

# New GST/HST rules for non-resident online sales to Canadians

On November 30, 2020, the federal government released its [Fall Economic Statement \(FES\)](#) amidst the COVID-19 pandemic. In addition to a number of programs designed to stimulate the economy and support Canadians through the pandemic, the government announced significant changes to how GST/HST applies to sales made over the internet by non-residents. While the changes are primarily directed at non-residents, there are also important changes and considerations for Canadian resident businesses and consumer purchasers.

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## GST/HST on services and digital goods

Advances in technology have led to a steady increase of non-resident vendors branching out and selling goods to Canadians through online platforms, also known as online marketplaces. When Canadians purchase goods from non-residents online, at the very least, GST (and in some cases PST or HST) is levied when those goods cross the border. However, similar taxes do not apply when Canadians purchase digital goods and services online, as there is no physical way to track when an app is downloaded or a service provided. As the non-resident vendor is generally not considered to be carrying on business in Canada,

they are not required to register for GST/HST purposes and, as a result, would not be required or permitted to charge GST/HST on the supply of digital goods and services to Canadian customers.

Beyond resulting in less GST/HST revenue being collected by vendors on behalf of the Canada Revenue Agency (CRA), current registration rules also effectively disadvantage GST/HST registered vendors, including those who sell through distribution platforms and fulfillment warehouses in Canada. Generally, vendors located in Canada are required to collect and remit GST/HST on the final selling price when digital goods are supplied to customers in Canada. This means the Canadian vendors' total tax included price to consumers could be higher than the unregistered non-resident vendors' price for the same digital goods and services.



Under the proposed new provisions, however, non-resident vendors that supply digital goods and services over the internet, that are not considered to be carrying on business in Canada, would be required to register, charge and collect GST/HST through a simplified registration system.

Unlike GST/HST charged by a regular GST/HST registered supplier, GST/HST charged through this simplified registration system is not eligible for an input tax credit (ITC) or rebate and the vendor is unable to claim any ITCs for any GST/HST incurred on their activities in Canada.

The non-resident would charge tax based on the rate in effect in the consumers' usual place of residence. However, there are exceptions to this rule—in particular, where the product or service supplied is connected to a specific location. However, no GST/HST would apply if a service is purchased by a Canadian resident consumer but the service relates to

- real property outside Canada,
- services or rights to services performed at an identifiable location outside Canada, and
- services in connection with litigation taking place outside Canada.

Non-resident vendors are only required to charge the specified GST/HST on supplies to consumers (or unregistered organizations). In cases of supplies made to a GST/HST-registered business/organization, that business must provide their GST/HST number to the non-resident vendor to permit the non-resident not to charge them the specified tax. If GST/HST is charged in error to a registered person, the person must obtain a refund of the tax from the non-resident and not from CRA.

The proposed new rules are currently expected to apply to supplies made on or after July 1, 2021. They will also apply to supplies made prior to July 1, 2021 if they are not paid for until July 1, 2021 or afterwards.

## GST/HST on goods supplied through fulfillment warehouses

As part of the same release, the Government of Canada announced proposed changes to how GST/HST applies to goods sold through digital platforms and those supplied through fulfillment warehouses. Under the existing GST/HST framework, non-resident vendors were not necessarily required to collect GST/HST on goods sold through online marketplaces. Further, when their goods were distributed by the operators of those marketplaces, the responsibility to charge the GST/HST was unclear, resulting in neither the operator nor the seller charging GST/HST on those goods. This created a competitive disadvantage for Canadian businesses that were required to charge GST/HST on all sales.

The proposed changes, effective July 1, 2021, ensure that both types of vendors will be required to charge GST/HST on their sales.

The changes are as follows:

### **Distribution platform operators (DPOs)**

A DPO is a vendor who acts as a fulfillment service provider for orders made through an online marketplace. DPOs tend to operate fulfillment warehouses located across the globe where goods will be stored to maximize fulfillment speed. A vendor is considered a DPO if they control the essential elements of the transaction between the supplier and recipient, or if they are involved in handling the payment between the supplier and recipient in any way.



Under the new proposed provisions, as of July 1, 2021, DPOs will be required to register for GST/HST and must collect GST/HST on most sales of goods from fulfillment warehouses located in Canada. This will include collecting GST/HST on sales made by non-registered vendors through their platform when those goods are shipped from a place in Canada to a purchaser in Canada.

