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Canada

Non-Residents and E-Platforms — Upcoming GST Changes

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Non-residents and e-platforms must determine how GST/HST changes may affect their obligations. These significant GST/HST changes, which were proposed in Finance's 2020 Fall Economic Update on November 30, 2020, will require many operators of electronic platforms and non-resident vendors to register for, collect and remit GST/HST on their sales of digital products and services to Canadian customers, or goods supplied through fulfillment warehouses located in Canada. To prepare for these upcoming changes, which take effect July 1, 2021, vendors and operators should determine how their businesses will be affected and which processes and systems will have to be adjusted to comply with these new obligations.

Essentially, the Update proposes significant GST/HST changes related to three types of supplies:

- Sales of cross-border digital products and services
- Sales of goods through fulfillment warehouses
- Sales of short-term accommodation through digital platforms.

Finance is accepting comments on these proposals until February 1, 2021. Quebec has indicated that it is studying these GST/HST changes and will later announce whether it will harmonize the QST rules with these proposed GST/HST measures.

Background

In its 2020 Throne Speech, the government signalled its upcoming taxation priorities, including its intention to tax "digital giants". It was presumed, among other options, that

the government was referring to new rules that would apply GST/HST to digital services from foreign-based firms, often referred to by the media as a "Netflix" tax. Similarly, the government's election platform also promised to ensure that international digital corporations collect and remit sales tax on products consumed in Canada, in line with OECD standards and Canadian digital corporations. For details, see *TaxNewsFlash-Canada* 2020-73, "[Canada Extends Wage Subsidy and Signals Tax Plans](#)".

For other tax measures announced in Finance's 2020 Fall Economic Update, see *TaxNewsFlash-Canada* 2020-87, "[Highlights of the 2020 Federal Fall Economic Update](#)".

Sales of cross-border digital products and services

Non-resident vendors that sell digital products or services to Canadian customers, as well as distribution platform operators that facilitate such sales of products and services of third-party vendors through their platforms will be subject to new GST/HST rules.

Non-resident vendors and non-resident distribution platform operators that are not registered under the normal GST/HST registration rules and that meet the rolling registration threshold of \$30,000 over a 12-month period will be required to register for, collect and remit GST/HST on their qualifying taxable sales under a new simplified GST/HST registration and remittance system, notwithstanding that they may not have a presence or be considered to be "carrying on business" in Canada.

However, these vendors and platform operators may also choose to instead register under the normal GST/HST rules in order to claim input tax credits (ITCs) for GST/HST paid on their expenditures.

These GST/HST changes are proposed to apply to supplies of cross-border digital products and services for which consideration becomes due after June 30, 2021 or is paid after June 30, 2021 without having become due.

Sales to customers — Important considerations

Non-resident vendors and non-resident distribution platform operators that register under the new simplified GST/HST registration system and that sell digital products or services will generally have to collect GST/HST from Canadian customers that are not registered for GST/HST purposes. As a result, these vendors and platform operators must begin to collect GST registration information, and identify the recipient's residence in order to determine the applicable GST/HST rate. The Update provides details on how vendors and platform operators can make these determinations, but also advises that, in certain situations, the recipient's residence may not be an appropriate basis to determine the place of consumption of the supplies, such as where the services relate to a specific province that differs from the province of residence.

The proposals note that, where a vendor or platform operator registered under the simplified registration system charges GST/HST to a registered customer in error, that customer will not be able to claim an ITC or a rebate for such an amount. Instead, the customer will have to request a refund directly from the vendor or platform operator.

ITCs not available under new simplified registration system

Under the proposals, non-resident vendors and non-resident distribution platform operators registered under the new simplified GST/HST registration system will generally not be eligible to claim ITCs for GST/HST paid on their expenditures. However, as previously noted, vendors and platform operators may still be eligible to claim ITCs if they voluntarily register under the normal GST/HST rules. Note that vendors and platform operators that choose to register under the normal registration rules would be subject to all the normal GST/HST rules. For example, they would have to collect tax from all Canadian recipients, even those registered for GST/HST purposes.

KPMG observation

To help prepare for this change, non-resident vendors and non-resident distribution platform operators should review their operating costs and determine whether to register under the normal GST/HST registration rules or under the new simplified registration system. At this time, it is not clear how GST/HST registration numbers issued under the new simplified registration system will differ from the GST/HST registration numbers issued under the normal GST/HST registration rules. Businesses will have to develop processes to identify purchases from non-resident vendors and non-resident platform operators registered under the new simplified registration system to identify any GST/HST paid in error.

As a result of these proposals, Canadian distribution platform operators may also have additional GST/HST collection obligations. There are specific rules to determine who must collect and remit the tax under the proposals when both the operator and vendor for a particular transaction are registered. The obligation to collect the tax will be determined based on whether the operators and the vendors are registered under the simplified or normal registration rules.

