

2018 Issue No. 18
5 April 2018

Tax Alert – Canada Québec announces QST and e-commerce measures

EY *Tax Alerts* cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

The digital economy poses difficulties regarding the collection of the Québec sales tax (QST) by suppliers that have no physical or significant presence in Québec. These nonresident suppliers are currently not required to register with Revenu Québec for the purpose of collecting and remitting the QST, even when their supplies in Québec are taxable.

Through budget provisions tabled on 27 March 2018 by Québec Minister of Finance Carlos J. Leitão, the Québec Government intends to implement a new mandatory *specified registration system* for suppliers that have no physical or significant presence in Québec to ensure the QST is collected and remitted in the digital age.

Measures relating to the QST and e-commerce

Mandatory registration system

According to the new *specified registration system*:

- ▶ Suppliers that have no physical or significant presence in Québec (non-QC resident suppliers) will be required to collect and remit the QST on taxable **incorporeal movable property** and **services** they supply in Québec to specified Québec consumers.
- ▶ Non-QC resident suppliers **that are located in Canada** will be required to collect and remit the QST on taxable **corporeal movable property** they supply in Québec to specified Québec consumers.

For this mandatory registration measure to apply to a non-QC resident supplier, the value of the considerations for all taxable supplies made by the supplier in Québec to specified Québec consumers must exceed a threshold of \$30,000 (see *Applicable concepts* below).

Digital property and services distribution platforms

The requirement to register under the new specified registration system will also apply to digital property and services distribution platforms with respect to taxable supplies of **incorporeal movable property** or **services** received by specified Québec consumers, where these digital platforms control the **key elements of transactions** with specified Québec consumers, such as billing, transaction terms and conditions, and delivery terms.

The requirement to register will not apply to digital platforms supplying only a transport service, a service providing access to a payment system, or an advertising service that informs customers of various types of movable property or services offered by a non-QC resident supplier and links them to the supplier's website. Such digital platforms will not be considered to control the key elements of transactions.

Changes to rules regarding the presumption of supply outside Québec

Changes will be made so that the presumption *whereby a supply of movable property or services made in Québec by a person that is not resident in Québec is deemed to have been made outside Québec* does not apply to the following supplies:

- ▶ Supplies of corporeal movable property made in Québec to specified Québec consumers by non-QC resident suppliers located in Canada and registered under the specified registration system
- ▶ Supplies of incorporeal movable property or services made in Québec to specified Québec consumers by non-QC resident suppliers registered under the specified registration system
- ▶ Supplies of incorporeal movable property or services made in Québec to specified Québec consumers by non-QC resident suppliers through a digital platform registered under the specified registration system or the general registration system

Existing self-assessment rules under the QST system will continue to apply to taxable supplies that continue to be deemed to have been made outside Québec.

Applicable concepts

- ▶ **Specified registration system – Input tax refund (ITR) not applicable:** Non-QC resident suppliers registered under the new specified registration system will not be *registrants* within the meaning of the other provisions of the QST system. They will not be able to claim an ITR in respect of property and services acquired in the course of their commercial activities. Similarly, recipients registered under the general registration system who pay QST to a non-QC resident supplier registered under the specified registration system may not recover, by means of an ITR mechanism, the tax thus paid.
- ▶ **Specified Québec consumer:** For the purposes of the specified registration system, the term “specified Québec consumer” will mean a person who is not registered for the QST and whose usual place of residence is located in Québec. To validate a person's usual place of residence, non-QC resident suppliers will be required to obtain two non-contradictory pieces of information (e.g., the person's billing address and personal address).

