



## Canadian Tax & Legal Alert

### Sales tax and the digital economy – Canada is jumping on the bandwagon

The Department of Finance Canada proposes to extend the collection obligation for GST/HST purposes to foreign-based suppliers and digital platforms

December 14, 2020

Following the acceleration in the shift towards digitalization, notably due to COVID-19, the Department of Finance Canada (Finance) proposed new rules on December 1, 2020 that may force foreign-based suppliers and digital platforms that facilitate supplies of tangible personal property (TPP), services, intangible

#### **Contacts:**

##### **Doug Myrden**

National Indirect Tax Leader  
Tel: 416-601-6197

##### **Quebec**

##### **Michel Lagrange**

Tel: 514-393-7124

##### **Eastern Region**

##### **Michael Matthews**

Tel: 613-751-5310

##### **Toronto**

##### **Danny Cisterna**

Tel: 416-601-6362

personal property (IPP) or short-term accommodation to register to collect the Goods and Services Tax/Harmonized Sales Tax (GST/HST). In light of these newest announcements from Finance, Deloitte has assembled the following summary to track these changes.

## 1. Current Rules

Subject to a few exceptions, a person non-resident of Canada and who makes a taxable supply in Canada is not required to register for GST/HST purposes, unless the person is carrying on a business in Canada.

While the GST/HST regime has historically relied on the above-mentioned rule to require non-resident suppliers to register, various other Canadian sales tax regimes have adapted their legislation to cover non-resident suppliers with no presence in Canada. The [October 4, 2018](#) and [September 17, 2020](#) editions of our Canadian Indirect Tax News alert include more details on these regimes.

## 2. Proposed legislative changes

Changes proposed by Finance contemplate that a non-resident of Canada may be required to register for GST/HST purposes to the extent that such person either:

- (i) makes supplies of IPP or services to Canadians not registered for GST/HST purposes,
- (ii) makes supplies of booking/administration services in connection with a supply of short-term accommodation situated in Canada to recipients not registered for GST/HST purposes,
- (iii) or makes supplies of TPP.

Furthermore, the changes also contemplate that platform operators may be required to register and/or collect GST/HST for supplies of TPP, IPP, services and short-term accommodation made in Canada through their platform.

## 3. Application date

The proposed new rules for foreign-based suppliers, distribution platform operators and accommodation platform operators are set to apply as of **July 1, 2021**.

## 4. Foreign-based suppliers – Cross-border digital products and services

Finance proposes to apply a specified GST/HST regime for cross-border digital products and services. This specified regime would have mechanics similar to the specified Québec Sales Tax (QST) regime introduced in January 2019 for suppliers located outside Quebec (however, arguably, these two regimes are far from harmonized).

### 4.1. Registration required

Every **specified non-resident supplier** (i.e. a non-resident of Canada that does not carry on a business in Canada and is not registered for the GST/HST

## Western Region

**Janice Roper**

Tel: 604-640-3353

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(i.e. the “regular GST/HST regime”<sup>1</sup>) is required to be registered under the specified GST/HST regime if the threshold amount of this supplier for any period of 12 months exceeds \$30,000. Referring to the definition of several key concepts is necessary to untangle these proposed rules.

#### **4.2. Registration threshold**

The proposal would require the registration of non-resident vendors making supplies of digital products and services to Canadians, if their 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. In determining if they meet this threshold, a non-resident vendor would not include supplies that are facilitated by a distribution platform operator that is registered for the GST/HST (under either the normal or simplified registration system) and that is deemed to have made the supply (see section 5 below).

For the July 1, 2021 date of application, the expected sales for the next 12 months should be used to calculate this threshold amount.

#### **4.3. Specified supply**

A **specified supply** is proposed to be defined as a taxable supply of IPP or a service other than:

- a) a supply of IPP that
  - i. may not be used in Canada;
  - ii. relates to real property situated outside Canada; or
  - iii. relates to TPP ordinarily situated outside Canada;
- b) a supply of a service that
  - i. may only be consumed or used outside Canada; or
  - ii. is in relation to real property situated outside Canada.