Despite these proposed changes, the current GST/HST self-assessment rules will continue to apply to sales made to registered recipients. In general, registered recipients that purchase digital products and services from non-resident vendors or through distribution platforms registered under the new simplified GST/HST registration system will still have to self-assess if the products and services are not used exclusively in their commercial activities.

Sales of goods through fulfillment warehouses

The Update also proposes GST/HST changes for non-resident vendors and distribution platform operators (i.e., online marketplaces) that facilitate the sales of goods located in

Canadian fulfillment warehouses. These vendors and platform operators will have to register for, collect and remit GST/HST under the normal GST/HST rules (i.e., not the new simplified registration system), unless their total sales are below the \$30,000 registration threshold, which is calculated differently for vendors and platform operators. Fulfillment warehouses will also have new filing GST/HST obligations under these proposals.

These changes are proposed to apply for supplies made after June 30, 2021 and supplies made before July 2021 if all the consideration is payable after June 30, 2021.

Distribution platform operators

Distribution platform operators that are residents or non-residents of Canada will be subject to the new rules where they have non-registered vendors selling goods through their platforms and those goods are located in fulfillment warehouses in Canada, or are shipped from a location in Canada to consumers and businesses in Canada. A distribution platform operator would be subject to these proposed rules if the platform operator controls certain key elements of the transactions.

Under these proposals, platform service fees that distribution platform operators charge to non-registered vendors related to certain sales of goods will not be subject to GST/HST. This measure is intended to limit the extent to which GST/HST costs are embedded in the prices of these goods.

In addition, under the proposals, distribution platform operators that facilitate sales of qualifying goods through their platform will be required to file an annual information return with the CRA. This return must be filed for the calendar year no later than six months after the end of the calendar year.

KPMG observation

Note that distribution platform operators may also be considered to be fulfillment warehouses, and would therefore be subject to the rules below.

Non-resident vendors selling on their own

In general, non-resident vendors will also have to register under the normal GST/HST registration rules if they sell, on their own, goods that are located in fulfillment warehouses in Canada or that are shipped from Canada to the purchaser in Canada (i.e., sales not made through a distribution platform).

Fulfillment warehouses

The Update proposes that fulfillment warehouses will be required to notify the CRA that they are a fulfillment warehouse and maintain records on their non-resident clients and their stored goods.

ITCs

Since qualifying non-resident vendors and distribution platform operators that facilitate the sale of goods located in Canada (e.g., in a fulfillment warehouse) will be required to register under the normal GST/HST registration system, they will generally be eligible to claim ITCs for GST/HST paid on their expenditures. Under the proposals, distribution platform operators may also be eligible to claim ITCs for GST paid at the border on imported goods by non-registered vendors selling the goods through their platforms if they meet certain conditions.

KPMG observation

Based on these proposals, GST/HST should essentially be collected on all taxable sales of goods made through distribution platform operators that facilitate the sales of goods located in fulfillment warehouses in Canada.

Some non-resident vendors may make sales of goods located in Canada on their own, for example from their own websites, as well as through distribution platforms. In such cases, the non-resident vendor will have to register under the normal registration rules, and collect and remit GST/HST on its sales to Canadian purchasers made through its own website and through distribution platforms. It appears that platform operators will be required to collect and remit GST/HST on sales of such goods only if the non-resident vendors are not registered for GST/HST purposes under the normal GST/HST registration system.

Sales of short-term accommodation through digital platforms

The Update proposes to apply GST/HST to taxable short-term rental accommodation facilitated through accommodation platforms (i.e., digital platforms). Under this change, the accommodation platform operators (or the property owner if the owner is registered for GST/HST) will be required to collect and remit GST/HST on all short-term accommodation in Canada facilitated through digital accommodation platforms, except where operators facilitate \$30,000 or less of taxable supplies of short-term accommodation in Canada related to accommodation suppliers who are not registered. An accommodation platform operator would be subject to these proposed rules if that operator controls certain key elements of the transactions.

Accommodation platform operators that carry on business in Canada will still be subject to the current registration and other GST/HST rules, under these proposals. However, non-resident accommodation platform operators may be able to use the new simplified GST/HST registration system.

These proposals provide that the GST/HST rate (i.e., 5%, 13% or 15%) to apply to the short-term rental accommodation will essentially be based on the location of the property. Further, service fees charged by the accommodation platform operators to non-registered accommodation suppliers will not attract GST/HST, in order to limit the extent that

GST/HST costs are embedded in the price for the accommodation. However, service fees charged by the accommodation platform operators to guests will be subject to GST/HST at the location-based rate.

In addition to collecting and remitting GST/HST, accommodation platform operators will also be required to maintain records, and file an annual information return with the CRA. This return will be required to be filed for the calendar year no later than six months after the calendar year.

These GST/HST changes are proposed to apply to supplies of short-term accommodation in Canada for which consideration becomes due after June 30, 2021 or is paid after June 30, 2021 without having become due.

We can help

Your KPMG adviser can help you assess the effect of these proposals on your business and provide guidance on how this development might affect you in the future. For more details, contact your KPMG adviser.

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