



Seller Beware! New Canadian Sales Tax Changes for Online Sellers

Sellers of goods and digital products into Canada should be aware of several key changes to the sales tax treatment of goods or services sold to Canadian customers through online platforms. Effective July 1, 2021, new rules will apply with respect to the application of Canada's value-added tax, referred to as the goods and services tax/harmonized sales tax ("**GST/HST**"), in three key areas:

(1) Sales of certain digital products and services by non-resident vendors either directly or through an online marketplace.

Under the new rules, non-resident vendors of digital products and services selling to Canadian consumers must register for, collect and remit GST/HST where they make more than \$30,000 in sales over a 12-month period. Dubbed by many as the "Netflix Tax", this new requirement aims to capture digital service providers who might have escaped existing GST/HST registration requirements because they did not "carry on business in Canada" despite collecting significant revenue from Canadian consumers. The new requirements apply to non-resident vendors, as well as to operators of online marketplaces through which non-resident vendors sell digital products and services to Canadian consumers (referred to as "**Distribution Platform Operators**", or "**DPOs**"). Non-resident sellers have the choice to register under either the traditional GST/HST regime, or under a new simplified regime that has certain benefits, but limits the ability to claim back credits for GST/HST paid on purchases in Canada.

(2) Sales of tangible goods by non-resident vendors (or online marketplaces) shipped/fulfilled from a Canadian warehouse or a place in Canada.

The new measures also target sales of tangible goods located in Canadian fulfillment warehouses that are sold by non-resident vendors to consumers, either directly by a vendor or indirectly through a DPO's platform. A vendor or DPO will be required to register for GST/HST if their total sales over a 12-month period exceed \$30,000 for all sales made (or facilitated through an online marketplace) to non-GST/HST-registered Canadian resident recipients or to non-resident consumers, unless the seller maintains sufficient evidence that the goods were sent from an address outside Canada.

(3) Sales of short-term accommodation in Canada through a digital platform.

Lastly, the government has introduced new rules to ensure that GST/HST is collected on supplies of short-term (i.e., less than one month) accommodation located in Canada that are facilitated through an online "accommodation platform" (e.g., Airbnb). Under the new rules, the obligation to collect and remit GST/HST on supplies of short-term accommodation in Canada through an accommodation platform generally rests with: (1) the property owner if they are registered for GST/HST; or (2) the Accommodation Platform Operator (the "**APO**") if the property owner is not GST/HST-registered and the APO meets the other criteria which require registration. An APO will have to register if it facilitates \$30,000 or more in sales of short-term accommodations in Canada from homeowners who are not GST/HST-registered (note that this \$30,000 threshold takes into account booking and administrative fees).



In addition to these GST/HST changes, new rules targeting digital sellers of goods and services have been announced or introduced in all Canadian provinces that have a separate, stand-alone sales tax:

- **Quebec:** Since January 1, 2019, the Province of Quebec has required non-resident sellers to register for and collect Quebec sales tax under rules that are similar to those announced under the GST/HST;
- **Saskatchewan:** Effective January 1, 2020, “marketplace facilitators”, “online accommodation platforms” and sellers of goods and services through “electronic distribution platforms” need to register for, charge and collect provincial sales tax if they make any sales to Saskatchewan residents;
- **British Columbia:** Effective April 1, 2021, sellers of digital software and telecommunication services must register for and collect the provincial sales tax on sales to B.C. customers if they have annual revenue in the province of more than \$10,000; and
- **Manitoba:** As part of its 2021 provincial budget, the province announced that it intends to enact rules targeting streaming services, online marketplaces and online accommodation platforms effective December 2021.

In summary, non-Canadian sellers who sell online to Canadian customers should carefully consider whether any of these new rules apply and should seek advice if they are unclear regarding their Canadian sales tax obligations.

Due to the complexity and ever-changing nature of tax laws, an informed tax analysis is a critical element in providing effective legal service. We encourage you to reach out to Aird & Berlis to discuss how these new rules apply to your business.

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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.



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Angelo is a member of the firm's Tax Group. His practice focuses on tax litigation and commodity tax, including goods and services tax/harmonized sales tax (GST/HST) and provincial sales taxes. Angelo has extensive experience in resolving tax disputes involving GST/HST, income tax, CPP/EI, excise taxes, Ontario land transfer tax, Ontario employer health tax and Ontario tobacco tax.

He has been successful in resolving a wide range of tax disputes at early stages of the process. Particularly in the field of GST/HST, Angelo's in-depth knowledge of the legislation, coupled with his practical knowledge of the tax litigation process and the CRA administrative decision-making process, allows him to arrive at creative solutions to tax disputes that would have otherwise proceeded to trial. However, if a dispute cannot be resolved before trial, Angelo has experience representing clients before the Tax Court of Canada, the Federal Court, the Federal Court of Appeal and the Superior Court of Justice. Angelo also represents clients in making voluntary disclosures with the CRA and the Ontario Ministry of Finance.