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Sale of Electronic Services in Canada:

Upcoming GST/HST Registration Requirements for Non-Residents

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In Canada, the term “**electronic service**” is not defined for sales tax purposes. Instead, we are talking about either the supply of a “**service**” or the supply of an “**intangible personal property**” for purposes of the federal Goods and Services Tax/Harmonized Sales Tax (“**GST/HST**”).

GST/HST is a value-added-tax similar those applicable in other countries in the world. It is not a retail sales tax, like those applicable in the various states of the United States of America.

The purpose of this article is to provide a short overview of the upcoming changes to the GST/HST registration requirements for non-resident selling electronic services in Canada, which may generally include any service or intangible personal property. However, our article does not address the registration requirements for providers of short-term accommodations and related services which follow similar, but not identical rules.

GST/HST Registration Requirements

Currently, a non-resident of Canada who does not carry-on business in Canada is generally not required to register for GST/HST purposes and to charge the tax on its supplies of services and intangible personal

properties. Changes to the registration rules have been announced that will come into effect on July 1, 2021. Those new rules will require non-residents of Canada to register for GST/HST purposes effective on that date and going forward if certain conditions are satisfied.

It is proposed¹ that every person (other than a registrant or a person that carries on a business in Canada) that is a **specified non-resident supplier** at any time in respect of a supply made at any time is required at that time to be registered for GST/HST purposes under a new simplified GST/HST regime for non-residents, if the threshold amount of the person for any period of 12 months (other than a period that begins before July 2021) that includes that time exceeds \$30,000.

A “**specified non-resident supplier**” would be defined as a person non-resident of Canada that does not make supplies in the course of a business carried on in Canada and that is not GST/HST registered.

The “**threshold amount**” of a particular person for a period will be defined as the total value of the supplies that are, or that could reasonably be expected to be **specified supplies** made during that period by the particular person to **specified Canadian recipients** (other than supplies made through a GST/HST registered **distribution platform operator**). Therefore, if all the sales of the non-resident are made through a GST/HST registered distribution platform (or if less than \$30,000 of sales are made or are reasonably be expected to be made in Canada annually by the non-resident in any other way), the non-resident would not be required to register for GST/HST purposes under these proposed rules.

¹In subsection 211.12(2) of the Excise Tax Act (“**ETA**”)

The term “**specified supply**” generally includes any taxable supply of a service or intangible personal property except when:

- The intangible personal property may not be used in Canada, relates to real property situated outside Canada or relates to tangible personal property ordinarily situated outside Canada.
- The service may only be consumed or used outside Canada, is in relation to real property situated outside Canada, or is rendered in connection with litigation that is under the jurisdiction of a court or other tribunal established under the laws of a country other than Canada.

A “**specified Canadian recipient**” would be defined as a recipient of a supply in respect of which the following conditions are met:

- a. The recipient has not provided to the supplier, or to a distribution platform operator in respect of the supply, evidence satisfactory to the Minister that the recipient is registered for GSTS/HST purposes; and
- b. The usual place of residence of the recipient is situated in Canada.

Note: The recipient does not have to be an individual. It could be any Canadian business that is not registered for GST/HST purposes.

Finally, a “**distribution platform operator**” in respect of a supply of property or a service made through a **specified distribution platform**, would mean a person (other than the supplier or an **excluded operator** in respect of the supply) that:

- a. Controls or sets the essential elements of the transaction between the supplier and the recipient;
- b. If paragraph (a) does not apply to any person, is involved, directly or through arrangements with third parties, in collecting, receiving, or charging the consideration for the supply and transmitting all or part of the consideration to the supplier; or
- c. Is a prescribed person.

A “**specified distribution platform**” would mean a digital platform (such as a website, an electronic portal, gateway, store or distribution platform or any other similar electronic interface)

through which a person facilitates the making of specified supplies by another person that is a specified non-resident supplier.

It must be noted that a digital platform does not include an electronic interface that solely processes payments, or that is otherwise prescribed by regulations.

Similarly, a distribution platform operator would not include an “**excluded operator**” which is a person that, does not set, directly or indirectly, any of the terms and conditions for the supply, is not involved in authorizing the charge to the recipient and is also not involved in the ordering or delivery of the property or service. An excluded operator would also include a person that solely provides for the listing or advertising of the property or service or for the redirecting or transferring to a digital platform on which the property or service is offered, or that is solely a payment processor or, finally, a person prescribed by regulations.

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