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Understanding Canadian Sales Tax Registration Requirements for Non- Resident E-Commerce Suppliers

Frédéric Pansieri

The objective of this article is to provide a summary of the registration requirements for sales tax purposes that may be applicable to an e-commerce supplier who is a non-resident of Canada (a “**Merchant**”) that is selling goods and services in Canada.

This article is not intended to be comprehensive (i.e., to cover every aspect of the sales tax legislation and registration requirements). It is intended to provide an overview of some of the more significant sales tax registration requirements applicable in Canada. We have also included a reference map with the current tax rates for the provinces and territories of Canada for your convenience.

Federal sales tax regime

Canada is a federation that is made up of 10 provinces and three territories. A federal value-added-tax (“**VAT**”) of five per cent called the Goods and Services Tax (“**GST**”) applies across the country on the sale of most properties and services as well as on the importation of most goods in Canada. In addition, five provinces have opted to participate in the federal VAT regime instead of imposing and administering their own provincial sales tax. In those participating provinces, the provincial sales

tax is harmonized with the GST and is generally shown on invoices as one tax called the Harmonized Sales Tax (“**HST**”).

For example: Ontario is an HST-participating province and any taxable sales made in that province will generally be subject to HST at the rate of 13 per cent which includes the five per cent GST as well as an additional eight per cent provincial tax component. The four other HST-participating provinces (New Brunswick, Newfoundland-Labrador, Nova Scotia and Prince Edward Island) each imposes a 15 per cent HST (i.e., five per cent GST with an additional 10 per cent provincial tax component).

The federal VAT is commonly referred to as GST/HST and requires only one registration and one return filed for each reporting period. When a non-resident of Canada registers under the federal VAT regime, the non-resident automatically becomes responsible to charge and collect any applicable HST (for sales made in HST-participating provinces) and any applicable GST (for sales made elsewhere

in Canada) and to report those amounts consolidated as one lump-sum total on its GST/HST return. There is no need to break-down the tax by province on the GST/HST return.

The non-resident Merchant may also be able to claim a credit (input tax credit) on its GST/HST return to reduce the amount of tax to remit with the GST/HST return. The credit is generally equivalent to the amount of GST/HST paid on purchases and importation made by the Merchant, subject to some restrictions. In the end, the non-resident will have to remit a net amount, or may also be entitled to receive a net refund (if the credits claimed for the period exceeds the amount of GST/HST collectible for the period).

Provincial sales tax regimes

Four provinces impose their own provincial sales taxes distinctively from the federal GST.

Quebec Sales Tax – Normal regime

One of those provinces (Quebec) imposes a VAT called the Quebec Sales Tax (“**QST**”) that is for the most part fully harmonized with the GST. As such, every sale that is subject to the federal five per cent GST in Quebec will generally¹ also be subject to the QST at the rate of 9.975 per cent for a combined rate of 14.975 per cent. However, given that the QST is administered separately from the federal GST/HST, the two taxes will be showed on each sale as two separate taxes and the QST will be reported and filed on its own separate sales tax return for each reporting period. A non-resident Merchant must also register separately for QST purposes with the taxing authorities of the province of Quebec. As for GST/HST, a QST registrant may also be able to claim a credit (input tax refund) to recover the QST payable on purchases made in the course of its commercial activities, subject to some restrictions.

Under the regular QST regime, a Merchant that is a non-resident of Canada who makes a taxable sale of goods in Quebec in the course of a business carried on in Quebec is generally required to register for QST purposes.² For the purposes of this article, we are making the assumption that all Merchants make more than \$30,000 of sales worldwide on an annual basis. If they make less

than \$30,000 of sales worldwide, they may qualify as “small supplier” and not be required to register for QST purposes.

Whether a non-resident is carrying on a business in Quebec for QST purposes is a question requiring consideration of all relevant facts.

Given that the QST under the regular rules and GST/HST rules are for the most part fully harmonized, a Merchant that carries on a business in Quebec for GST/HST purposes generally also carries on a business for QST purposes. Revenu Quebec, which administers both the GST/HST and QST in the province of Quebec, will generally follow the Canada Revenue Agency’s written GST/HST policy (“**CRA Policy**”)³ by reading any reference in the CRA Policy to “Canada” with “Quebec” to determine whether a non-resident carries on a business in Quebec for both GST/HST and QST purposes.

