

TAXTALK

U.S. SUPREME COURT RULING COULD CAUSE CANADIAN ONLINE RETAILERS TO FACE TAX ON U.S. SALES

On June 21, 2018, the U.S. Supreme Court overruled a longstanding court precedent that applied to the collection of sales tax from online and other remote retailers. In *South Dakota v. Wayfair, Inc. et al*, the Court replaced the “physical presence” nexus rule with a new standard for determining when states can impose a sales tax collection responsibility on out-of-state (including Canadian) sellers of taxable goods and services.

The Court determined that the threshold for a state to exercise its taxing power is now “substantial nexus” in the state. While the Court did not provide a “bright line” test for the minimum dollar amount or number of transactions that would satisfy the substantial nexus standard, it found that South Dakota’s threshold of requiring sellers with more than \$100,000 in annual sales of goods and services or 200 or more separate transactions in the state to collect its tax is “clearly sufficient” to constitute substantial nexus.

The impact of this Court ruling will dramatically change the U.S. sales and use tax landscape. States will be able to collect sales tax from online retailers, provided that they meet criteria to be determined by each state. Also, U.S. states could soon force Canadian online retailers to register and pay sales taxes on products sold into their state which could have a ripple effect across Canada’s e-commerce sector. Many small Canadian online vendors who sell their products through e-commerce giants like Amazon.com Inc. and eBay Inc., will be impacted by the ruling.

To learn about the impact of this change on the states in which you do business and to identify possible areas of exposure affecting your business, please contact Basil Punit, Partner, in our U.S. and International Tax Services Group at bpunit@mgca.com.

A memorandum of this nature cannot be all-encompassing and is not intended to replace professional advice. Its purpose is to highlight tax planning possibilities and identify areas of possible concern. Anyone wishing to discuss the contents or to make any comments or suggestions about this TaxTalk is invited to contact one of our offices.

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