules are drafted, this new regime could also create some challenges related to the self-assessment rules for certain entities (e.g., certain types of financial institutions).

The full extent of the effect of the new QST rules will be clearer once the draft legislation is available. For example, it is not yet known whether the introduction of the new QST rules will alter any of Quebec's current place of supply rules. Quebec may simply decide to introduce new rules to deem supplies made electronically to specified Quebec consumers to be QST taxable supplies.

In addition, while Quebec indicates that a business that registers under the new registration system will not be considered as a registrant under the current QST system, it does not specifically address whether the new registration system will affect zero-rated provisions. For example, it's unclear whether a supplier outside Quebec registered under the new registration system will still be able to benefit from zero-rated measures as a non-registered non-resident. Suppliers outside Quebec that voluntarily register under the general QST and GST/HST systems should also determine if they will lose any benefits from zero-rated provisions.

The new Quebec measures may be particularly challenging for U.S. retailers who, as a result of long-standing U.S. Supreme Court jurisprudence, are generally not required to collect sales taxes on behalf of states in the U.S. where they do not have a nexus. If a retailer in Montana is not legally required to collect California sales tax, it may seem unusual for such a retailer to be required to register and collect the taxes of a foreign jurisdiction like Quebec. It is possible that the extraterritorial application of the new QST rules could pose legal or enforcement issues.

We can help

KPMG can help you determine how the proposed QST changes in the 2018 Quebec budget may affect your business and determine how to prepare for those upcoming changes. We can also keep you abreast of the progress of these proposals as they make their way into law. We can assist you with your indirect tax compliance obligations, including the GST/HST and/or QST returns. We can also help identify areas where you may be able to manage certain tax costs and any elections that should be considered.
