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Tax Alert – Canada

Federal government announces specified GST/HST regime for e-commerce supplies

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 30 November 2020, the federal government tabled *Supporting Canadians and Fighting COVID-19: Fall Economic Statement 2020*. The Fall Economic Statement (FES) contains significant Goods and Services Tax (GST)/Harmonized Sales Tax (HST) proposals, including measures designed to ensure that GST/HST applies fairly and effectively in the context of an increasingly digital economy. Specifically, nonresident vendors supplying digital products and services to consumers in Canada would be required to register for, collect and remit GST/HST with respect to their taxable supplies to Canadian consumers. Similar requirements would apply to supplies of short-term accommodation made through digital accommodation platforms, as well as to goods supplied through fulfillment warehouses. In addition, the supply of certain face masks and face shields will be zero-rated for GST/HST purposes. The FES contains draft legislative amendments to the *Excise Tax Act* (Canada) to implement these proposals.

The federal government also announced its intention to implement a domestic tax on corporations providing digital services, as well as a national tax-based measure targeting the unproductive use of domestic housing that is owned by foreign nonresident investors.

Specified GST/HST regime for e-commerce supplies

Currently, nonresident persons that do not carry on business in Canada are not required to register, collect or remit GST/HST.¹ Where tangible personal property is purchased from a nonresident vendor, GST/HST is levied on the value of the goods at time of importation. If a nonresident vendor supplies digital products or services to a consumer in Canada, the consumer must self-assess and pay tax directly to the Canada Revenue Agency (CRA). In practice, GST/HST is often not collected on online purchases from nonresident vendors or purchases made through digital platforms. Canadian vendors of digital products and services are thereby put at a significant commercial disadvantage.

To prevent GST/HST leakage and level the playing field between Canadian and nonresident vendors, new rules are being introduced that would require a nonresident vendor to register for, collect and remit the GST/HST if the vendor's 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. These measures would also apply to a nonresident distribution platform operator if the operator's total taxable supplies of digital products or services made to consumers in Canada, including the supplies of digital products or services by nonresident vendors to consumers in Canada that the operator facilitates, exceed or are expected to exceed \$30,000 over a 12-month period. Note that, for purposes of this proposal, a consumer is an entity or person not registered for GST/HST and a business is any other entity or person registered for GST/HST.

To determine whether a consumer is resident in Canada (and by extension, where in Canada), the draft legislative proposals provide a number of specified indicators, such as a consumer's home address, billing address, bank or payment information, and the internet protocol address of the device used by the consumer. In general, a consumer's usual place of residence would be in Canada if two or more indicators identified Canada as the consumer's normal residence. There will be exceptions for services linked to a specific location outside Canada or where a consumer's usual place of residence is not an appropriate basis for determining where, or whether, the place of consumption is in Canada and if the GST/HST would apply. For determining the place of supply for services in Canada the same general rule, with exceptions for services linked to specific locations in Canada, will apply.

A nonresident vendor or nonresident distribution platform operator that does not carry on business in Canada would be able to register under a simplified system, allowing them to use a specific online portal for simplified GST/HST collection and remittance. They would be required to collect and remit GST/HST for supplies made to consumers; however, they would not be required to collect and remit GST/HST for supplies to a registrant. Under the simplified system, they could not claim input tax credits (ITCs) to recover GST/HST paid on business

¹ It should be noted that effective 1 January 2019, Quebec implemented a mandatory specified registration system for suppliers with no physical or significant presence in Quebec to ensure collection and remittance of the Quebec Sales Tax (QST). Suppliers with no physical or significant presence in Quebec are required to collect and remit the QST on taxable incorporeal movable property and services they supply in Quebec to specified Quebec consumers. As well, nonresident suppliers located in Canada are required to collect and remit the QST on taxable corporeal movable property they supply in Quebec to specified Quebec consumers, effective 1 September 2019. For further information, see EY Tax Alert 2018 Issue No. 18, *Québec announces QST and e-commerce measures*.

inputs. However, ITCs could be claimed by a non-resident vendor or nonresident distribution platform operator if that person registered in accordance with the regular GST/HST rules.

The new rules would apply to cross-border supplies of digital products and services to the extent the consideration for such supplies becomes due on or after 1 July 2021 or is paid without becoming due.

Fulfillment warehouses

Nonresident vendors often sell goods to Canadian consumers through digital platforms (distribution platforms). These platforms often store the goods of third-party vendors in “fulfillment warehouses” in Canada and ship goods to purchasers in Canada after the goods have been sold through the platforms. While taxes and duties apply when the goods are imported, there is concern that GST/HST is not consistently charged on the final price paid, which may be higher than the value on which GST/HST is applied on importation, for the goods when they are later sold to Canadian consumers.

To address this issue, new rules would require distribution platform operators to register under the normal GST/HST rules and to collect and remit the GST/HST for sales of goods that are located in fulfillment warehouses in Canada (or shipped from a place in Canada to a purchaser in Canada), when those sales are made by non-registered vendors through distribution platforms. Moreover, nonresident vendors would be required to register under the normal GST/HST rules and to collect and remit the GST/HST for sales of goods that are stored in fulfillment warehouses in Canada, when nonresident vendors make such sales on their own account.