This process works by deeming the supply made by the non-resident/non-registrant supplier to be made by the DPO. Effectively, the DPO is deemed to have supplied the goods to the end customer in Canada, which requires them to collect GST/HST. These provisions deem that there is no supply between the non-registrant and the DPO for use of the DPO's platform so that no tax will apply on any charges from the DPO to the non-resident.

Additional changes are being implemented to avoid embedding tax into the final sales price. In particular, when goods are brought across the border for storage at a DPO's premises, the DPO will generally be eligible for an ITC for the GST paid at the border.

Finally, there are expanded disclosure obligations being imposed on DPOs regarding the identity of their non-resident clients, including which of the goods being stored belong to these clients.

### **Non-resident vendors**

Non-resident vendors will now be expected to register under the regular GST/HST regime and must collect tax on sales of goods from fulfillment warehouses in Canada, or which are shipped from a place in Canada to a purchaser in Canada when those sales are not made through a distribution platform (e.g., their own website or an online marketplace). Registration will also give non-resident vendors the ability to claim ITCs. It may also expand the non-resident's obligation to charge tax on goods shipped into Canada depending on where legal delivery is considered to occur.



Once registered under this requirement, tax will apply whether the supplies are made to a consumer or to a business, as the vendor will be registered under the normal GST/HST regime.

#### Additional notes

The proposed changes do not change the existing drop shipment rules and are not intended to replace or override those rules. However, some additional drop-shipment relieving provisions have been added where an unregistered non-resident is acquiring supplies from a GST/HST registered supplier who would otherwise have been required to charge tax where the supply to the Canadian customer is to be made through a DPO.

## GST/HST on platform-based short-term accommodation

As part of the 2020 FES to again ensure consistency in the application of tax on short-term accommodations by all suppliers, the government proposed applying GST/HST to short-term rentals facilitated through a digital platform (e.g., Airbnb or a similar accommodation platform) effective July 1, 2021.

Under the current rules, often GST/HST is not being collected by unregistered individual property owners who rent out their residences through an accommodation platform where they have not exceeded the small supplier threshold (\$30,000). Additionally, property owners who rent out properties and who have exceeded that threshold may not be aware of the requirement to register and collect GST/HST. This creates disparity with respect to the application of tax to short-term accommodation providers in Canada, and in turn less revenue for CRA.

The GST/HST applies on short-term accommodation at the applicable rate based on the location of the accommodation. GST/HST applies to the reservation amount, including any platform fees charged to guests booking the accommodation.

There is no tax on platform service fees charged to a non-registered supplier of the accommodation.

As noted in the proposed legislation:

#### Property owners

The property owner (supplier) is required to register and collect GST/HST on short-term rentals offered through the accommodation platform unless they are a small supplier (making less than \$30,000 of taxable supplies over a 12-month period). This requirement is currently in place based on existing legislation.

The operators of the accommodation platforms where property owners list their properties will now be required to maintain records on property owners and provide this information to the CRA. This will provide the CRA with greater information about who operates short-term rentals through these platforms to ensure income from these operations is reported to the tax authorities.

#### Accommodation platform operators (APOs)

An APO is the person that controls or sets the essential elements of the transaction, such as collecting, receiving, charging payment and transmitting payment between the third-party vendor and the customer for the supply of short-term rentals in Canada. Under the proposed rules, the APO would be deemed to be the supplier where the third parties are not registered for GST/HST. As such, an APO is deemed to be the supplier for the short-term rental and would be required to register and collect GST/HST on such rentals.

Non-resident APOs not carrying on business in Canada would be required to charge and collect GST/HST through a simplified registration system described above. Any GST/HST charged through this simplified registration system is not eligible for an ITC and the platform operator cannot claim ITCs on their activities in Canada. In this case, a GST/HST-registered business can provide their GST/HST number to the non-resident platform operator and self-assess and remit the tax on any short-term accommodation purchased through these platforms if required to under the legislation.

*Grant Thornton LLP wants to caution that these rules are still new and continue to evolve as the government continues to re-evaluate the economic impact caused by the COVID-19 pandemic. We may still see changes to these measures—as well as new measures—as the government attempts to address the issues that have been raised by us and the tax community. Therefore, any analysis included herein, reflects our knowledge as of the date and time of this email and may no longer be applicable if changes do occur and you should proceed with caution before making any decisions.*

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