Québec's New QST Registration Rules Target Non-Resident Online Vendors and Service Providers

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Prior to January 1, 2019, a company with no fixed place of business in Québec was generally not required to register or charge Québec Sales Tax (QST) on its sale of goods or services into the province. That has now changed with significant amendments to the QSTA which created a completely new set of QST registration rules for non-resident service providers and digital platforms. Many companies with no fixed place of business in Québec such as digital and SaaS providers may be required to register, charge and remit QST on their services and certain goods sold to Québec customers.

Depending on the type and location of the non-Québec business, these new registration and collection obligations are phased in on January 1, 2019 and September 1, 2019.1 Notably, as outlined below, a business may be responsible for collecting QST from a broader range of customers than what was anticipated when these new rules were first announced.

Background

As a general rule, businesses supplying property or services to Québec customers have no obligation to register for, charge and collect QST unless the business:

- carries on business in Québec;
- has a permanent establishment in Québec; or
- voluntarily registers for QST purposes.2

This has historically provided a tax advantage to non-Québec businesses who would not need to charge and collect QST from their Québec customers. This issue is not unique to Québec; it is a policy problem faced by nearly all jurisdictions administering value-added taxes. The explosion of digital commerce and SaaS have exacerbated this issue worldwide.

New Registration and Collection Requirements Starting 2019

The new QST registration system requires certain out-of-province businesses to now register for QST purposes and collect QST when selling certain goods and services to recipients in Québec.3 The amendments have created categories of consumers such as a "Specified Québec consumer" which means a recipient, not registered for QST, and whose usual place of residence is Québec.4

Two types of businesses are caught by this new registration regime:

- "specified suppliers," which are generally suppliers, not otherwise registered for QST, who have no permanent establishment within the province and are not carrying on business in Québec; and
- operators of a "specified digital platform", which is generally a digital platform through which third parties can sell incorporeal moveable property (*i.e.* generally, personal property) or services directly to consumers.5

Registration Threshold

Both types of businesses must register for QST under the new system where their revenue from certain sales to individuals exceeds a threshold of $30,000.6 The threshold is calculated based on revenue from the supplies made in Québec to a customer who can reasonably be considered to be a "consumer".7 "Consumer" generally means an individual purchasing property for their or another individual's personal consumption, use or enjoyment.8

The new QST registration system gets even more complex as the system alters the general "place of supply" rules used to determine whether supplies are "made in Québec" for the purposes of calculating the $30,000 threshold. For example, the new rules potentially capture non-resident service providers who are not carrying on business in Québec.

Specified Digital Platforms

Businesses that operate specified digital platforms must include in their threshold calculation taxable supplies of incorporeal movable property or services through the digital platform.9

When determining whether certain sales are included in its $30,000 threshold, a specified supplier or digital platform operator must corroborate a customer's residency through information obtained in the ordinary course of business, for example, the customer's billing, home or business address, their IP address, or their payment-related bank information.10

Once a specified supplier or digital platform operator exceeds this $30,000 threshold, the business may choose to be QST-registered under the general procedure or under a new "simplified" registration procedure. The major difference between the two is that under the general registration, non-resident suppliers would be entitled to obtain a credit to recover any QST they pay to their own suppliers whereas under the simplified process, no such credits will be allowed. There are also nation-wide implications to the non-resident if they register under the general route.

Obligation to Collect and Remit QST

Notably, a supplier's *registration* obligations are determined based on sales to "Québec consumers" (individuals in Québec who are consumers), but a supplier's *collection* obligations extend to "*specified* Québec consumers" (individuals, corporations, and any other "persons" for QST purposes who are (1) resident in Québec and (2) *not* registered for QST). In other words, where the supplier registers for the new regime, it must collect QST on the supplies, mentioned above, that are made to all Québec customers who are not registered for QST purposes, regardless of whether the customer is an individual or another entity.11 For example, consider a U.S.-based investment manager providing its services (outside of Canada) to both Québec individuals and Québec-based investment funds. If the U.S.-based investment manager's revenue from non-registered Québec individuals exceeds the $30,000 threshold, it appears that the investment manager would have to register for the new QST regime and collect QST from both its individual clients as well as from its investment fund clients.

Compliance Deadlines

These new measures will apply as of January 1, 2019 for foreign specified suppliers and specified digital platform operators facilitating sales by such suppliers, and as of September 1, 2019 for the Canadian specified suppliers and specified digital platform operators facilitating sales by such suppliers.12

Other Canadian Jurisdictions

No equivalent schemes have been implemented in the other provinces or federally. However, based on a May, 2018 legislative tweak to the definition of "vendor", Saskatchewan has recently started taking the position that certain vendors of tangible personal property or services who are neither resident of Saskatchewan or carrying on business in Saskatchewan must now register for and collect Saskatchewan's Provincial Sales Tax.

Should you have any questions regarding these new rules and how they might apply to your circumstances, please contact us or a member of our Commodity Tax and Customs Tariffs Group.

1 Bill 150, 2018, c 18, s 78 [Bill 150].

2 *Act Respecting the Quebec Sales Tax*, s 23 [QSTA].

3 QSTA, s 477.6.

4 QSTA, s 477.2 "specified Québec consumer."

5 QSTA, s 477.2 "specified supplier"; s 477.2"specified digital platform"; s 477.5.

6 QSTA, s 477.5.

7 QSTA, s 477.2 "specified threshold".

8 QSTA, s 1"consumer."

9 QSTA, s 477.2 ”specified threshold”.

10 QSTA, s 477.3.

11 QSTA, s 23(4)-(6); 477.6; 477.2 ”specified Quebec consumer.”

12 Bill 150, s 135.

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