Both resident and nonresident distribution platform operators would be required to register if their total qualifying supplies of tangible personal property to purchasers in Canada, including supplies made through their platforms by third-party vendors, exceed or are expected to exceed \$30,000 over a 12-month period.

A person that supplies a service of storing tangible personal property in Canada (other than a service that is incidental to a freight transportation service) that is offered for sale by a nonresident person would be required to:

- ▶ Notify the minister of national revenue that they carry on a fulfillment business; and
- ▶ Maintain certain records on their nonresident clients.

As well, distribution platform operators would be required to file an information return with the minister and report information to the CRA about the nonresident vendors using their platforms.

The new rules would apply to supplies made on or after 1 July 2021, as well as to a supply made before that date if all the consideration for the supply is payable on or after 1 July 2021.

Short-term accommodation

Many individual property owners are participating in the short-term accommodation sector by renting out their residences. Such transactions are often facilitated by digital platforms, which list properties and coordinate payments between the customer and the property owner. In practice, GST/HST is often not collected on such supplies, for several reasons. For example, a property owner with annual taxable supplies that do not exceed \$30,000 qualifies as a small seller and is not required to collect and remit GST/HST. As well, under the current rules, the facilitating digital platform is often not considered to be the actual supplier of the accommodation and is thereby not required to account for GST/HST.

In accordance with the draft legislative proposals, GST/HST would be required to be collected and remitted in respect of supplies of short-term accommodation made through a digital accommodation platform. A property owner who is a registrant would be required to account for GST/HST on supplies of short-term accommodation. If the property owner is not a registrant, the accommodation platform provider would be deemed to have made the supply and would be responsible for GST/HST collection and remittance.

An accommodation service provider would be required to register for the GST/HST if that person facilitates or expects to facilitate more than \$30,000 in taxable supplies of short-term accommodation in Canada for third-party suppliers of the accommodation who are not registered. An accommodation service provider that carries on business in Canada and is required to register under the existing rules would continue to be subject to the regular GST/HST registration regime. Nonresident accommodation platform operators that do not carry on business in Canada would be able to register under a simplified system, allowing them to use a specific online portal for simplified GST/HST collection and remittance. They would be required to collect and remit GST/HST for supplies of short-term accommodation made to consumers (defined to be a person not registered for GST/HST); however, they would not be required to collect and remit GST/HST for supplies to a registrant. Under the simplified system, they could not claim ITCs to recover GST/HST paid on business inputs.

Accommodation platform operators would also be required to file an information return with the minister containing prescribed information, including information on the third-party property owners using their platforms.

The new rules would apply to supplies of short-term accommodation made on or after 1 July 2021, as well as to a supply made before that date if all the consideration for the supply is payable on or after 1 July 2021.

GST/HST relief for face masks and face shields

The draft legislative proposals would amend Schedule VI, Part II.1 of the *Excise Tax Act* (Canada) to provide temporary GST/HST relief by zero-rating supplies of certain face masks and face shields. In general, this measure will apply to a supply of:

- ▶ A face mask or respirator that is designed for human use and authorized for medical use in Canada;

- ▶ A face mask or respirator that meets N95, KN95 or equivalent certification requirements, is designed for human use, and does not have an exhalation valve or vent; and
- ▶ A face mask or respirator that:
 - ▶ Is designed for human use;
 - ▶ Is made up of multiple layers of dense material, but may have a portion in front of the lips of transparent and impermeable material that permits lip reading;
 - ▶ Is large enough to completely cover the nose, mouth and chin without gaping;
 - ▶ Has ear loops, ties or straps for securing the face mask or respirator to the head;
 - ▶ Is used for preventing the transmission of infectious agents, such as respiratory viruses; and
 - ▶ Does not have an exhalation valve or vent.

As well, zero-rating will apply to a face shield that:

- ▶ Is designed for human use;
- ▶ Has a transparent and impermeable window or visor;
- ▶ Covers the entire face and has a head strap or cap for holding it in place; and
- ▶ Is not specifically designed or marketed for a use other than preventing the transmission of infectious agents, such as respiratory viruses.

Zero-rating will apply to supplies made after 6 December 2020 and would remain in effect until public health officials no longer broadly recommend their use for the COVID-19 pandemic.

National speculation vacancy tax

To reduce speculative demand in the domestic housing market and make housing more affordable, the federal government will take steps to implement a national tax-based measure targeting the unproductive use of domestic housing that is owned by foreign nonresident investors. It should be noted that the province of British Columbia currently imposes an annual speculation and vacancy tax payable by owners of residential property in designated taxable regions of British Columbia. The tax aims to tackle speculation in the housing market in major urban centres and encourage the conversion of empty properties into homes for British Columbia residents.

Digital services tax

In addition to imposing GST/HST registration, collection and remittance requirements on nonresident vendors and nonresident digital platform operators, the federal government proposes to implement a new tax on corporations providing digital services. This measure would aim to ensure that such corporations are subject to tax in respect of their Canadian activities. While the government has indicated its preference to develop a multilateral solution under the auspices of the Organisation for Economic Co-operation and Development, it is concerned about the delay in reaching an agreement. Therefore, the federal government is proposing to introduce a digital services tax effective 1 January 2022, which would apply until an acceptable multilateral option takes effect. Further details will be provided in the 2021 budget.

Learn more

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