In applying the CRA Policy, Revenu Quebec will consider the following factors in determining whether a Merchant is carrying on business in Quebec for QST purposes under the regular regime in a particular situation:

- The place where agents or employees of the Merchant are located;
- The place of delivery;
- The place of payment;

- The place where purchases are made or assets are acquired;
- The place from which transactions are solicited;
- The location of assets or an inventory of goods;
- The place where the business contracts are made;
- The location of a bank account;
- The place where the Merchant’s name and business are listed in a directory;
- The location of a branch or office;
- The place where the service is performed; and
- The place of manufacture or production.

In general, a non-resident Merchant must have a significant presence in Quebec to be considered to be carrying on business in Quebec. Generally, isolated transactions carried on in Quebec as part of a business that is carried on by a non-resident person outside Quebec may not result in the person being considered to be carrying on business in Quebec, given that the above-noted factors will usually not be met to a sufficient degree. Requirement to register under the regular QST regime for Merchants selling publications in Quebec.

¹There are exceptions which we are not covering in this article.

²Section 407 of an Act respecting the Quebec Sales Tax (“**QSTA**”).

³Policy Statement P-051R2.

A Merchant would be required to register for QST purposes under the regular regime if the Merchant, through an employee or a mandatary or by mean of advertising directed at the Quebec market, solicits orders in Quebec for the sale of publications (as defined in above GST/HST section relating to the sale of publications) that is to be sent by mail or courier to the recipient at an address in Quebec.⁴

Other registration requirements

Other registration requirements may apply to a Merchant selling goods to individuals under the regular QST regime but only if the Merchant is a resident of Canada. For the purposes of this article, we are assuming that all Merchants are non-residents of Canada.

Quebec Sales Tax - Regime for out of province businesses

Since 2019, the province of Quebec also has a separate regime that may require non-residents of Quebec that are not otherwise required to register under the normal QST regime, to register solely to charge QST on sales made to individuals for personal consumption or use.

Merchants who are not required to register under the regular QST regime may have to register in that separate QST regime.

Registration requirements under the new QST regime

Under the new QST regime, Merchants located outside Quebec must also register for the QST under the new regime if:

- They are not already registered for QST under the regular QST regime⁵;
- They do not operate a business in Quebec or have a permanent establishment in Quebec that would require them to register for QST under the regular QST regime;
- They are registered for the GST/HST;
- They have made taxable sales of goods;
- The taxable supplies were made in Quebec to consumers. A consumer is generally defined as an individual who acquires the goods his or her personal consumption, use or enjoyment; **and**
- Over the 12-month period preceding a particular calendar month, the total value of such taxable sales (assuming that sell nothing but goods in Quebec) is more than \$30,000 (referred to as the specified threshold).

The Merchant must recalculate its specified threshold on the first of every month thereafter to determine whether it is more than \$30,000. If it is, then the

Merchant must register under the new QST regime, unless they elect to register under the regular QST regime instead.

If a Merchant elects to register under the regular QST regime, they must also give and thereafter maintain security of a value and in a form satisfactory to Revenu Quebec.

To register under the new QST regime, the Merchant must use the registration services in *My Account* for suppliers outside Quebec. Only the Merchant can register by creating its own account and enter all the required information online.

Collecting the QST under the new QST regime

Once the Merchant is registered under the new QST regime, they are required to collect the tax at the rate of 9.975 per cent, and remit it to Revenu Quebec when making the sale in Quebec to a consumer who is a resident of Quebec and is not registered under the new QST regime.

The Merchant registered under the new QST regime is not required to collect QST from any individual that is registered under the regular QST regime and provide his or her TQ registration number to the Merchant (to serve as evidence that the individual is registered under the regular QST regime).

⁴Subsection 409(1) of the QSTA

⁵QST registration under the regular regime includes the letters "TQ" in the registration number. Merchants that are registered under the new QST regime will have a QST registration number that includes the letters "NR".

A Merchant registered under the new QST regime is also not required to collect QST from any individual who is not a resident of Quebec (even if the goods are to be delivered in Quebec). An individual will only be considered a resident of Quebec if their usual place of residence is situated in Quebec.

