

Canada's New Sales Tax Rules for Non-Residents Apply July 1, 2021

June, 2021

Non-residents of Canada involved in the provision of goods and services to Canadians face new sales tax obligations, beginning July 1, 2021. Affected businesses include the following:

- non-resident businesses selling digital products and services to Canadian consumers;
- non-resident vendors selling goods that are delivered or made available in Canada to Canadian consumers;
- distribution platform operators (i.e., persons controlling the essential elements of a transaction between a seller and a buyer) that facilitate sales described above; and
- operators of platforms that facilitate the provision of short-term accommodation in Canada.

Where applicable, these new rules require non-residents to register with Canadian tax authorities by July 1, 2021, and to collect and remit Canadian sales taxes.

Canada's Sales Tax Regime

Canada levies a 5% federal sales tax known as the "GST" (goods and services tax) that applies throughout Canada. Sales taxes are also levied by all provinces of Canada except Alberta. Most provinces have essentially added their sales tax onto the federal GST to create a single federal/provincial harmonized sales tax ("HST"), which is administered by the Canada Revenue Agency (or in the case of the province of Québec, the Québec tax authority). The Western Canadian provinces of Manitoba, Saskatchewan and British Columbia levy a completely separate provincial sales tax unrelated to the GST/HST.

For several years now Canadian governments have been concerned with not collecting sales tax revenue from transactions between Canadian consumers (i.e., final purchasers of the relevant good or service) and non-residents. Canadian retailers required to register for GST/HST purposes and collect GST/HST on sales to Canadian consumers have also complained that they are at an unfair disadvantage relative to non-resident competitors. The new rules applicable from July 1, 2021 are directed at these concerns.

Most non-resident vendors that have no physical or substantial presence in Canada are not required to register with the Canada Revenue Agency or to collect and remit GST/HST on sales to Canadians. These rules are changing as of July 1.

New Rules: Simplified Regime

First, a simplified GST/HST registration system is being created for cross border digital products and services. Non-resident suppliers of such products and services who are not already GST/HST registered will be required

to register with the Canada Revenue Agency by July 1, 2021 under a new simplified regime, if their revenues from sales to Canadian consumers exceed CAD \$30,000 during any 12-month period beginning on or after July 1, 2021. Similar requirements will also apply to operators of distribution platforms that are not already GST/HST registered and that generate more than CAD \$30,000 of sales from such supplies to Canadian consumers (e.g., supplied from non-resident vendors through the operator's distribution platform) during any 12-month period beginning on or after July 1, 2021. In either case, the non-resident supplier or platform operator will be required to collect GST/HST on sales to Canadian consumers and remit such amounts to the applicable tax authority.

Sales of Goods Delivered or Made Available in Canada

A non-resident seller of goods to Canadian consumers that is not already GST/HST registered under the normal rules will now be required to register with Canadian tax authorities by July 1, 2021 and charge, collect and remit GST/HST on certain sales to Canadian consumers. This obligation will apply where during any 12-month period beginning on or after July 1, 2021, the non-resident vendor has more than CAD \$30,000 of revenues from the sale to Canadian consumers of goods that are delivered or made available to the Canadian consumer in Canada, including:

- goods that are located in Canada (e.g., in a fulfillment warehouse); and
- goods shipped from a place in Canada to a Canadian consumer.

This new obligation does not apply to a non-resident that has no Canadian presence and is merely selling remotely to Canadian consumers through a distribution platform operator. Distribution platform operators are themselves deemed to supply goods they facilitate the sale of, if such goods are sold through their platform by a vendor that is not GST/HST registered and the goods are delivered or made available to the Canadian consumer in Canada, as described above. Such a distribution platform operator will itself be required to register with Canadian tax authorities by July 1, 2021 and charge, collect and remit GST/HST on certain sales to Canadian consumers, if during any 12-month period beginning on or after July 1, 2021, the operator has more than CAD \$30,000 of revenues from such sales to Canadian consumers.

Platform-Based Short-Term Accommodation in Canada

New GST/HST registration obligations will also apply to platform-based short-term accommodation in Canada. If the platform operator is not carrying on business in Canada such as to be required to register for GST/HST purposes under the normal regime, it will be deemed to be the supplier of the short-term rental accommodation in Canada that is facilitated through the operator's platform (unless the property owner is themselves GST/HST registered in Canada). If the accommodation platform operator makes supplies of short-term accommodation situated in Canada exceeding CAD \$30,000 over any 12-month period beginning on or after July 1, 2021, it will be required to register for GST/HST purposes by July 1, 2021 and collect and remit GST/HST on such supplies.

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