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Tax Alert – Canada

New Manitoba PST registration requirements for nonresidents in the digital economy

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.

Following the lead of British Columbia,¹ Saskatchewan and Quebec,² Manitoba has expanded its Provincial Sales Tax (PST) registration requirements for online marketplaces, online accommodation platforms and streaming services. The registration requirements stipulate that they include out-of-province and non-Canadian businesses that “enable or facilitate” sales made in Manitoba, but do not otherwise carry on business in the province (see below).

On 14 October 2021, Manitoba amended *The Retail Sales Tax Act* requiring “online accommodation platforms”, “online sales platforms” and other digital service providers to be registered for and collect PST at 7% from customers located in Manitoba. Affected businesses will also be required to file monthly, quarterly or yearly returns. These requirements come into force on 1 December 2021.³

However, there remains a significant issue as to whether Manitoba has the legislative authority under Canada’s Constitution to impose any such requirements on out-of-province and non-Canadian businesses, with two related constitutional challenges currently working their way through the courts.

¹ Refer to [EY Tax Alert 2021 Issue No. 05](#).

² Refer to [EY Tax Alert 2019 Issue No. 32](#).

³ As announced in the Manitoba budget; refer to [EY Tax Alert 2021 Issue No. 17](#).

Background

In 2002, Manitoba passed legislation requiring businesses located outside of Manitoba that do “not otherwise carry on business in the province” to register for, charge, collect and remit Manitoba PST if they (i) cause goods to be delivered in Manitoba, (ii) solicit orders for goods in Manitoba, and (iii) accept orders that originate in Manitoba.

Now with its 2021 amendments, Manitoba – following the lead of British Columbia, Saskatchewan and Quebec – is attempting to expand its authority outside its provincial boundaries even further, in respect of the digital economy.

Nonresidents and residents of Canada

Under Manitoba’s 2021 amendments, anyone who operates an “online accommodation platform” or “online sales platform” must be registered for the purposes of collecting and remitting Manitoba’s PST. “Online accommodation platform” and “online sales platform” are defined in the amendments as online marketplaces that “enable or facilitate” (i) retail sales in the province, and (ii) the collection of payment.

Significantly for out-of-province and non-Canadian businesses, these registration requirements may be triggered even where the operator of the online platform:

1. Does not sell goods to persons in Manitoba (but merely “enables or facilitates” sales made by “online sellers” or accommodation providers); and
2. Does not carry on business in Manitoba.

In addition, Manitoba’s 2021 amendments expand the definition of a taxable “telecommunication service” under *The Retail Sales Tax Act*. The apparent intent of this expanded definition – along with further definitions added for “telecommunications” and “electronic device” – is to require streaming service providers to register for and collect PST.⁴ However, the complex interaction between these three definitions may also trigger registration requirements for other digital service providers.

Constitutionality

Section 92 of Canada’s *Constitution Act, 1867* limits the legislative authority of each province to making laws *in the particular province*. As such, there remains a significant issue as to whether Manitoba and the other provinces in Canada that still administer their own PST (British Columbia, Saskatchewan and Quebec) have legislative authority to impose PST registration requirements on persons who do not carry on business in the province.

EY teams are aware of court cases challenging the constitutionality of British Columbia’s PST registration requirements and are monitoring the outcomes.

⁴ As is set out in the explanatory notes to Bill 74. See also Manitoba’s Information Bulletin No. 121 (April 2021) <https://www.gov.mb.ca/finance/taxation/pubs/bulletins/2021budget.pdf>

Learn more

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