

Fall Economic Update: Major GST/HST Changes to Non-Resident Businesses Selling to Canadian Consumers

Dec 01, 2020

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On November 30, 2020, the Government of Canada released its Fall Economic Statement 2020 titled “Supporting Canadians and Fighting COVID-19”. The Economic Statement includes sweeping proposed changes to the GST/HST treatment of certain goods and services sold by non-residents of Canada.

The Key GST/HST Proposals

(1) Sales of Digital Products and Services (aka “The Netflix Tax”)

Almost two years after the Province of Québec introduced its own e-commerce and digital sales tax measures, the Government of Canada announced measures to target non-resident sellers of certain goods and services. Under the current rules, a non-resident person that is not registered for GST/HST purposes and is not “carrying on business in Canada” is not required to register for the GST/HST or to charge/collect the GST/HST on its supplies to Canadian consumers. For online sellers based outside of Canada without any presence in Canada, this has often meant that goods or services sold by the non-resident online seller did not attract GST/HST (e.g., your Netflix subscription), whereas Canadian sellers (or GST/HST-registered non-resident sellers) of those same or similar goods or services generally charged the GST/HST. While the Government of Canada has been aware of this issue for years, the rapid change in retail spending habits brought forth by the COVID-19 pandemic (which resulted in a nearly 70% increase in retail e-commerce sales over the first eight months of 2020) likely prompted the Government to act now.

Effective July 1, 2021, foreign-based vendors selling certain digital products or services to consumers in Canada will be required to register for, collect and remit the GST/HST on their taxable sales to Canadian consumers. In addition, digital marketplace platforms (i.e., “app stores”) that facilitate the sale of certain digital products or services to Canadian consumers will also be required to register for, collect and remit the GST/HST on such taxable sales. Consistent with how such changes were implemented for the Province of Québec in 2019, the Government of Canada will implement a new simplified registration system to encourage and assist non-resident vendors in satisfying their tax collection/remittance obligations. This registration system is separate from the regular GST/HST registration system. Of course, non-resident businesses could always opt to register under the regular GST/HST registration system.

(2) Sales of Goods Supplied Through Canadian Fulfillment Warehouses

Effective July 1, 2021, the Government of Canada proposes to tax the sale of goods that are sold online by non-resident vendors through digital platforms and which are fulfilled through inventory stored in Canadian fulfillment warehouses. Under the proposed measures, the GST/HST must be collected by either the foreign-based vendor or the digital platform that facilitates the sale.

(3) Sales of Short-Term Accommodations Through Digital Platforms

Although the market for short-term accommodations has dried up considerably in the midst of the COVID-19 pandemic, there still exists a large number of residential properties that are rented online on a “short-term” basis (i.e., for periods less than one month). Owners of short-term rental units are generally not GST/HST experts and hence are unaware of their GST/HST registration, collection or remittance

obligations in respect of those short-term rental units. Accordingly, effective July 1, 2021, GST/HST will apply on all short-term rental accommodation in Canada supplied through a digital platform. The collection and remittance obligations will need to be satisfied by either the property owner or the digital accommodation platform.

Proposed Corporate Income Tax Measures for Digital Service Companies

The Government of Canada proposes to introduce a corporate level tax on corporations providing digital services starting January 1, 2022 on an interim basis until a broader multilateral approach is adopted. The Government remains committed to a multilateral solution to international taxation issues that arise as a result of digitalization and mobile capital, such as the recent Pillar One and Pillar Two proposals put forward by the Organization for Economic Co-Operation and Development as part of the base erosion and profit shifting (BEPS) project. However, it is concerned about the delay in arriving at consensus. Accordingly, the Government proposes to implement a tax on corporations providing digital services, with effect from January 1, 2022, which would apply until such time as an acceptable common approach comes into effect. Details have not been provided.

Additional Tax Measures

Finally, the Fall Economic Statement 2020 announced several new measures or updates to previously announced measures, including the zero-rating of certain PPE (e.g., certain face masks, face shields and respirators) for GST/HST purposes, final proposed amendments to the taxation of certain employee stock options, an increase in spending for tax compliance initiatives (particularly with respect to offshore audits), and measures to simplify the claiming of certain home office expense deductions. The Government also announced that it is launching consultations in the coming months on the modernization of Canada's anti-avoidance rules, in particular the General Anti-Avoidance Rule, in order to target increasingly complex structures created to lower tax obligations in a manner that does not serve an economic purpose. Interestingly, the Government announced that it would take steps over the coming year to implement a "national, tax-based measure targeting the unproductive use of domestic housing that is owned by non-resident, non-Canadians." It remains to be seen how such a tax would be implemented, what constitutes "unproductive use" and how such a tax interacts with or differs from other provincial-based taxes that similarly target foreign ownership of residential properties (e.g., the 15% Ontario non-resident speculation tax, the B.C. Speculation and Vacancy Tax or the Vancouver Empty Homes Tax).

Questions?

The announced GST/HST measures may impact any entity that is, or is considering, selling goods or services in Canada. If you have any questions or would like more information regarding any of the announced measures or how they will impact sales to Canadian customers, please contact Neil Bass, Angelo Gentile or any member of our Tax Group.

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