

# Fall Economic Statement 2020: GST/HST and income tax changes for digital commerce

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On November 30, the Department of Finance released the Fall Economic Statement 2020 (Fall Economic Statement) that includes proposed changes to the GST/HST and the corporate tax treatment of digital commerce. In this bulletin, we explain these proposed changes.

## What you need to know

- **GST/HST on cross-border digital products and services:** Non-resident digital platform operators and non-resident vendors that exceed a C\$30,000 per year registration threshold will generally be required to register for and collect and remit GST/HST on taxable sales of digital products and services to Canadian consumers, effective July 1, 2021.
- **GST/HST on goods supplied through Canadian fulfillment warehouses:**
  - Digital platform operators that exceed a C\$30,000 per year registration threshold will be required to register for and collect and remit GST/HST on sales to Canadians of goods that are located in Canadian fulfillment warehouses that are facilitated for non-registered vendors through the platform, effective July 1, 2021.
  - Non-resident vendors that exceed a C\$30,000 per year registration threshold will be required to register for and collect and remit GST/HST on direct sales to Canadians of goods that are located in Canadian fulfillment warehouses, effective July 1, 2021.
- **GST/HST on platform-based short-term accommodation:** GST/HST will apply to all platform-based short-term rental accommodation supplied in Canada (regardless of being resident or non-resident), effective July 1, 2021.
- **Consultation on GST/HST proposals:** The Government is seeking stakeholders' views on the above GST/HST proposals. Interested parties are invited to submit comments on the proposals and associated draft legislation to the Department of Finance by February 1, 2021.
- **Corporate-level tax for foreign-based digital corporations:** Canada proposes to implement a corporate-level tax for foreign-based digital corporations, with effect from January 1, 2022, which will operate on a provisional basis until a multilateral solution is achieved with Canada's international partners. Although Canada remains committed to a multilateral solution, the provisional measure is being proposed due to concern about the delay in arriving at consensus.

# Introduction

Under the proposals, foreign-based digital platform operators and online vendors with no physical presence in Canada that exceed a C\$30,000 per year registration threshold will be required to register for and collect and remit GST/HST on taxable sales to Canadian consumers of digital products and services, including mobile apps, online video gaming and video and music streaming services effective July 1, 2021. This is intended to: i) level the playing field between Canadian vendors that must collect GST/HST and foreign-based online vendors that do not; and ii) broaden the Canadian tax base, since Canadian consumers who purchase from foreign-based online vendors and who are supposed to self-assess and remit GST/HST seldom do.

The proposals will require GST/HST to be collected and remitted on sales to Canadians of goods that are located in Canadian fulfillment warehouses that are facilitated by digital platform operators for non-registered vendors or that are made directly by non-resident vendors, where the digital platform operator or non-resident vendor exceeds a C\$30,000 per year registration threshold.

In addition, the proposals will require GST/HST to be collected and remitted on all platform-based short-term accommodation.

The proposals represent a fundamental change to the amount of GST/HST that is collected on online cross-border transactions as well as on short-term rental accommodations by imposing the collection obligation on the online platform providers.

The proposals will also implement a corporate-level tax for foreign-based digital corporations, with effect from January 1, 2022. This tax will operate on a provisional basis until a multilateral solution is achieved with Canada's international partners. Although Canada remains committed to a multilateral solution, the provisional measure is being proposed due to concern about the delay in arriving at consensus.

## Details of the proposals

### Part I: The GST/HST changes

#### *GST/HST on cross-border digital products and services*

The proposals for cross-border digital products and services are intended to level the playing field between resident and non-resident vendors and increase collection of applicable GST/HST on supplies of services from outside Canada of digital products or services, such as mobile apps, video and music streaming services, online software and games, and other services that Canadian consumers purchase directly online.

The proposals affect non-resident vendors who make more than C\$30,000 of taxable sales of digital products or services (including traditional services) over a 12-month period to consumers whose usual place of residence is in Canada, unless the non-resident vendor transacts through a registered "distribution platform operator". Such non-resident vendors will be required to register for and collect and remit GST/HST under a special simplified registration category on consumer supplies. "Consumer supplies" means supplies to persons that are not registered for GST/HST (i.e., generally not businesses or persons carrying on a business). However, such non-resident vendors will not be required to collect GST/HST from customers that are registered for GST/HST. They also will not be entitled to recover any GST/HST they pay on their business inputs through input tax credits.