Reporting and remitting the QST

A Merchant registered under the new QST regime has a reporting period corresponding to a calendar quarter. The Merchant must file a QST return for each quarterly reporting period online using the services in *My Account* for suppliers outside Quebec. The filing and remittance deadline is the last day of the month following the calendar quarter that corresponds to the reporting period. For example, the QST return for the reporting period from January 1 to March 31 of a particular year must be filed and the remittance must be made by April 30 of that particular year.

To calculate the amount of net amount of QST to report and remit for each reporting period, the Merchant must add the amounts of QST that was collected or that became collectable (whichever comes first) in the reporting period. The Merchant may then reduce from this total any amounts of QST that the Merchant refunded or credited back to the individual during the reporting period.

Finally, the Merchant can also subtract any amount of QST in regard to bad debts written off during the period (or add back as an amount to be remitted any amount of QST that was previously subtracted as a bad debt and that is recovered in the reporting period). The end-result of this calculation is referred to as the “net tax”. The net tax that result in a positive amount (which would be most of the time) is the amount that must be remitted to Revenu Quebec. If the calculation results in a negative amount (which should be infrequent), that is the amount of refund of the net tax that the Merchant can claim.

Note that there is no input tax refund (“ITR”) allowed under the new QST regime. If the Merchant expects to incur costs in Quebec that bear QST, they should instead register under the regular QST regime to be able to claim an ITR to recover such tax. It is expected that non-residents that would be required to register under the new QST regime would not incur any costs in Quebec given that they must not be carrying on business in Quebec to be required to register under that new regime. If they were carrying on business in Quebec, they would be required to register under the regular QST regime instead.

The remittance of the net amount of QST must be made electronically, either through the internet online payment of a Canadian financial institution or by international transfer, such as a SWIFT transfer.

British Columbia PST

The British Columbia (“BC”) provincial sales tax (“PST”) is a retail sales tax imposed at the rate of seven per cent that is similar to a “U.S.-style sale and use” tax in the sense that it only applies on retail sales as distinct from the GST/HST which is a value-added-tax applicable at every level in the production chain. A “retail sale” excludes a sale of goods acquired by the customer solely for resale.

A “collector” is defined for BC PST purposes as someone who is registered for BC PST purposes or who is required to register.

A Merchant would be required to register as a collector and charge the BC PST on the retail sale of goods to be delivered in **BC if it carries on business in BC⁶** or is **otherwise** required to register under any of the rules listed below.

Whether a Merchant would carry on business in BC is primarily a question of fact. A Merchant would typically be considered as carrying on business in BC if it has a place of business located in BC such as:

⁶S.169 of the PST Act.

- A store front, factory, mill, branch, office or other physical place of business (except use of temporary space such as trade show booths);
- Real property such as a warehouse that is leased or owned (except a contract with another person to store inventory, such as a contract with a fulfillment house);
- The Merchant's name, or any name under which the Merchant carries on business, is listed in a telephone directory for any part of BC; and in which an address or telephone number in BC is given for the Merchant; or
- The Merchant's name, or any name under which the Merchant carries on business, appears or is announced in any advertisement in which an address or telephone number in BC is given for the Merchant.

A Merchant would also be deemed to have a business located in BC if the Merchant has agents, employees or other representatives physically located in BC, or if the Merchant's business management and control is in BC.

In addition, even if the Merchant is not located in BC and is not otherwise deemed to carry on business in BC, it would still be required to register as a collector for BC PST purposes if either of the following situations apply.

Situation 1

All of the following facts apply regularly⁷:

- The Merchant is located in Canada (**) but outside BC;
- The Merchant solicits customers in BC for orders to purchase the taxable goods, by advertisement or any other means (including mail, email, fax, newspaper or the internet);
- The Merchant accepts orders (including by telephone, mail or internet⁸) to purchase the taxable goods, if the orders to purchase originate from locations within BC;
- The Merchant sells or provides the taxable goods to a customer in BC; and
- The Merchant causes (i.e., delivers) the taxable goods to be delivered to a location in BC.

