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Canadian indirect tax news

Sales tax registration – Provinces are going after non-residents

How tax authorities are adapting their sales tax legislations in response to the increase in non-resident vendors selling into a province

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Following the international phenomenon, various Canadian tax authorities have introduced or suggested the possibility of rules that may force non-resident vendors to register to collect sales tax. In light of the newest announcements from the governments of British Columbia and Saskatchewan, Deloitte has assembled the following roadmap to track these advances.

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1. Sales taxes in Canada

The Canadian sales tax landscape is unique and complex. In this respect, Canada has a federal Goods and Services Tax (GST), which is a value-added tax regime and applies in all provinces and territories across Canada on the taxable supply of goods, services and intangibles made in Canada.

As well, at times, a provincial sales tax can apply simultaneously to a supply that is subject to GST.

Certain provinces (Newfoundland-and-Labrador, New Brunswick, Nova Scotia, Ontario and Prince Edward Island) have harmonized with the federal regime having these rules apply for provincial purposes as well. The Canada Revenue Agency (CRA) is the tax authority that administers the GST and Harmonized Sales Tax (HST) regime.

The Québec Sales Tax (QST) is quasi harmonized with the federal GST, with a branch of the provincial government (Revenu Québec) managing the administration and enforcement of the QST regime which is substantially the same as the GST regime.

Finally, other provinces (British Columbia, Manitoba and Saskatchewan) have a Provincial Sales Tax (PST) regime, where tax is generally only collected on goods, software and enumerated services sold to end users (similar to the sales and use tax regimes in the US).

Alberta and the three Canadian territories do not have a provincial/territorial sales tax regime.

The above leads to an abundance of complexities including ever-changing rules in a variety of regimes, burdensome registration and compliance obligations, and varying taxability dependent on the regime in question.

2. GST/HST regime

In general, a non-resident of Canada is required to register for GST/HST purposes if it is "carrying on business" in Canada. It is a question of fact whether a person is carrying on business in Canada for GST/HST purposes. Various politicians have suggested that amendments may be coming to the GST/HST regime to require non-residents with activities in Canada to register. However, as of the date of publication, no amendments have been proposed to the *Excise Tax Act* (ETA) in this regard. Specifically, the ETA does not have the extended definition of "carrying on business" that is contained in the *Income Tax Act*. CRA released its Policy Statement P-051R2 – *Carrying on Business in Canada*, in order to assist non-residents in determining if the non-resident is carrying on business and thus required to register for GST/HST purposes and collect tax on taxable supplies made in Canada.

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3. QST regime

3.1. Non-resident vendors and marketplace facilitators

Historically, the QST non-resident registration criteria, similar to the GST/HST regime, generally required that a vendor be considered to be carrying on business in Quebec.

On June 12, 2018, the National Assembly of Quebec passed into law the measures announced in the 2018-2019 Budget, introducing a particular QST regime (hereafter the "new QST regime"). This new QST regime provides that suppliers, notably those engaging in e-commerce, which transact with customers in Quebec must register for the QST.

Effective on January 1, 2019, the new rules introduced registration requirements for non-residents of Quebec. In addition, new rules were introduced for non-residents of Quebec that are registered for GST/HST purposes, effective on September 1, 2019. According to the legislation, "specified suppliers" and operators of a "specified digital platform" may be required to register under the new QST regime and collect QST on taxable incorporeal movable property (i.e., intangible personal property (IPP)) and services supplied in Quebec, should the "specified threshold" exceed $30,000. In addition, "specified suppliers" registered for GST/HST may also be required to collect QST on taxable supplies of corporeal movable property (i.e., tangible personal property ("TPP")) in Quebec.

Further details can be found in the October 4, 2018 edition of our Canadian Indirect Tax News alert, found here.

3.2. Operators of digital accommodation platforms

As of January 1, 2020, an operator of a digital accommodation platform must register to collect the tax on lodging if:

- It operates a digital accommodation platform used to offer for rent one or more accommodation units located in one of the 21 Quebec tourism regions where the tax on lodging applies;
- It receives an amount as consideration for the rental of the units.

In this respect, the operator must collect and remit the tax on lodging, calculated on the consideration received, rather than the renter of the accommodation unit.

4. PST in British Columbia

While the registration requirements have historically required some sort of inventory held in the province, or solicitation and delivery into the province (dependent on the residency of the vendor), on February 18, 2020, the government announced proposed changes to the provincial sales tax laws. These proposed changes include expanding the PST registration requirements so that Canadian sellers of goods and Canadian and foreign sellers of software and telecommunication services will be required to register to collect PST if specified BC revenues exceed $10,000.

HOT OFF THE PRESS! On September 2, 2020, it was announced that the implementation of the above-proposed changes will be effective on April 1, 2021.

5. PST in Saskatchewan

5.1. Non-resident vendors

On May 30, 2018, Royal Assent was given to the amendments proposed by the government of Saskatchewan regarding the PST registration criteria for non-resident suppliers. Retroactive to April 1, 2017, businesses located outside Saskatchewan that make retail sales in the province, or lease taxable goods in the province, including tangible personal property and taxable services that are acquired for use or consumption in or relating to Saskatchewan, are required to become licensed to collect PST.

5.2. Marketplace facilitators, operators of online accommodation platforms and electronic distribution platforms

The government of Saskatchewan now requires certain *marketplace facilitators* and operators of *online accommodation platforms* to register and collect Saskatchewan PST. The changes, which were announced on June 15, 2020[1], became law on July 3, 2020 and have retroactive effect to January 1, 2020. The changes add a number of new definitions and concepts to the legislation.

5.2.1. Marketplace facilitator

A "marketplace facilitator" is defined as a person that:

- Makes or facilitates a marketplace for retail sales by marketplace sellers; and
- Directly or indirectly, collects payment from a consumer or user and remits payment to a marketplace seller.

A "marketplace seller" is a person that makes retail sales through any physical or electronic marketplace operated, owned or controlled by a marketplace facilitator.

Therefore, a person who meets the criteria in the definition of "market facilitator" is generally required to register and collect PST.

5.2.2. Online accommodation platforms

An "online accommodation platform" means an electronic marketplace that enables or facilitates transactions in relation to accommodation services located in Saskatchewan.

The operator of an online accommodation platform is a vendor, generally required to register and collect PST, if:

- It makes or facilitates the marketplace in which the provider of accommodation services in Saskatchewan and the user of those services are brought together; and

[1] Bill No. 211, *The Provincial Sales Tax Amendment Act, 2020*.

- It collects payment from the user, remitting payment to the provider of the accommodation services.

5.2.3. Electronic distribution platform

Finally, the proposed amendments introduce the definition of "electronic distribution services", stating that these services that are delivered, streamed or accessed through an "electronic distribution platform" are subject to PST.

6. Key takeaways

Non-resident suppliers and platform operators may find themselves with Canadian sales tax obligations, independent of physical presence in Canada. As such, it is important that non-resident businesses keep abreast of advances in legislation, and review sales tax obligations to ensure risks are limited.

How can Deloitte help you?

Deloitte's Indirect Tax professionals can help you identify whether the above-mentioned requirements may affect your business.

If you have any questions on any of the above, please reach out to your Deloitte representative or any of the individuals noted on this newsletter.

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