

Ontario to Introduce VAT

by Angela Grant, Danny Cisterna,
and Heather Missouri

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COUNTRY DIGEST

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Ontario, in its March 26 provincial budget, announced its intention to proceed with a VAT.

Effective July 1, 2010, the provincial sales tax will be harmonized with the Canadian federal goods and services tax, resulting in a federally administered 13 percent tax, of which the Ontario portion will be 8 percent. Details, such as the transitional rules that will apply and the rules relating to place of supply, are expected to be released later in 2009.

This article will consider the implications of an Ontario harmonized sales tax (OHST) on nonresidents' processes, systems, importations, and dealings with customers in Ontario.

Nonresident GST Registrants

Sales

For nonresident GST registrants that sell goods and services to Ontario customers, the provincial component of the OHST is to be collected in the same manner as the GST, with some potential exceptions. Therefore, it will be important to ensure that the current tax codes used for GST purposes are correct.

Imports

For nonresident persons that act as the importer of record, one significant question is whether commercial importation of goods will be subject to the full 13 percent OHST at the time of importation. To the extent commercial imports are treated the same under the OHST as they are for the current harmonized sales tax (HST) in New Brunswick, Nova Scotia, and Newfoundland, commercial goods will be relieved from the provincial component of the OHST on import. However, it is not clear whether this rule will apply.

Security Requirements

Depending on whether commercial imports into Ontario will attract 5 percent GST or the 13 percent OHST and whether sales into Ontario will attract the full 13 percent OHST, nonresident GST registrants may have an effect on the amount of security required to post with the Canada Revenue Agency. This affects

nonresident GST registrants that do not have a permanent establishment in Canada that are required to post security in the amount of 50 percent of their annual absolute dollar net tax (that is, GST collected less GST recoverable). For example, if commercial imports continue to attract 5 percent GST while 13 percent tax is required to be collected on sales of the imported goods, the amount of security a nonresident GST registrant will be required to post likely will increase.

Point-of-Sale Rebate on Consumer Goods

As stated above, the provincial component of the OHST is to be collected in the same manner as the GST, with some potential exceptions. When nonresidents sell goods to end consumers, specific goods will be subject to special point-of-sale rebates for the 8 percent provincial component (books, children's clothing and footwear, children's car seats and booster seats, diapers and feminine hygiene products).

Tax-Inclusive Pricing

One major issue that has not been addressed is whether the federal government will pursue mandatory tax-inclusive pricing. The matter of tax-inclusive pricing was not to be reinitiated until the harmonized provinces together constitute at least 51 percent of the total population of all provinces. This is a sensitive issue with Canadian national retailers and could also presumably affect nonresidents selling to end consumers in Canada. It remains to be seen if the subject will be raised in this round of sales tax harmonization.

Nonregistered Nonresident Businesses

Nonregistered nonresident businesses that conduct business in Ontario must analyze the impact harmonization could have on the potential for additional nonrecoverable taxes to be paid on travel, meals, transient accommodation, and other costs incurred in Ontario. Also, for businesses that act as the importer of record for goods that are sold in Canada and depending on how importation of goods will be treated for OHST purposes, it will be important to understand how harmonization will affect any arrangements that exist to "flow through" the GST paid at the border to GST-registered customers in Canada. If commercial imports

will be taxed at 13 percent, there is much more tax at stake to be managed. There may be a need to rethink strategies concerning imported goods, including assessing the possibility of redefining delivery terms and having customers act as the importer. Finally, it will be important to understand the implications of harmonization on any "drop shipment" arrangements that may exist for nonresident businesses and their customers in Canada and what effect, if any, it will have on the issuance of GST drop shipment certificates.

Systems Issues and Other Considerations

Another issue for nonresidents to consider with the introduction of the OHST is the required systems

changes. Such changes will affect the accounts receivable and billing systems and potentially the accounts payable systems. It will be necessary to identify the priorities for information technology departments related to the specific system requirements for the OHST and ensure that the requisite testing and implementation procedures are executed. Also, these businesses will need to review the implications of harmonization on their marketing materials, including catalogues, flyers, coupons, and rebates. ◆

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