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Canada's Federal Sales Tax—An Overview for Non-Resident Suppliers

Those who sell goods or services in Canada have always to consider whether to become a ôregistrantô under Canadaôs federal *Excise Tax Act*. For residents of Canada, the issue is simple. If revenues from the sale of goods or services in Canada that became due in the four preceding calendar quarters exceed CDN$30,000.00 then registration is required unless, in broad terms, an exemption can be found. Unfortunately, matters are considerably more complicated for non-residents of Canada.

Overview of Canada's Sales Tax System

By way of an overview, Canada has both federal and provincial levels of sales tax. The federal sales tax is referred to as the Goods and Services Tax (**"GST"**) whereas sales tax at the provincial level is generally referred to as provincial sales tax (**"PST"**)ð except in Quebec, which refers to its sales tax as QST. In the provinces of Ontario, Nova Scotia, New Brunswick and Newfoundland & Labrador, the administration of GST and PST has been combined and the result referred to as Harmonized Sales Tax (**"HST"**). British Columbia had adopted the HST but reverted to its old PST system as of April, 2013. For simplicityôs sake, this article refers throughout to GST but such comments apply equally to HST.

GST applies at a rate of 5% of the value of the consideration for the supply, *i.e.*, the sale price. The various PST rates range from 5% to 10% and, in non-HST provinces, is variously applied to the net or gross sale price (sale price with or without GST). In Ontario, the total HST is 13% (GST of 5% plus PST of 8%). Tax advice should be obtained to determine whether and at what rate sales tax applies in given circumstances.

A key element of this federal system is a set of rulesð known as the ñplace of supplyò rulesð to determine which province has jurisdiction to tax a given transaction. Simply stated, the province with jurisdiction is generally the one in which the supply occurs. If, for example, the goods supplied are tangible personal property then the relevant province is generally the one in which the goods are delivered or made available to the recipient. If the supply is of real estate then the relevant province is generally the one in which that real estate is located. If the supply is of intangible personal property, jurisdiction will depend on a number of factors, including the place in which the property can be used and the location of the purchaser. Different intangible properties will, however, be subject to different rules. When services are supplied, the relevant province is generally determined according to the home or business address of the purchaser, although, again, specific rules apply for certain types of services. The place of supply rules are extensive and the above examples are general and for illustrative purposes only.

When property and services are brought into an HST province from another province (whether or not such other province is also an HST province) or from outside Canada for consumption, use or supply in that HST province, the supplier is required to self-assess since no actual purchase and sale occurs.

Significance of being a "registrant" under Canada's Excise Tax Act

So what is the significance of being a registrant? A registrant is required to withhold and remit GST on supplies made in Canada of goods and services (provided that no exemption is available) and to file periodic GST returns. On the other side of the ledger, a registrant is entitled to claim input tax credits for (deduct) any GST paid or payable by it on taxable supplies (inputs) that are used, consumed or supplied in the course of its commercial activities. The policy behind input tax credits is that GST should only be paid by consumers, not each party in the supply chain. Consequently, to the extent that the registrantôs commercial activities involve the making of ñexemptò supplies, (supplies that are not subject to GST) input tax credits are not available. Perhaps inconsistently, ñtaxableò supplies includes ñzero-ratedò supplies (supplies that are taxable at a rate of 0%) and supplies that are made outside Canada (to which GST does not apply). Input tax credits can only be claimed if the taxpayer (including non-residents) keeps documentation sufficient to determine the amount of GST that it paid on its inputs. This documentation is, to some extent, prescribed by regulation and varies according to the cost of the particular input.

Registration requirement as it applies to non-residents

To return, then, to the original question, when is a non-resident required to become a registrant? A non-resident is generally required to become a registrant under the *Excise Tax Act* if it carries on business in Canada. In making this determination, the Canada Revenue Agency (the ñCRAò) claims a broad discretion unfettered by any clearly articulated rules. Instead, the CRA has published various scenarios, each with a lengthy set of circumstances, and expressed an opinion in each instance. It is left to non-residents and their tax advisors to discern patterns among these scenarios and findings.

In the context of non-residents selling goods worldwide, for example, the CRA emphasises the solicitation of orders and delivery of goods in Canada. Yet these factors alone are insufficient to find that the non-resident carries on business in Canada. Something more is always required. That something more may be the place of contract, which itself can involve subtle legal analysis, or the warehousing of goods in Canada.

Other factors, such as a Canadian bank account will be considered but are less significant.

Interestingly, the CRA has indicated that it does not consider it relevant that a non-resident who sells machinery into Canada also sends its employees into Canada to install that machinery. Such activity is regarded as being merely ancillary to the sale. One must be careful when relying upon such statements, however, since there may well be situations in which the time required for the installation or the amount of the purchase price allocable to such installation services would draw a different response from the CRA. Each situation must be carefully considered in view of its own circumstances.

In addition to the foregoing considerations, special rules require non-residents to register for GST in the following circumstances, subject, as always to qualifications and exceptions:

- a non-resident sells admissions to a place of amusement, seminar or other activity or event in Canada, including concerts and sporting events;
- a non-resident sells books, newspapers or periodicals in Canada;
- a non-resident organises a convention in Canada; or
- a non-resident exhibitor at a convention in Canada brings into the country goods for sale to delegates.

In general, registration must occur before the thirtieth day following the day on which the taxable supply is first made in Canada. Non-residents who sell admission to a place of amusement, seminar or other activity or event, however, must register before the taxable supply is made.

Conclusion

In view of the foregoing, non-residents who intend to sell goods or services in Canada should always consult their Canadian tax advisor in advance and, ideally, before finalizing the services or sales agreement. Registration obligations, whether for tax or other purposes, the effects of such registrations and even applicable tax rates are of sufficient complexity that proper advice is always essential.

About the Author
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Patrick Westaway is Tax Counsel to Sorbara, Schumacher, McCann LLP, a full service law firm based in Waterloo, Ontario. Patrick advises on a broad range of Canadian taxation issues such as corporate tax planning, structuring inbound investments, corporate reorganizations, cross-border financings, tax opinions for public disclosure documents, tax assessments, personal tax matters, wealth preservation, and on federal and provincial sales tax matters (HST/GST/PST). Patrick also practices corporate and commercial law with an emphasis on the implementation of matters related to his tax planning practice.

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