

Canada introduces new GST/HST regime for non-resident businesses

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What you need to know

- The new GST/HST regime is effective as of July 1, 2021.
- Non-resident vendor can trigger GST/HST registration, even if it is not carrying on business in Canada or provides services or products entirely outside of Canada.
- Non-GST/HST-registered vendors with Canadian clients must now keep records to prove they are not obligated to register.
- Certain Canadian clients may continue to have a GST/HST self-assessment obligation under the current rules, of which they may not necessarily be aware.
- Canadian clients with non-resident vendors should understand these rules to avoid compliance traps.

The Simplified Registration Regime

On July 1, 2021, new rules take effect that significantly broaden the obligations of non-resident businesses to register for and comply with the Goods and Services Tax/Harmonized Sales Tax (GST/HST) rules under a so-called simplified registration regime (the Simplified Registration Regime). The Simplified Registration Regime will apply to a non-resident vendor even if they sell products completely outside of Canada and do not “carry on business in Canada.” This is a significant shift and expansion of the GST/HST rules.

The new Simplified Registration Regime will directly affect both non-resident vendors and Canadian organizations doing business with those vendors. The regime is not limited to sales to consumers; rather, sales to Canadian operators in predominately GST/HST-exempt sectors such as financial services, health care, education, residential rentals, charities and non-profit organizations can trigger these rules.

Canadian operators paying GST/HST under this regime should be careful to confirm whether a vendor is registered under the Simplified Registration Regime or the old regime, as the former would preclude claims for input tax credits or refunds for tax paid in error.

In its 2021 budget, the federal government also proposed implementing new rules for non-resident vendor sales through online platforms and fulfillment warehouses. Please refer to [BLG's budget summary article](#) to learn about the other new GST/HST rules.

Current rules

GST/HST generally applies to property and services supplied “in” Canada. Non-Canadian businesses providing services or intangibles to Canadian customers do not need to register for and collect GST/HST in two circumstances:

- Where services are performed completely outside of Canada; or
- Where services are partially performed in Canada or intangibles may be used in Canada, but the business is not GST/HST-registered and does not carry on business in Canada.

The first exception applies because services performed outside of Canada are outside of the GST/HST regime. The second exception is known as the “non-resident override rule,” which deems such products to be supplied “outside” of Canada (which essentially fits these products into the first exception).

New Simplified Registration Regime

The Simplified Registration Regime applies to the provision of services and intangibles. This regime creates a lower GST/HST registration threshold for non-Canadian businesses in the following circumstances:

- A non-GST/HST registered Canadian is liable to pay the supplier’s fees;
- The supplier is not a Canadian resident and does not carry on business in Canada;
- The services or intangibles may be “used or consumed” in Canada. Note the rules capture services that are not physically performed in whole or in part “in” Canada as long as they may be used or consumed in Canada; and
- The supplier will charge or will reasonably expect to charge more than C\$30,000 in fees for these services or intangibles over any rolling 12-month period.

The purpose of the Simplified Registration Regime is to address competitiveness issues with the current GST/HST rules. The current rules incentivize non-GST/HST-registered consumers and organizations to avoid paying GST/HST by purchasing products from non-GST/HST-registered non-resident vendors. Academically, these customers have a technical obligation to self-assess GST/HST on these purchases. Practically, this rule is largely unknown and unenforceable. This effectively means a consumer saves 5 to 15 per cent (depending on the GST/HST rate) purchasing downloadable software, for example, from a foreign vendor instead of a domestic vendor. By expanding registration obligations, the rules aim to eliminate this advantage and create a GST/HST-neutral marketplace for Canadian and foreign vendors.

The current regime continues to apply to sales to GST/HST-registered Canadian clients - in other words, the “carrying on business in Canada” threshold still applies if the non-resident business only sells to GST/HST-registered customers.

Simplified Registration Regime issues for non-resident businesses

The Simplified Registration Regime for non-resident businesses radically lowers the registration threshold for non-resident businesses by removing the “carrying on business in Canada” registration threshold. Further, a non-resident business must keep records of Canadian residency indicators and, potentially, the GST/HST registration status of its Canadian customers to demonstrate to Canada’s tax authority, the Canada Revenue Agency, why it has not registered under the Simplified Registration Regime.

If a non-resident business does trigger registration under the new regime, it should consider whether to register under the full GST/HST system instead where the registrant may claim input tax credits whereas such credits are not available under the Simplified Registration Regime.

Simplified Registration issues for Canadian organizations

Canadian organizations should verify whether a non-resident vendor is unregistered, registered under the regular GST/HST regime, or registered under the Simplified Registration Regime. For commercial businesses, input tax credits or refunds are generally unavailable for GST/HST paid to a business registered under the Simplified Registration Regime. For non-GST/HST-registered organizations, GST/HST self-assessment obligation is informed by the tax status of the non-resident vendor.

Failure to properly identify the GST/HST status of a non-resident vendor could, therefore, lead to a GST/HST-registered business inadvertently paying unrecoverable GST/HST, and could leave a non-GST/HST-registered organization potentially open to double GST/HST by self-assessing GST/HST when it should have paid tax to its supplier.

Takeaways

Wherever a non-GST/HST registered individual or entity pays a non-Canadian vendor for services or intangible property (like software), both the vendor and customer should review their current GST/HST obligations and confirm whether the Simplified Registration Regime affects these obligations.

Lastly, very similar rules are already in place in Québec for the Québec Sales Tax. The Québec Sales Tax rules may trigger registration and collection obligations for all businesses outside Québec, including other Canadian businesses who may have clients in the province. Québec has confirmed it will update its rules to mirror the federal rules. These changes will also come into effect on July 1, 2021.

For more information, please reach out to any of the key contacts listed below.

By

[Braek Urquhart](#)

Expertise

[Tax](#), [Commodity Tax](#)

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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