#### **4.4. Usual place of residence**

In order to determine the usual place of residence of a person, a supplier or a platform operator needs to rely on a number of pre-defined residency “indicators”. More precisely, a supplier or platform operator will be allowed to consider that a person resides in Canada if it obtains, in the ordinary course of its operations, two or more Canadian indicators for this person and has not obtained more than one foreign indicator.

The following are the indicators that a supplier or platform operator will need to use when determining the usual place of residence of a recipient of a supply:

- a) the home address of the recipient;
- b) the business address of the recipient;
- c) the billing address of the recipient;
- d) the Internet Protocol address of the device used by the recipient or similar data obtained through a geolocation method;
- e) payment-related information of the recipient or other information used by the payment system;
- f) the information from a subscriber identity module, or other similar module, used by the recipient;

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<sup>1</sup> Subdivision D of Division V of the Excise Tax Act.

- g) the place at which a landline communication service is supplied to the recipient; and
- h) any other relevant information that the Minister may specify.

Note that there are also rules to establish the usual place of residence between the various provinces of Canada. As of today, Finance has not specified any other relevant information.

#### **4.5. No input tax credits (ITCs)**

A person registered under the specified GST/HST regime would not be eligible to claim ITCs for the GST/HST paid on its expenses in Canada.

#### **4.6. Simplified compliance**

In order to promote compliance with this new regime, Finance proposes to simplify the administrative burden related thereto by notably:

- Implementing a simplified registration process;
- Allowing for simplified quarterly returns and payments;
- Allowing, under certain conditions, payments in foreign currencies.

Furthermore, the Canada Revenue Agency (CRA) will publish a list of all registrants under this new regime.

### **5. Distribution platform operators and accommodation platform operators**

#### **5.1. Registration required**

As indicated above, the proposed new regime would apply not only to non-resident suppliers, but also to platform operators. Indeed, the proposed rules include several deeming provisions under which a supply will be deemed to be made by a platform operator rather than by the actual supplier.

Every **distribution platform operator** of a **specified distribution platform** and every **accommodation platform operator** would be required to register under the specified GST/HST regime if their threshold amount for any period of 12 months exceeds \$30,000. Again, several new key concepts need to be defined.

#### **5.2. Definitions**

A **specified distribution platform** is proposed to be defined as a **digital platform** through which a person facilitates either:

- the making of specified supplies by a specified non-resident supplier; or
- the making of qualifying TPP supplies (see section 6 below) by another person that is not registered under the regular GST/HST regime, irrespective of whether or not the supplier resides in Canada.

An **accommodation platform** is proposed to be defined as a digital platform through which a person facilitates the making of supplies of short-term accommodations in Canada by another person that is not registered under the regular GST/HST regime.

A **digital platform** is proposed to include a website, an electronic portal, a gateway, a store or a distribution platform or any other similar electronic interface but would not include (1) an electronic interface that solely processes

payments; or (2) a prescribed platform or interface (none specified at this time).

### **5.3. Registration threshold**

If a distribution platform's total taxable supplies of digital products or services made to consumers in Canada (including the supplies of digital products or services of non-resident suppliers to consumers in Canada that the operator facilitates) exceed, or are expected to exceed, \$30,000 over a 12-month period, in absence of the distribution platform operator being registered or required to register for GST/HST purposes under the regular GST/HST regime, the distribution platform operator is proposed to be required to register under the specified GST/HST regime.

Furthermore, if an accommodation platform's total taxable supplies of short-term accommodation situated in Canada made by anyone not registered for GST/HST purposes under the regular GST/HST regime to recipients not registered under that same regime, exceed, or are expected to exceed, \$30,000 over a 12-month period, in absence of the accommodation platform operator being registered or required to register for GST/HST purposes under the regular GST/HST regime, the accommodation platform operator would be required to register under the specified GST/HST regime.

### **5.4. Distribution platform operator precisions**

A specified supply will be deemed to be made by the distribution platform operator rather than by the specified non-resident supplier if a specified non-resident supplier makes a specified supply:

- to a specified Canadian recipient through a specified distribution platform and the operator is **registered under the specified GST/HST regime**; or
- to any type of recipient if the platform operator is **registered under the regular GST/HST regime**.

