New GST/HST regime for non-resident vendors of digital products will be effective July 1, 2021

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In brief

On November 30, 2020, in its Fall Economic Statement, the federal government proposed several changes to the Goods and Services Tax/Harmonized Sales Tax (GST/HST) regime to address the digitization of the global economy. The proposals are intended to ensure that the GST/HST applies to all goods and services consumed in Canada regardless of how they are supplied, or who supplies them. The federal government is proposing that:

- **GST/HST on cross-border digital products and cross-border services** — foreign-based digital businesses (that are not required to register under the current GST/HST rules) that supply digital products and services to consumers in Canada will generally be required to register for and collect GST/HST under a new simplified GST/HST regime starting July 1, 2021.

- **GST/HST on platform-based short-term accommodation** — GST/HST will apply to all supplies of short-term accommodation by private residential property owners that are facilitated through digital platforms to address issues in this fast-growing market sector, which could impact non-resident accommodation platforms.

- **GST/HST on goods supplied through fulfillment warehouses** — new GST/HST rules will apply to transactions involving goods for sale that are located at fulfillment warehouses in Canada and sold to purchasers in Canada by:
  - non-resident vendors that sell directly to consumers in Canada on their own account
  - online marketplace platforms that facilitate the sale of these goods by non-registered vendors to consumers in Canada

These new rules will apply to non-resident vendors and online marketplace platforms whose annual supplies to consumers in Canada exceed CAD 30,000.

In detail

Background

The 2014 federal budget raised concerns about the federal government’s inability to collect sales tax on e-commerce sales to Canadian residents by foreign-based vendors that did not have sufficient presence in Canada to require registration for GST/HST under the existing GST/HST regime, resulting in tax
leakage and competitive issues for domestic companies. The proposed simplified GST/HST registration and remittance regime announced in the 2020 Fall Economic Statement addresses these concerns, and is generally consistent with the recommendations of the Organisation for Economic Co-operation and Development (OECD) on the digital economy and the simplified regimes implemented in other jurisdictions, including Québec.

**Current GST/HST rules**

Under the current GST/HST rules, non-resident persons that carry on business in Canada are generally required to register for and collect GST/HST on their taxable supplies of goods and services in Canada. However, non-resident persons that do not carry on business in Canada are not required to register for or collect GST/HST. The GST/HST rules that generally apply to supplies of goods and services made by these non-residents, are as follows:

- for physical goods purchased from a non-resident vendor, the applicable GST/HST is collected by the Canada Border Services Agency (CBSA) at the time the goods are imported
- for supplies of digital products or services to Canadian consumers, the consumer is required to self-assess and pay the applicable GST/HST directly to the Canada Revenue Agency (CRA)

Since it is difficult to enforce the requirement on consumers to self-assess taxes owing, the GST/HST that applies on these latter purchases is often not remitted to the CRA, resulting in lost tax revenues and putting Canadian businesses that are required to register for and collect GST/HST on their sales at a competitive disadvantage.

**PwC observes**

Under the existing rules, many businesses and online platforms that sell goods and services in Canada remotely are not considered to be carrying on business in Canada for GST/HST purposes, and are therefore not required to register for GST/HST. While the CBSA may collect the GST for all imports and the provincial portion of HST for casual imports to consumers, it is extremely difficult for the government to enforce the self-assessment obligation on consumers that purchase digital products and services. The proposed changes should significantly increase the GST/HST collected from consumers in Canada.

**GST/HST on cross-border digital products and cross-border services**

The federal government is proposing to introduce a simplified GST/HST regime that will take effect on July 1, 2021. Foreign-based vendors of digital products and services that sell to consumers in Canada will be required to register under this new simplified regime. A recipient of a supply by these foreign-based vendors is considered to be a “consumer in Canada” (defined in the proposed legislation as a “specified Canadian recipient”) for purposes of the new rules if it is not registered for GST/HST purposes and its usual place of residence is in Canada.

**Who will be affected?**

Non-resident vendors that are not registered for GST/HST purposes and would not be required to register under the current GST/HST regime, will be required to register for GST/HST under the new simplified regime if their total taxable supplies of digital products or services (including traditional services) made to consumers in Canada exceed (or are expected to exceed) CAD 30,000 over a 12-month period (excluding any supplies they have made [or are deemed to have made] through a distribution platform operator that is registered for GST/HST under either the regular or simplified regimes).

In addition, distribution platform operators that facilitate sales by third-party vendors to consumers in Canada through their distribution platform will generally be required to register for GST/HST under the simplified regime, if their sales to Canadian consumers (including supplies of digital products or services of non-resident vendors to consumers in Canada facilitated by the operator) exceed, or are expected to exceed, CAD 30,000 over a 12-month period.

**PwC observes**

Non-resident vendors that only sell through GST/HST registered distribution platform operators should not be required to register for GST/HST as sales made through these operators are excluded from the calculation of the CAD 30,000 threshold; the sales are deemed to have been made by these operators.
How does the new simplified regime work?