Under the proposals, non-resident distribution platform operators (that are not carrying on business in Canada and are not otherwise registered under the normal) that meet the registration threshold are also required to register for GST/HST under the special simplified registration category and collect and remit GST/HST on sales of digital products or services to Canadian consumers that are facilitated for non-resident vendors. The registration threshold for non-resident distribution platform operators is also C\$30,000 of taxable sales of digital products or services to Canadian consumers over a 12-month period, which includes their own sales as well as those facilitated for third-party vendors supplying to Canadian consumers.

For these purposes, a “distribution platform operator” is generally a person that controls or sets the essential elements of the transaction between the third-party vendor and the purchaser, for example, by providing listing services for the sale of goods and setting payment terms and delivery conditions. The example given is an “app store”. If no such person exists, the operator would be a person that is involved, directly or through arrangements with third parties, in collecting, receiving or charging payment for the sale and transmitting payment to the third-party vendor. However, a distribution platform operator would not include a person that operates a website that simply allows vendors to list their goods for sale, such as a classified or advertising website, or is solely a payment processor.

The simplified GST/HST registration and remittance framework would be available to non-resident vendors and non-resident distribution platform operators that are not carrying on business in Canada (e.g., have no permanent establishment in Canada). An online portal will be made available for the simplified GST/HST registration and remittances. Under the simplified rules, the non-resident will generally be required to collect and remit the GST/HST if the consumer’s usual place of residence is in Canada. The consumer’s usual place of residence is generally determined based on specified indicators, including home address, billing address, Internet Protocol address of the device used, bank or payment information, and subscriber identification module (SIM card). The presence of two or more of these indicators that support Canada as the consumer’s usual place of residence will generally be sufficient to identify Canada as the consumer’s usual place of residence. Specific rules are also provided for determining whether the consumer’s usual place of residence is in an HST province and, if so, the applicable rate for the provincial component of the HST.

Non-resident vendors and non-resident distribution platform operators using the simplified registration system would be required to collect and remit the GST/HST only on the supply of digital products and services made to Canadian consumers. For these purposes, a person who is not registered for GST/HST and whose usual place of residence is in Canada is generally considered to be a Canadian consumer. Non-resident vendors and non-resident distribution platform operators would rely on the GST/HST registration number of a business as proof of its business status. If a business provides its registration number but is charged GST/HST anyway, the business would be able to request a refund of the GST/HST from the non-resident vendor or non-resident distribution platform operator. It should also be noted that a penalty would apply if a person provides a GST/HST registration number to a non-resident vendor or non-resident distribution platform operator in order to evade (or attempt to evade) GST/HST on digital products or services purchased for personal consumption.

Affected non-residents can also register under the normal GST/HST system but would then be subject to the normal rules for collecting and remitting applicable GST/HST from all customers. In that case, however, they would also be eligible for input tax credits.

The proposals for cross-border digital products and services will apply to supplies of cross-border digital products and services to that extent that the payment for such products and services becomes due on or after July 1, 2021, or is paid on or after that date without having become due.

#### *GST/HST on goods supplied through Canadian fulfillment warehouses*

The proposals for goods supplied through Canadian fulfillment warehouses are intended to level the playing field between resident and non-resident vendors, to help ensure that GST/HST is collected in an effective and efficient manner and to maintain the integrity of the GST/HST base.

Under the proposals, distribution platform operators (whether resident or not) would be deemed to be the supplier in respect of sales they facilitate for non-registered vendors (whether resident or not) of goods that are located in fulfillment warehouses in Canada or shipped from a place in Canada to a purchaser in Canada (referred to herein as a “qualifying supply”).

Distribution platform operators that exceed the registration threshold would be required to register for GST/HST under the general rules and would be required to collect and remit the GST/HST on the final sale price of the goods for which they are deemed to be the supplier. The registration threshold is C\$30,000 of qualifying supplies, including supplies made through their platforms by non-registered third-party vendors (whether resident or not), to Canadian consumers over a 12-month period.

Distribution platform operators would not be deemed to be the supplier in respect of sales they facilitate for registered third-party vendors (whether resident or not). Third-party vendors that are registered for GST/HST remain

liable for their own GST/HST obligations in respect of platform sales.

Distribution platform operators would be deemed not to have made a supply of services to non-registered third-party vendors relating to the deemed supply of goods made through the platform. This means that there will be no GST/HST on platform services provided by distribution platform operators to non-registered third-party vendors. This reflects that non-registered third-party vendors cannot claim input tax credits on GST/HST they pay on their inputs and should avoid GST/HST being embedded in the final sale price of goods for which the distribution platform operator is deemed to be the supplier.