** The Ministry of Finance would consider a Merchant to be located in Canada but outside BC if any of the following conditions are met:

- The Merchant's business has a physical presence in Canada, including:
 - A store front, factory, mill, branch, office or other physical place of business (except use of temporary space such as trade show booths);

- Real property such as a warehouse that is leased or owned (except a contract with another person to store inventory, such as a contract with a fulfillment house).
- The Merchant has agents or employees physically located in Canada but outside BC; or
- The Merchant's business management and control is in Canada but outside BC.

Situation 2

All of the following facts apply regularly⁹:

- The Merchant is located outside BC (either in or outside Canada);
- The Merchant accepts orders (including by telephone, mail or Internet) to purchase the taxable goods, if the orders to purchase originate from locations in BC;
- The Merchant sells or provides the taxable goods to a customer in BC; and
- The Merchant holds the taxable goods in inventory in BC at the time the Taxable Products are sold or provided (e.g., if the Merchant uses a fulfillment house located in BC).

Whether a Merchant is required to register as a collector for BC PST purposes will depend on how the Merchant decides to operate in Canada.

⁷S.172 of the PST Act.

⁸If the Merchant only has a website that is accessible from anywhere in the world, which does not target BC, the Merchant would not be considered as soliciting sales in BC. However, if the Merchant has a website and also solicit sales in BC by other means, such as through targeted internet advertisements, promotional flyers or newspaper advertisements, the Merchant would be considered as soliciting sales in BC.

6 ⁹S.172.1 of the PST Act.

As long as a Merchant does not have a place of business in Canada (whether in BC or outside BC) and no inventory, employee, or other representative located in BC, or any telephone number or advertisement associated with a BC address of the merchant, the Merchant would **not** be required to register as a collector for BC PST purposes and, therefore, not required to charge any BC PST on the sale of taxable goods delivered in that province.

If the Merchant begins to have a physical presence in Canada, **but outside BC** or begins to **keep inventory in BC**, it may become required to register for BC PST purposes under either of “Situation 1” or “Situation 2”, as explained above.

Also note that the BC tax authorities were supposed to implement a new registration requirement in 2020 for e-commerce retailers located outside the province. However, that new requirement has been postponed to a later undetermined date due to the impact of COVID-19.

Saskatchewan PST

The Saskatchewan (SK) PST generally applies at the rate of six per cent on the **retail sale** of taxable goods to be consumed or used in Saskatchewan unless a specific exemption applies. A “retail sale” excludes a sale of goods acquired by the customer solely for resale.

A “vendor” is generally defined for SK PST purposes to include any person who, within Saskatchewan and in the course of his business or in the course of continuous or successive acts, sells goods to a consumer or user at a retail sale in Saskatchewan for purposes of consumption or use, and not for resale.¹⁰

The distinction between “carrying on a business”, which is a concept that is derived from common-law jurisprudence and carrying on “continuous or successive acts” is not defined in the legislation and ultimately remains a question of fact. The Ministry of Finance has indicated that any participation in a craft or trade show in Saskatchewan may be enough to require the participant to those events to either register as a vendor for SK PST purposes or to at least collect the tax and remit it to the tax authorities using a casual return form.¹¹

Note that all businesses operating in Saskatchewan, whether they make retail sales or not, are required to be registered with a SK PST number, apart from businesses qualifying as small traders.¹²

In addition, for the purposes of the definition of “vendor”, a retail sale in Saskatchewan includes a retail sale of goods by a person who does not otherwise carry on business in Saskatchewan, if all of the following conditions apply:

- i. The person makes goods available for purchase by persons in Saskatchewan;
- ii. The person accepts orders to purchase goods that originates in Saskatchewan; and
- iii. The person causes the goods to be delivered in Saskatchewan.

This broad requirement essentially means that any Merchant who makes goods available for purchase by persons in Saskatchewan, accepts orders that originate from that province and causes the goods to be delivered in that province and that are not goods acquired for resale or that are otherwise exempt from SK PST, is required to register as a vendor for SK PST purposes and collect the tax.

Services Provided Through Online Platforms (new rules starting in 2020)

Operators of electronic distribution platforms, as well as online marketplace facilitators must be licensed for purposes of collecting and remitting Saskatchewan PST.

Electronic Distribution Platform means a website, internet portal, gateway, application or other means prescribed in the regulations that allow a consumer or user to purchase at a retail sale, whether singly, by subscription or in any other manner, including

¹⁰Para 3(1)(o) of the PST Act.

