

TAX TALK

NEW GST/HST RULES FOR E-COMMERCE SALES

Foreign companies that sell goods and services online in Canada should have registered for the simplified GST/HST e-commerce registration effective July 1, 2021.

The new GST/HST rules generally apply when a foreign company sells to consumers who are not normally registered for GST/HST in Canada. These sales include:

1. cross-border digital products and services;
2. goods supplied through Canadian fulfillment warehouses (such as Amazon Fulfillment Centres); and
3. short-term accommodation through digital platforms (such as VRBO and AirBNB).

A. Cross-border digital products and services

Under the old rules, foreign companies with no significant presence in Canada who sold digital products or services to consumers in Canada generally did not have to register and charge GST/HST to their customers.

The new rules now require non-resident vendors and distribution platform operators to register under the simplified registration process and to collect GST/HST on sales to Canadian customers, but not to those who are GST/HST registrants.

These foreign companies now must have a method to identify Canadian customers, the customers' locations and whether the customer is registered for GST/HST, in order to determine which customers are to be charged GST/HST and which GST/HST rate to apply (i.e. 5%, 13% or 15%).

Under the simplified regime, these non-resident companies are not required to charge GST/HST to customers registered for GST/HST. However, the non-resident then cannot claim any input tax credits for GST/HST paid on supplies purchased in Canada.

If the non-resident is registered under the simplified regime and inadvertently charges GST/HST to a customer who is a GST/HST registrant, the customer will have to request a refund from the non-resident directly rather than claim an ITC, since the customer is not entitled to claim an ITC on the GST/HST paid to the non-resident in error.

B. Goods supplied through fulfillment warehouses

Prior to the new rules, foreign online vendors or foreign digital platforms that did not have physical presence in Canada but held their goods in Canadian fulfillment warehouses were not required to charge GST/HST on the final price paid for the goods sold to Canadians.

The new rules now impose GST/HST on all sales to Canadians when the sale is facilitated by non-resident vendors or digital platform operators for goods located in Canadian fulfillment warehouses. The new rules require non-resident digital platform operators to register for GST/HST under the normal regime rather than under the simplified method and collect and remit GST/HST on sales to Canadians of goods located in Canadian fulfillment warehouses.

Furthermore, to help the Canada Revenue Agency (CRA) to administer these rules, the digital platform operators will be required to file a special annual information return with the CRA for each calendar year within six months after the end of that calendar year. The information return is to provide CRA with information on the foreign businesses selling through the digital platform to Canadian consumers.

In addition, the fulfillment warehouses must notify the CRA that they are acting as a fulfillment warehouse for their non-resident clients and must maintain records on their non-resident clients and goods stored for their non-resident clients.

C. Short-term accommodation through digital platforms

The new GST/HST rules will also impose GST/HST on all platform-based short-term rental accommodation supplied in Canada by both Canadian and foreign property owners.

If the property owner is a GST/HST registrant, the property owner is required to collect and remit GST/HST on their short-term rentals.

If the property owner is not a GST/HST registrant, then the accommodation platform operator will be deemed to have made the supply and will be required to collect and remit the GST/HST on the short-term rentals.

Accommodation platform operators will be able to register, collect and remit GST/HST under the simplified regime where they are deemed to have made the supply on behalf of an unregistered property owner. However, if the accommodation platform operators need to claim ITCs on expenses incurred in Canada, they will be required to register under the regular GST/HST method.

Short-term accommodation generally would include a rental of a residential complex or unit to a person for less than a month and for more than \$20 a day.

To help the CRA administer these rules, accommodation platform operators will be required to maintain records and file a special information return with the CRA for each calendar year six months after the end of that calendar year.

D. Information required to register for a GST/HST account

A foreign company will need all of the following information to apply to register for a simplified GST/HST account:

1. Effective date of registration

The latest date of registration is the day the foreign company's sales in Canada exceeds \$30,000 CAD which is the threshold amount for registering for GST/HST. The foreign company may register on an earlier date, if it so chooses.

2. Fiscal year for GST/HST purposes

The fiscal year end for the simplified GST/HST filing is December 31st for each year regardless of the actual year end of the foreign company.

3. Total annual revenue

The total annual revenue for GST/HST registration purposes is the total sales in Canada in CAD\$. For new businesses, the foreign company may provide the CRA with a reasonable estimate of sales in Canada for the year in CAD\$.

4. Business information

The foreign company must provide the following information about their business:

- type of business or organization (such as sole proprietorship, partnership or corporation);
- business legal name;
- operating, trade, or partnership name (if any);
- Canadian business number (if any);
- physical address;
- mailing address (if different);
- address where the books and records of the business are kept;
- e-mail address for the business;
- website address (if applicable);
- description of major business activity; and
- incorporation information (where applicable):
 - date of incorporation;
 - jurisdiction of incorporation; and
 - certificate number.

Foreign entities including sole proprietorships, partnerships and corporations must also provide the following information about their business owner(s).

- names, title and phone number
- Social Insurance Number (SIN) – if applicable
- Temporary Tax Number (TTN) – if applicable

5. Supporting documents

CRA may require supporting documentation after the registration application form has been reviewed.

6. Optional GST/HST registration process

Alternatively, non-resident vendors and platform operators falling under these rules can choose to register under the normal GST/HST rules so that all the standard GST/HST rules would apply. This option would be best when the vendor would purchase goods or services with GST/HST since under the simplified e-commerce registration the non-resident vendor would not be allowed to claim an ITC on these goods or services.

We Can Help

Your MG advisor can help you review your GST/HST situation and help you decide which steps you should take to determine whether you will need to register for GST/HST with the CRA under the new e-commerce sales tax rules.

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.

Offices: First Canadian Place
100 King Street West, Suite 5700
Toronto, Ontario M5X 1C7
Phone: 416-362-0515

1900 Minnesota Court, Suite 116
Mississauga, Ontario L5N 3C9
Phone: 905-451-4788
Fax: 905-451-3299

TaxTalk is prepared by our Tax Group (taxtalk@mgca.com). Please visit our web site at www.mgca.com.

McCarney Group LLP is an independent member of Morison Global