Distribution platform operators that are registered for GST/HST will be able to claim input tax credits in respect of GST/HST paid at the border by non-registered third-party vendors on the importation of goods into Canada that are sold through the distribution platform. Third-party vendors who are registered for GST/HST under the general rules would continue to be entitled to input tax credits on their business inputs, including tax paid at the border on the importation of goods into Canada.

Distribution platform operators will be required to report information to the Canada Revenue Agency (CRA) on third-party vendors using their platforms.

Consequential amendments will be made to the drop shipment rules to ensure that the proposals do not conflict with existing rules.

Non-resident vendors who sell goods without the use of a distribution platform will also be required to register for GST/HST under the general rules and collect and remit GST/HST on their sales to Canadians (whether consumers or not) if their qualifying supplies to Canadian consumers exceed C\$30,000 over a 12-month period. Such non-resident vendors who are registered for GST/HST under the general rules would be eligible to claim input tax credits on their business inputs, including tax paid at the border on the importation of goods into Canada.

Fulfillment businesses in Canada will also be required to notify the CRA that they are carrying on a fulfillment business and maintain records regarding their non-resident clients and the goods they store on behalf of their non-resident clients.

It should be noted that the proposals do not change the imposition of duties and taxes on the importation of goods into Canada. All goods that are imported into Canada will continue to be subject to applicable duties and taxes on the value of the goods at the time of importation. In particular, applicable duties and taxes will continue to be levied at the border on:

- a. goods that are imported into Canada for storage in a fulfillment warehouse or any other place in Canada for subsequent sale and delivery to a purchaser in Canada; and
- b. goods that are sold and shipped from outside Canada directly to a purchaser in Canada (e.g., sent by mail or courier and not stored in a fulfillment warehouse in Canada after importation and prior to sale).

The proposals for goods supplied through Canadian fulfillment warehouses will generally apply to supplies made on or after July 1, 2021, and supplies made before that date if all of the consideration is payable on or after July 1, 2021.

#### *GST/HST on platform-based short-term accommodation*

The proposals for platform-based short-term accommodation are intended to increase collection of applicable GST/HST on all short-term rentals in Canada that are arranged digitally.

The proposals affect all domestic and non-resident accommodation platform operators that facilitate more than C\$30,000 of short-term accommodation in Canada over a 12-month period, where the underlying third-party suppliers (i.e., property owner or person responsible for providing the accommodation) of the accommodations are not registered for GST/HST. Generally, a taxable short-term accommodation would include a rental of a residential complex or a residential unit (or part of a unit) to a person for a period of less than one month where the price is more than C\$20 per day.

Under the proposals, accommodation platform operators would be deemed to be the supplier of the short-term accommodation where the property owner (or responsible person) is not registered for GST/HST. Where the accommodation platform operator exceeds the C\$30,000 registration threshold described above, the

accommodation platform operator would be required to register for and collect GST/HST on such supplies. Affected accommodation platform operators would need to determine the applicable rate of GST/HST to charge and collect, which will depend on the Province in which the short-term accommodation is situated. Accommodation platform operators will be required to maintain records and report information to the CRA, including information on the underlying third-party property owners/suppliers using their platforms.

For these purposes, an accommodation platform operator is generally a person that controls or sets the essential elements of the transaction between the third-party vendor and the customer, for example, by providing listing services in respect of supplies of short-term accommodation in Canada and setting payment terms and conditions. Where no such person exists, the operator would be a person that is involved, directly or through arrangements with third parties, in collecting, receiving or charging payment in respect of supplies of short-term accommodation in Canada and transmitting payment to the third-party vendor. However, an accommodation platform operator would not include a person that operates a website that simply allows vendors to list their properties for short-term rental, such as a classified or advertising website, or is solely a payment processor.

Accommodation platform operators that are registered for GST/HST would be deemed not to have made a supply of services to non-registered third-party property owners/suppliers in respect of the supply of short-term accommodation in Canada they facilitate. This reflects that non-registered third-party property owners/suppliers are unable to claim input tax credits in respect of the tax paid on their business inputs. As a result, there should not be GST/HST embedded in the final price of the accommodation for which the accommodation platform operator is deemed to be the supplier.

However, GST/HST would be applicable on a platform guest fee (either a service fee or commission for services) charged to a guest who is acquiring the short-term accommodation for the services provided in helping the guest to find and book an accommodation and in facilitating the transactions between the guest and the third-party property owner/supplier. The appropriate GST/HST rate charged on such fees would also be determined based on the location of the property in Canada.