The new simplified regime will operate as follows:

- There will be a simplified process for online registration and remittances through an online portal.
- Registrants under the new regime will only be required to collect and remit GST/HST on business-to-consumer (B2C) sales of digital products and services. For these purposes, an entity or person that is registered for GST/HST and provides its GST/HST registration number to the registrant will be considered a business, and any other entity or person will be considered a consumer.
- In general, the application of tax will be based on the consumer’s usual residence, which will be determined by specified indicators, such as the home address, billing address, Internet Protocol address of the device used, bank or payment information and the recipients’ subscriber identification module (SIM) card. Typically, a consumer’s usual place of residence will be considered to be in a particular place if two or more of the specified indicators identify that place as the consumer’s normal location or residence.
- Where the consumer’s usual place of residence is in Canada, the GST/HST collected is based on the GST/HST rate that applies in the specified province of usual residence. However, there will be exceptions to the general rule for transactions where a consumer’s usual place of residence is not an appropriate basis to determine the application of tax, as illustrated by the following examples:
  - Where the digital product or service is linked to a specific location in Canada, the GST/HST rate used should be the rate that applies in the province or territory of that specific location; therefore, if a non-resident supplier provides remote security monitoring services for a cottage or condominium in Alberta to a consumer whose usual place of residence is in Ontario, the non-resident would be required to collect 5% GST because the service relates to real property situated in Alberta.
  - Where the digital product or service made to a consumer whose usual place of residence in Canada is linked or restricted to a specific location outside Canada, such as services or rights to be performed at a readily identifiable location outside Canada (e.g. a restaurant meal, spa session or other personal service at a location outside Canada), no GST/HST is collectible.
- Non-resident vendors and non-resident distribution platform operators registered under the simplified regime cannot claim input tax credits (ITCs) to recover GST/HST paid on their business inputs. If they wish to claim ITCs to recover GST/HST paid on their business inputs, they may register under the regular GST/HST regime.
- Businesses can apply to remit and report taxes in a foreign currency.

PwC observes

Non-resident vendors and distribution platform operators should generally be able to apply the existing methodologies that they use in other jurisdictions to determine the usual residence of purchasers in Canada. However, they should verify that their current methodology will allow them to distinguish between provinces and territories within Canada.

The takeaway

Non-resident suppliers of digital products and services (including digital platforms through whom non-resident vendors make supplies of digital products and services that are not required to register under the existing GST/HST regime) will likely be required to register under the new simplified regime. Non-resident businesses should start preparing their systems to collect and remit the GST/HST on these supplies.

GST/HST on platform-based short-term accommodation

The federal government is proposing new rules to ensure that GST/HST will apply on all supplies of short-term accommodation in Canada that are facilitated through an accommodation platform (i.e. a digital platform that lists properties for rent and facilitates the rental and payment transactions between the property owners and its customers). The proposed new rules will generally take effect on July 1, 2021.
Supplies of short-term accommodation are generally subject to GST/HST; however, it is not generally being applied on short-term accommodations that are rented through an accommodation platform, because under the current GST/HST rules, the property owner is generally considered to be the supplier of the short-term accommodation and many property owners are not registered for GST/HST. With the dramatic increase in individual property owners using an accommodation platform to rent out all or part of their residences or other residential property that they own, GST/HST is generally not being collected and remitted on these short-term rentals, resulting in a loss of tax revenues.

Who will be responsible for collecting GST/HST?

Under the proposed rules, GST/HST on short-term accommodation supplied in Canada through an accommodation platform will be collected and remitted by either:

- the property owner or person responsible for providing the accommodation (the Owner) if the Owner is registered for GST/HST purposes; under the current GST/HST rules, an Owner that makes more than CAD 30,000 in taxable supplies (including any supplies of short-term accommodation in Canada facilitated by an accommodation platform operator) over a 12-month period is required to register for GST/HST purposes
- the accommodation platform operator (APO) when the Owner is not registered for GST/HST purposes; in this case, the APO will be deemed to be the supplier of the short-term accommodation

PwC observes

A person that operates a website that simply allows vendors to list their properties for short-term rentals, (i.e. a classified or advertising website) or a person that solely processes payments would not be considered an APO for purposes of these rules.

When is an APO required to register?

A non-resident APO that is carrying on business in Canada is required to register for GST/HST under the existing rules and will continue to do so. However, a non-resident APO that is not carrying on business in Canada will be required to register under the new simplified registration/remittance regime if it facilitates (or expects to facilitate) over a 12-month period more than CAD 30,000 in taxable supplies of short-term accommodation in Canada (of which the underlying third-party suppliers of the accommodation are not registered for GST/HST purposes). The simplified regime will generally have the same attributes as the simplified GST/HST regime for non-resident vendors of digital products and services as discussed above.

How will the rules apply?

