



Canadian indirect tax news

The new QST registration regime for non-residents selling into Quebec – important clarifications

October 4, 2018

On June 12, 2018, the National Assembly of Quebec passed into law the measures announced in the 2018-2019 budget, relating to the new Quebec sales tax (QST) registration regime (the new regime) for suppliers with no physical or significant presence in Quebec, notably those engaging in e-commerce. These measures were discussed in our [April 13, 2018 edition of *Canadian indirect tax news*](#).

As a general rule, a person who is not resident in Quebec and who makes a supply of goods or services in Quebec is not required to register for QST

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purposes, unless the person is carrying on a business in Quebec. This rule is under what is known as the “regular QST regime”.

Where such person is not required to register for QST purposes under the regular QST regime, the person could, however, be subject to the new regime. Indeed, this regime contemplates that a non-resident of Quebec must register for QST purposes to the extent that the person makes supplies of incorporeal movable property or services to certain persons in the province.

The new rules

Important definitions

According to the legislation, “specified suppliers” and operators of a “specified digital platform” may be required to register under the new regime and collect QST on taxable incorporeal movable property (i.e., intangible personal property (IPP)) and services supplied in Quebec. In addition, “Canadian specified suppliers” may also be required to collect QST on taxable supplies of corporeal movable property (i.e., tangible personal property (TPP)) in Quebec.

A specified supplier is a person that is not carrying on a business in Quebec, does not have a permanent establishment in Quebec and is not registered under the regular QST regime.

A Canadian specified supplier is a specified supplier that is registered for goods and services tax /harmonized sales tax (GST/HST) purposes.

Deloitte tip:

Even if a supplier is a non-resident of Canada, the supplier can be considered a Canadian specified supplier if it is registered for GST/HST purposes.

A specified digital platform generally is a digital platform for the distribution of property or services through which a particular person (i.e., the operator of a digital platform) enables a specified supplier to make a taxable supply of IPP or a service in Quebec. Note that the digital platform must control the essential elements of the transaction between the specified supplier and the recipient, such as billing, the terms and conditions of the transaction and the terms of delivery in order to qualify as a specified digital platform.

Registration threshold test

A specified supplier is required to be registered under the new regime from the first day of a particular calendar month for which the person's “specified threshold” exceeds \$30,000. The specified threshold is generally based on the value of the taxable supplies made during the preceding twelve-month period in Quebec of IPP or services to a recipient who can reasonably be considered to be a consumer (i.e., an individual who purchases supplies for personal consumption or an entity that purchases supplies outside the course of its commercial activities). For a Canadian specified supplier, the value of the taxable supplies of TPP made in Quebec must also be included.

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Deloitte tip:

Revenu Québec has confirmed that there is no need to undertake extensive investigation in the determination of whether a recipient is a consumer. Rather, a supplier should review the name of the customer and the nature of the supplies in order to determine whether the recipient can reasonably be considered to be a consumer. For example, it is reasonable to assume that customer "XYZ Inc." is not a consumer and customer "John Smith" is.

In order to determine whether the taxable supply is made in Quebec for "specified threshold" purposes, a specified supplier must obtain one or more of the following pieces of information from its customers that are considered consumers:

1. the customer's billing address;
2. the customer's home or business address;
3. the IP address of the device used by customer at the time the agreement relating to the supply is entered into or similar data obtained at that time through another geolocation method;
4. the customer's payment-related bank information or the billing address used by the bank;
5. the information from a SIM card used by the customer;
6. the place where a landline telephone service is supplied to the customer; or
7. any other relevant information.

Deloitte tips:

This list of information items was confirmed during discussions with representatives of Revenu Québec.

According to Revenu Québec, there is no specific piece of information contemplated by item 7, "any other relevant information". The purpose of this item is only to keep the door open for the future.

Collection

A registrant under the new regime must charge QST at the rate of 9.975% on the taxable supply of IPP and services (and on TPP for Canadian specified suppliers) made in Quebec to "specified Quebec consumers".

For the purposes of this new regime, a specified Quebec consumer means a person (individual or corporation) who meets the following criteria:

- The person is not registered for QST purposes under the regular QST regime; and
- The person's usual place of residence is located in Quebec.

Deloitte tips:

Note that a specified Quebec consumer is different than the "consumer" criteria previously used to determine registration requirement.

Revenu Québec has confirmed that, given the registration threshold test is based on past data, suppliers will likely not have the details to determine

whether their customers are specified Quebec consumers and, as such, are subject to a less intense test.

As such, as long as a customer informs the specified supplier that it is registered under the regular QST regime and provides its QST identification number, the specified supplier does not have an obligation to charge and collect QST on the supply.

Deloitte tip:

According to Revenu Québec, the specified supplier is not required to verify whether the QST number is valid. However, the specified supplier should keep a record of this information in case of future audit.