All property owners (or responsible persons) that make more than C\$30,000 of taxable supplies over a 12-month period, including any supplies of short-term accommodation in Canada facilitated by an accommodation platform operator, will continue to be required to register for and account for the GST/HST on their supplies that are facilitated by an accommodation platform operator.

A simplified GST/HST registration and remittance framework would be available to non-resident accommodation platform operators that are not carrying on business in Canada (e.g., have no permanent establishment in Canada). An online portal will be made available for simplified GST/HST registration and remittances by non-resident accommodation platform operators that facilitate taxable supplies of short-term accommodation in Canada by third-party property owners/suppliers that are not registered for the GST/HST. Non-resident accommodation platform operators using the simplified registration system would be required to collect and remit the GST/HST only on the supply of taxable short-term accommodation made to Canadian consumers. Such supplies made to businesses would not be subject to GST/HST. For these purposes, the GST/HST registration number of a business would be relied on by the non-resident accommodation platform operators as proof of its non-consumer status. If a business provides its registration number but is charged GST/HST anyway, the business would be able to request a refund of the GST/HST from the non-resident accommodation platform operator. It should also be noted that a penalty would apply if a person provides a GST/HST registration number to a non-resident accommodation platform operator in order to evade (or attempt to evade) GST/HST on short-term accommodation in Canada purchased for personal use.

Non-resident accommodation platform operators that use the simplified registration system would not be able to claim input tax credits for any GST/HST they pay on their business inputs. However, non-resident accommodation platform operators can also register under the normal GST/HST system but would then be subject to normal rules for collecting and remitting applicable GST/HST from all customers. In that case, however, they would also be eligible for input tax credits.

Accommodation platform operators will be required to maintain records and report information to the CRA, including information regarding the third-party owners/suppliers using their platforms

The proposals for platform-based short-term accommodation would apply to supplies of short-term accommodation in Canada to the extent that the consideration for the supply becomes due on or after July 1, 2021, or is paid on or after

that date without having become due.

### *Consultation on GST/HST proposals*

The Government is seeking stakeholders' views and comments on the above GST/HST proposals. The Government invites interested parties to submit comments on these proposals and the related draft legislation to the Department of Finance by February 1, 2021 (comments can be sent to: [fin.gsthst2020-tpstvh2020.fin@canada.ca](mailto:fin.gsthst2020-tpstvh2020.fin@canada.ca)).

## Part II: The new corporate-level tax on digital corporations

The proposals also announced that Canada will implement a corporate-level tax to ensure that digital corporations pay their fair share of taxes in respect of their activity in Canada on corporations providing digital services, with effect from January 1, 2022, which would apply until such time as an acceptable common approach comes into effect.

The proposals state that Canada is committed to ensuring that everyone pays their fair share, so that Canada continues to have the resources needed to invest in people and keep our economy strong. When it comes to corporate-level tax, this means ensuring that corporations in all sectors, including digital corporations, pay their fair share of taxes in respect of their activity in Canada. It is important that tax rules take account of new ways in which businesses carry out value-creating activities in a jurisdiction, including remote digital means such as the collection of user data and content contributions. It is also important that countries have tools to protect their tax bases against avoidance in the form of international profit shifting.

Canada, together with the other Organization for Economic Development (OECD) countries, have been considering how to address the perceived unequal treatment of digitally facilitated transactions that lack the traditional physical nexus attributes on which international tax systems allocate the right to collect tax. Work of the OECD, under the so called "Pillar One"<sup>1</sup>, is focused on new nexus and profit allocation rules to ensure that, in an increasingly digital age, the allocation of taxing rights with respect to business profits is no longer exclusively circumscribed by reference to physical presence.

The proposals also indicate that Canada recognizes the mutual benefits of multilateral coordination in international taxation and therefore has a strong preference for a multilateral approach to address these issues. The proposals state that Canada has been working with the OECD with a view to developing a coordinated approach by mid-2021.

However, despite these ongoing multilateral negotiations, several countries have decided to move ahead with unilateral measures to tax the digital economy. The proposals indicate that Canada is concerned about the delay in arriving at consensus and that is why it is proceeding with a digital services tax.

On a provisional basis, it is estimated that the new measure would increase federal revenues by C\$3.4 billion over 5 years, starting in 2021-22. The proposals did not provide any detailed backgrounder. Further details will be announced in Budget 2021.

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<sup>1</sup> OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/beba0634-en>.

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