- ▶ **The non-QC resident supplier's \$30,000 threshold** is based on the value of the considerations for all taxable supplies made by the supplier in Québec to consumers during the 12-month period preceding the month that includes the particular date and the value of the considerations for supplies deemed to be made outside Québec.
- ▶ **Tax paid in error:** A person who is registered under the general registration system and who pays the QST in error to a non-QC resident supplier registered under the specified registration system must go through the non-QC resident supplier to obtain a rebate of the QST paid in error. However, if the person is a specified Québec consumer, the person may apply for a rebate either through the non-QC resident supplier registered under the specified registration system or from Revenu Québec, in accordance with the QST system rules applicable to this situation.
- ▶ **Election to register under the specified registration system or the general registration system:** Non-QC resident suppliers required to register under the new specified registration system may elect instead to register under the general registration system, if they meet the optional registration requirements currently provided for under the QST system and if they provide security satisfactory to the Minister of Revenue. Non-QC resident suppliers making such election will also be required to register for GST/HST.
- ▶ **Verification mechanism:** A mechanism to verify the identification number of non-QC resident suppliers registered under the specified registration system will be introduced.
- ▶ **Penalties:** A new penalty will apply equal to or greater than \$100 or 50% of the QST payable on the transaction in respect of which a recipient avoided or attempted to avoid paying the QST. It will apply to recipients of movable property or services supplied by a non-QC resident supplier registered under the specified registration system who give the supplier a QST registration number erroneously or false information regarding their usual residence, in an effort to avoid paying the applicable QST to the non-QC resident supplier. During the 12-month period following the date of application of this new system, Revenu Québec will not apply penalties to non-QC resident suppliers who show that they have taken reasonable measures to meet their new obligations. After this 12-month period, the penalties provided for in the existing tax legislation will be applied to non-QC resident suppliers that have not complied with the new obligations.
- ▶ **Characteristics of the specified registration system:** The specified registration system will be accessible via a new Revenu Québec simplified online service that will allow non-QC resident suppliers to identify themselves to Revenu Québec in order to file QST returns and pay their taxes electronically on a quarterly basis. Non-QC resident suppliers registered under the specified registration system will be able to pay the QST collected in a currency other than the Canadian dollar.
- ▶ **Records and supporting documents:** The QST legislation will be amended so that the same obligations to keep records and supporting documents for six years apply to non-QC resident suppliers registered under the specified registration system.

Application dates

The measures stemming from the implementation of the new specified registration system will apply as of:

- ▶ **1 January 2019**, in the case of non-QC resident suppliers **outside Canada** and in the case of digital platforms enabling such suppliers to make taxable supplies of **incorporeal movable property** or **services** in Québec to specified Québec consumers
- ▶ **1 September 2019**, in the case of non-QC resident suppliers **located in Canada** with respect to taxable supplies of **corporeal** or **incorporeal movable property** or **services** to specified Québec consumers and in the case of digital platforms enabling such suppliers to make taxable supplies of **incorporeal movable property** or **services** in Québec to specified Québec consumers

New measures for ensuring tax fairness regarding corporeal property from outside Canada

An existing agreement stipulates that the Canada Border Services Agency is responsible for collecting, on behalf of the Québec Government, the QST applicable to property imported by Québec individuals (consumers). In the spring of 2018, a pilot project will be implemented to improve the parcel processing capacity of Canada Post's sorting centre in Montréal.

If the pilot project is successful, it will be extended to other regions in the future. It will be interesting to see if other Canadian provinces will apply similar measures.

Learn more

Given the new measures described above, it will be important for businesses to determine whether or not they are required to register under the new specified registration system and therefore required to collect and remit QST on the taxable supplies mentioned above. For more information on this and any other topics that may be of concern, please contact your EY or EY Law advisor or one of the following professionals:

Jean-Hugues Chabot, Montréal
+1 514 874 4345
jean-hugues.chabot@ca.ey.com

Manon Jubinville, Montréal
+1 514 874 4391
manon.jubinville@ca.ey.com

Louis Fournier, Montréal
+1 514 879 6891
louis.fournier@ca.ey.com

Jadys Bourdelais, Montréal
+1 514 879 6380
jadys.bourdelais@ca.ey.com

Jean-Baptiste Congy, Montréal
+1 514 879 8079
jb.congy@ca.ey.com

Catherine Dickner, Montréal
+1 514 879 8100
catherine.dickner@ca.ey.com

And for up-to-date information on the federal, provincial and territorial budgets, visit ey.com/ca/budget

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

About EY's Tax Services

EY's tax professionals across Canada provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We offer a range of tax-saving services backed by in-depth industry knowledge. Our talented people, consistent methodologies and unwavering commitment to quality service help you build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its potential. It's how we make a difference.

For more information, visit ey.com/ca/tax.

About EY Law LLP

EY Law LLP is a national law firm affiliated with EY in Canada, specializing in tax law services, business immigration services and business law services.

For more information, visit eylaw.ca.

About EY Law's Tax Law Services

EY Law has one of the largest practices dedicated to tax planning and tax controversy in the country. EY Law has experience in all areas of tax, including corporate tax, human capital, international tax, transaction tax, sales tax, customs and excise.

For more information, visit eylaw.ca/taxlaw.

© 2018 Ernst & Young LLP. All Rights Reserved.

A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

ey.com/ca