¹¹Information Notice IN 2017-09.

¹²A “small trader” can only be an individual and would not apply to a Merchant.

maintenance, updates and support, tangible personal property or services that are delivered through an electronic format. Under that definition, a Merchant selling taxable tangible personal properties or services may be required to register for Saskatchewan PST purposes even if the Merchant would not otherwise be required to do so.

Electronic distribution services that are delivered, streamed, or accessed through an electronic distribution platform are subject to PST. This includes:

- The content delivered through the electronic distribution platform; and,
- Any associated or incidental services, including all transactions services, processing services and administration services.

A Marketplace Facilitator is a person that makes or facilitates a marketplace for retail sales by marketplace sellers and collects payment from a consumer or user, directly or indirectly, and remits payment to a marketplace seller; regardless whether or not that person receives consideration in exchange for its services.

A marketplace seller, who makes retail sales exclusively by way of an online marketplace facilitator, is not required to be licensed as a vendor to collect and remit

Saskatchewan PST, when the operator of the marketplace facilitator is licensed and collecting the tax.

Manitoba RST

The Manitoba (MB) RST generally applies at the rate of seven per cent on the retail sale of taxable goods delivered in Manitoba unless a specific exemption applies. A “retail sale” excludes a sale of goods acquired by a MB RST registered customer solely for resale. Note that the sales tax rate will be reduced to 6% effective on July 1, 2020. Note that the tax rate was supposed to be reduced to six per cent effective on July 1, 2020, however, this rate reduction has been deferred to a later undetermined date due to the Covid-19 situation.

A “vendor” includes a person who sells goods, or offers or keeps goods for sale, directly to a purchaser at a **retail sale** in Manitoba.¹³

Any person carrying on business in Manitoba (except for small businesses located in Manitoba with annual taxable sales in Manitoba under \$10,000) must have a valid MB RST number before making any taxable sales in Manitoba. A person without an MB RST number must not carry on business as a vendor or collect tax.¹⁴

As such, a merchant would be required to register as a vendor and charge the MB RST on the sale of taxable goods to be delivered in Manitoba **if it carries on business in Manitoba**.

The concept of “carrying on business” is derived from common-law jurisprudence and is not defined in the legislation and ultimately remains a question of fact. The Ministry of Finance provides very little guidance as to the meaning of carrying on business in Manitoba. However, it does take the view that a business could be carried on in Manitoba on a temporary, short-term, or intermittent basis.¹⁵

Also note that a merchant could be required to register for MB RST purposes if it carries on business in Manitoba as a manufacturer, wholesaler, importer or jobber, either directly or through an agent, regardless of whether it makes any retail sales in the province.¹⁶

In addition, even if a merchant does not carry on business in Manitoba, it would still be required to register as a vendor for MB RST purposes if either of the following situations apply:

Situation 1

All of the following facts apply:

- The merchant causes the taxable goods to be delivered in Manitoba;

¹³Subsection 1(1) of the RST Act.

¹⁴Subsection 5(1) of the RST Act.

¹⁵Pamphlet “Do I need to register?”

¹⁶Subsection 5(2) of the RST Act.

- The merchant solicits the order for sale in Manitoba, directly or through an agent, by advertising or any other means, e.g., in person, by telephone, mail, e-mail, fax, posters, television or newspaper advertisement; and
- The merchant accepts orders originating in Manitoba to purchase the taxable goods. The order can be originated by telephone, Internet, e-mail, fax, letter, or agents located in or out of Manitoba.

Situation 2

The merchant holds the taxable goods in inventory in Manitoba, available for sale to Manitoba customers, at the time of accepting the purchaser’s order.¹⁷

In conclusion, as long as a merchant does not factually carry on business in Manitoba (e.g., by having a place of business or employees based in Manitoba among other factors that may be relevant), does not keep any inventory of goods in Manitoba and does not do any solicitation in Manitoba or target the Manitoba market, they would likely **not** be required to register as a vendor for MB RST purposes and, therefore, would not be required to charge any MB RST on the sale of taxable goods delivered in that province.