To determine whether the usual place of residence is situated in Quebec, the person registered under the new regime will be required to obtain, in the ordinary course of its operations, two non-contradictory pieces of information from among the following that reasonably support the conclusion:

1. the customer's billing address;
2. the customer's home or business address;
3. the IP address of the device used by customer at the time the agreement relating to the supply is entered into or similar data obtained at that time through another geolocation method;
4. the customer's payment-related bank information or the billing address used by the bank;
5. the information from a SIM card used by the customer;
6. the place at which a landline telephone service is supplied to the customer; or
7. any other relevant information.

Deloitte tips:

A specified supplier must continue to gather the information that it obtains in the ordinary course of its operations. In this respect, a specified supplier generally does not have the obligation to collect more information than it has in the past. However, Revenu Québec is expecting the supplier to comply with this rule. Therefore, if the supplier obtains the IP address, and is capable of obtaining the billing address from the customer's credit card information, the supplier will be required to keep the two pieces of information.

Furthermore, Revenu Québec will be flexible with the application of these criteria. If a specified supplier acts reasonably (i.e., uses all information at its disposal) and obtains only one piece of information from the list above, Revenu Québec will not penalize upon audit. However, Revenu Québec may ask that the specified supplier obtain more information, on a go-forward basis only, and the specified supplier will not be assessed for the past.

Revenu Québec noted that in many cases, the IP address would be the ideal information to obtain.

Specified digital platform

Under the new regime, “specified digital platforms” are required to register and collect QST with respect to certain transactions.

If the specified threshold of an operator of a specified digital platform exceeds \$30,000, this person would be required to collect QST with respect to the taxable supply of IPP or services made in Quebec by a specified supplier to a specified Quebec consumer on its platform. If a specified supplier is also the operator of a specified digital platform, all applicable amounts must be included in the specified threshold of \$30,000.

The specified digital platform rules override the specified supplier rules. As such, should the specified digital platform be required to collect tax with respect to supplies made in Quebec by a specified supplier, the specified supplier is not required to collect tax on these supplies.

Furthermore, all supplies made by a specified supplier on a specified digital platform are not to be included in the specified suppliers’ registration threshold test. As such, should the specified supplier only make supplies via specified digital platforms, the specified supplier will not be required to register.

Deloitte tips:

Revenu Québec has confirmed that if the operator of a specified digital platform is registered under the new or the regular QST regime, the specified supplier would not be held responsible to collect the QST on supplier made on the platform. However, the specified supplier must be sure that the operator of the specified digital platform is registered for QST purposes in order to be relieved of its obligation.

Revenu Québec is currently considering publishing all specified digital platforms registered under the new regime (either by list or through a search platform similar to that of the regular QST regime), so that a specified supplier may verify registration status.

Application dates for the new regime

- January 1, 2019
 - For non-resident suppliers located outside Canada and for digital platforms allowing such suppliers to make taxable supplies of incorporeal movable property or services in Quebec to Quebec consumers.

- September 1, 2019
 - For Canadian suppliers that are not residents of Quebec and for digital platforms allowing such suppliers to make taxable suppliers of incorporeal movable property or services in Quebec to Quebec consumers.

Important considerations

- **System updates:** Specified suppliers must update their systems to take into account the following:
 - Determination of which supplies must be included in the registration threshold test;
 - Gathering of customer information obtained in the ordinary course of operations – potential adjustment to systems to gather all pieces of information; and
 - Gathering of QST numbers from customers.
- **Audit considerations:** Specified suppliers should make sure to keep record of information gathered in relation to the registration threshold test, the determination as to whether or not to charge QST on supplies made to customers, and supplies made through specified digital platforms, in case of future audit by Revenu Québec.
- **Registration link for the new regime:** Specified suppliers and digital platforms can register today for the new regime on [Revenu Québec's website](#).
- **Registration under the regular QST regime:** A specified supplier may choose to voluntarily register under the regular QST regime, rather than under the new regime. It would be necessary to register for GST/HST purposes as well. However, potential benefits are as follows:
 - The place of supply rules to determine whether the supply of a service or an IPP is made in Quebec are generally less stringent; and
 - Registration under the new regime does not entitle the supplier to claim input tax refunds (ITRs) with respect to QST paid on business expenses. However, should the supplier register for QST under the regular QST regime, it would be eligible to claim ITRs with respect to QST paid on business expenses, if all other conditions are met.

In addition, Revenu Québec is likely to require a security deposit from specified suppliers who voluntarily register under the regular QST regime.

- **Tax paid in error:** If QST is collected in error under the new regime (for example, QST is collected from a customer who is registered for QST purposes), the customer may only request a refund of this erroneous tax from its specified supplier or specified digital platform. Revenu Québec has confirmed that it will not allow a customer to claim an ITR or any other refund of this amount from Revenu Québec.
- **Cancellation of registration:** Revenu Québec has confirmed that the new regime does not contain a requirement to remain registered even though a person no longer meets the registration threshold test.

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.

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