### **5.5. Accommodation platform operator precisions**

According to the proposed changes, where

- (i) a particular person that is not registered under the regular GST/HST regime makes a taxable supply of short-term accommodation situated in Canada through an accommodation platform,
- (ii) the accommodation platform operator is **registered under the specified GST/HST regime**, and
- (iii) the recipient has not provided to the accommodation platform operator evidence that it is registered under the regular GST/HST regime,

the supply of short-term accommodation in Canada is proposed to be deemed to have been made by the accommodation platform operator and not by the particular person.

However, if the accommodation platform operator is **registered under the regular GST/HST regime or carrying on business in Canada**, the evidence of GST/HST registration of the recipient would not be required, all other conditions as mentioned above being equal.

### **5.6. Information return – Accommodation platform operators**

Accommodation platform operators will be required to file with the CRA an information return for the calendar year.

## **6. Tangible personal property (TPP)**

In addition to the existing GST/HST registration requirements, every non-resident of Canada or distribution platform operator will be required to register under **the regular GST/HST regime** if, for any period of 12 months, the sum of the following amounts is greater than \$30,000:

- the total amount of the value of the consideration for a taxable supply that is or is reasonably expected to be a **qualifying tangible personal property supply** made by the person to a **specified recipient** (i.e. a person not registered under the regular GST/HST regime (other than a non-resident of Canada that is not a consumer of the property)); and
- if the person is a distribution platform operator, the total amount of the value of the consideration for a supply that is or is reasonably expected to be a qualifying tangible personal property supply made through the specified distribution platform to a specified recipient.

For the July 1, 2021 date of application, the amount expected for the next 12 months should be used in calculating this threshold amount.

### **6.1. Qualifying tangible personal property supply**

A “**qualifying tangible personal property supply**” is a supply made by way of sale of TPP that is, under the agreement for the supply, to be delivered or made available to the recipient in Canada other than

- a) an exempt or zero-rated supply;
- b) a supply of TPP to be sent by mail or courier to the recipient at an address in Canada from an address outside Canada by the supplier or by another person acting on behalf of the supplier, if the supplier maintains evidence satisfactory to the Minister that the property was so sent; or
- c) a prescribed supply (none specified at this time).

### **6.2. Distribution platform operator precisions**

If a qualifying TPP supply is made through a specified distribution platform by a particular person (whether resident or not) that is not registered under the regular GST/HST regime and if the distribution platform operator (whether resident or not) with respect to this supply is registered under the regular GST/HST regime, the qualifying TPP supply is proposed to be deemed to have been made by the distribution platform operator and not by the particular person.

### **6.3. Input tax credits (ITCs)**

Since the above registration would be under the regular GST/HST regime, the non-resident of Canada or the distribution platform operator, as applicable, would be eligible to claim ITCs for any GST/HST paid on their expenses in Canada.

Furthermore, under certain circumstances, the GST paid on importation by an unregistered supplier may be claimed by the distribution platform operator.

#### **6.4. Information return – Operators and warehouses**

A distribution platform operator in respect of qualifying TPP supplies made in a calendar year will be required to file an annual information return with the CRA.

Furthermore, a person that provides a service of storing TPP in Canada (other than a service that is incidental to the supply by the person of a freight transportation service) offered for sale by a non-resident person will be required to notify the CRA of this fact and maintain records containing information specified by the CRA.

#### **6.5. New drop-shipment rule**

Drop-shipment rules are an essential component of the GST/HST framework for supplies of goods made by non-residents. In order to ensure that the proposed rules would not conflict with the existing drop-shipment rules, the proposal included a new GST/HST relief under the drop shipment rules where a non-registered non-resident provides a certificate to a service provider or vendor of goods acknowledging that a registered distribution platform operator was deemed to sell the goods and required to collect tax.

#### **7. Additional changes – Face masks and face shields**

In addition to the above, note that Finance proposed that the *Excise Tax Act* be amended to zero-rate the supply of face masks and face shields provided for specific use (e.g., medical use and use in preventing the transmission of infectious agents such as respiratory viruses), if supplied after December 6, 2020.

#### **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 alert.

Deloitte LLP  
Bay Adelaide Centre, East Tower  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9  
Canada

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