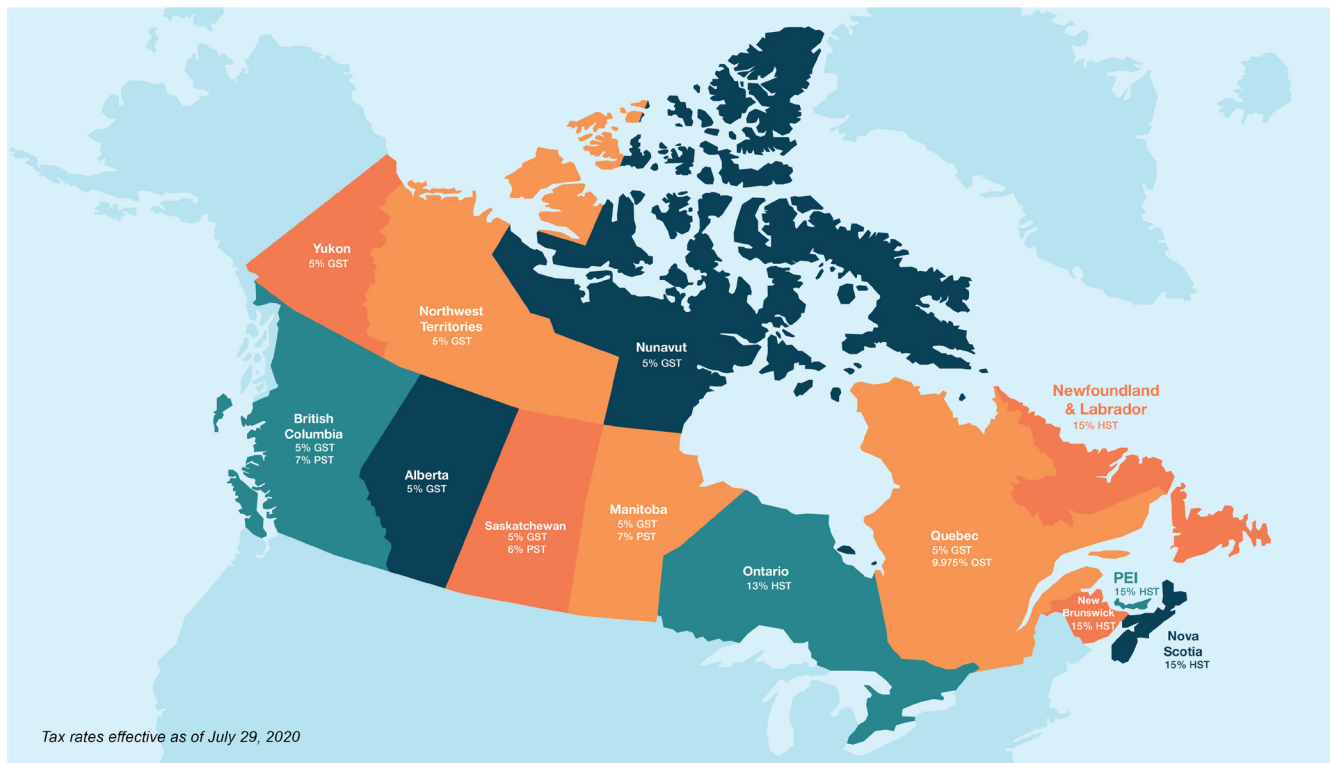
Conclusion

The bottom line is that the e-retailers are most often solely responsible to determine if they have to register and charge

any applicable Canadian sales taxes and are left to themselves to figure out the extent of their obligations, including how to address the taxes payable on importation.

Given that more and more sales are made through electronic third-party platforms in this age of COVID-19, it is now, more than ever before, time to really investigate the Canadian sales tax implications to minimize the potential tax liabilities.

This article has been prepared for the general information of our clients. Please note that this publication should not be considered a substitute for personalized advice related to your situation.



¹⁷Subsection 1.2(1) of the RST Act.

Connect with the Author

Frédéric Pansieri, BBA, CPA, CA, Frédéric Pansieri Professional Corporation
Partner, Commodity Taxes

This article was prepared by Frédéric Pansieri, who is a partner of Commodity Taxes. If you have any questions relating to this article, we encourage you to contact him.

T: 416 963 7237

E: frederic.pansieri@crowesoberman.com

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