The rules will generally apply as follows:

- The tax rate will be determined by the GST/HST rate that applies in the province or territory where the short-term accommodation is located.
- GST/HST will not apply to service fees charged by GST/HST registered APOs to non-registered Owners for supplies of short-term accommodations that they facilitate; the APO will be deemed not to have made a supply of services to these non-registered Owners.
- GST/HST will apply to service fees or commissions charged by APOs to guests acquiring short-term accommodation for the APO’s help in finding and booking the accommodation, and facilitating the transactions between the guest and the Owner; the GST/HST rate will be based on the location of the property in Canada (ensuring the same rate of tax applies on the guest fee and the accommodation).
- APOs will be required to maintain records and report information to the CRA, including information on the underlying third-party property owners/suppliers that use their platform.
GST/HST on goods supplied through fulfillment warehouses

Resident and non-resident vendors often use fulfillment warehouses in Canada to store their goods so that they can be delivered to customers in Canada on a timely basis. These vendors may make sales directly to customers on their own account, or sell through online marketplaces that facilitate sales to customers on their behalf (referred to as a “distribution platform”).

Distribution platforms

The federal government is proposing new rules that will require an operator of a distribution platform (DPO) to register under the regular GST/HST regime when:

- goods that are located in fulfillment warehouses in Canada (or shipped from a place in Canada to a purchaser in Canada) are sold by non-registered vendors to Canadian consumers (i.e. purchasers not registered for GST/HST) through the DPO’s platform, and
- those sales exceed (or are expected to exceed) CAD 30,000 over a 12-month period

For purposes of these rules, a person will not be considered to be a DPO if its activities are limited to operating a website that simply allows vendors to list their goods for sale (i.e. a classified or advertising website), or it acts solely as a payment processor.

Under the proposed rules, resident and non-resident DPOs will be deemed to be the supplier in respect of sales that they facilitate for non-registered vendors (whether resident or non-resident) of goods that are located in Canadian fulfillment warehouses or shipped from a place in Canada to a purchaser in Canada (referred to as a “qualifying supply”). DPOs will be required to collect GST/HST on the final sale price of these deemed supplies irrespective of whether the supply is made to a consumer or a purchaser that is registered for GST/HST.

The DPO will be deemed not to have made a supply to non-registered third-party vendors of services relating to the deemed supply of goods made through the platform, so that no GST/HST will be payable by the non-registered vendor on the service fee. Furthermore, a DPO will not be deemed to be the supplier in respect of sales it facilitates by GST/HST-registered third-party vendors (whether resident or not). In this case, the third-party vendor will remain liable for collecting and remitting GST/HST on sales made through the platform. Therefore, DPOs must request and confirm the registration status of its vendors to determine whether the actual vendors are registered for GST/HST.

Non-resident vendors

Non-resident vendors will also be required to register under the regular GST/HST regime when:

- they sell goods that are located in Canadian fulfillment warehouses (or shipped from a place in Canada to a purchaser in Canada) directly to Canadian consumers through their own website on their own account (i.e. without the use of a distribution platform), and
- those sales exceed (or are expected to exceed) CAD 30,000 over a 12-month period

Registered non-resident vendors will be required to charge GST/HST on all of their qualifying supplies irrespective of whether the supply is made to a consumer or a purchaser registered for GST/HST.

Registered non-resident vendors and registered DPOs will be eligible under the existing GST/HST rules to claim ITCs to recover the tax paid on inputs used in their commercial activities, including tax paid at the border. Further, registered DPOs will be able to claim ITCs to recover the tax paid at the border by non-registered third-party vendors that import their goods into Canada and sell their goods through the DPO’s distribution platform under a new flow through ITC mechanism.

The proposed new rules will generally take effect on July 1, 2021.
PwC observes

GST/HST will apply to platform sales of goods located in Canada by both registered and non-registered third-party vendors, irrespective of the DPO’s or third-party vendor’s residence. However, when goods are shipped to the consumer from outside Canada by non-registered vendors or non-registered DPOs, there should not be a registration requirement unless they are “carrying on business in Canada” under the existing rules.

The drop shipment rules will be modified to accommodate the proposed rules.

Information obligations for DPOs and fulfillment businesses

DPOs will be required to report information to the CRA regarding the third-party vendors that use their platform. In addition, fulfillment businesses in Canada will be required to notify the CRA that they are carrying on a fulfillment business (generally a business that provides services of storing goods other than services incidental to a freight transportation service) in Canada and maintain records on their non-resident clients and the goods that they store on their behalf.

Digital services tax

In addition to the new GST/HST rules, the federal government proposes to implement a tax on certain corporations providing digital services in Canada, effective January 1, 2022 until an acceptable multilateral approach to taxing the revenues of digital corporations comes into effect. The proposed tax is intended to capture revenues derived by digital corporations from value-creating activities in Canada by remote digital means, such as collecting user data and content contributions, which are currently not subject to Canadian corporate tax. Details on the proposed tax will be announced in the 2021 federal budget.

How can PwC help

We can work with you to determine whether these new and changed tax regimes apply to your business. If they do, we can help your business comply with the new regime and consider the potential consequences of, and remedies for, any non-compliance.

The federal government has invited interested parties to submit comments on the proposals and draft legislation by February 1, 2021. If you have questions or concerns on the proposals or draft legislation, we can assist you with making a submission.

Let’s talk

For a deeper discussion of how these new GST/HST regimes affect your business, please contact:

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