

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.

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 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. In essence, this means non-resident vendors are not considered to be carrying on business in Canada. As a

result, they are not required to register for GST/HST purposes and frequently do not charge GST/HST on their sales of digital goods and services to Canadians.

Beyond leading to a decrease in GST/HST revenue being collected by the Canada Revenue Agency (CRA), current registration rules also disadvantage vendors situated in Canada, 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 sold to customers in Canada. This means the Canadian vendors' total selling price to consumers could be higher than the non-resident vendors' price for the same digital goods and services.



Under the new rules, however, non-resident vendors that sell digital goods and services over the internet, but do not carry on business in Canada, would be required to charge and collect GST/HST through a simplified registration system. GST/HST charged through this simplified registration system is not eligible for an input tax credit (ITC) and the vendor is unable to claim any ITCs 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. In that case, 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 GST/HST on sales to consumers. In cases of a sale to a GST/HST-registered business, that business can provide their GST/HST number to the non-resident vendor. The Canadian business would be required to self-assess and remit the tax on any purchases from a non-resident that are not used exclusively in commercial activities. If GST/HST is charged in error, the business must obtain a refund of the tax from the non-resident.

The proposed new rules would apply to supplies made on or after **July 1, 2021**. They will also apply to supplies made prior to July 1, 2021 but that are not payable until July 1, 2021 or afterwards.

GST/HST on goods supplied through fulfillment warehouses

The Government of Canada recently announced changes to how GST/HST applies to goods sold through digital platforms and supplied through fulfillment warehouses. Under the existing GST/HST framework, non-resident vendors were not necessarily required to collect GST/HST on goods sold on 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 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 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.

Effective July 1, 2021, DPOs will be required to register for GST/HST and must collect GST/HST on sales of goods that are located in fulfillment warehouses in Canada. They must also

collect 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 to the DPO. Effectively, the DPO is deemed to have supplied the goods, which requires them to collect GST/HST. There is no deemed supply between the non-registrant and the DPO for use of the DPO's platform.

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

Finally, there are expanded disclosure obligations being placed 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 for GST/HST and must collect this on sales of goods that are located in 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.

These changes apply whether the supplies are made to a consumer or to a business.

Additional notes

The proposed changes do not change the existing drop shipment rules and are not intended to replace or override those rules.



GST/HST on platform-based short-term accommodation

As part of the 2020 FES, 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, GST/HST is not being collected by unregistered individual property owners who rent out their residences through an accommodation platform since they are operating on a small-scale basis. Additionally, property owners who rent out properties on a larger scale for short-term rentals 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.

The GST/HST is exigible on short-term accommodation at the provincial rate where the accommodation is located. GST/HST applies to the reservation amount, including any platform fees charged to guests booking the accommodation. There is no tax on platform services provided to a non-registered underlying supplier of the accommodation.

As noted in the proposal:

Property owners

The property owner 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 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 once they are no longer a small supplier.

Non-resident APOs not carrying on business in Canada would be required to charge and collect GST/HST through a simplified registration system. 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.

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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