

B.C. announces newly extended registration requirements for its provincial sales tax

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In its 2020 Budget and Fiscal Plan, dated February 18, 2020, British Columbia (B.C.) announced that it would be imposing newly extended registration requirements for its provincial sales tax (B.C. PST). The new requirements, effective July 1, 2020, will require certain non-residents of B.C. to register as collectors of B.C. PST. Specifically, Canadian sellers of goods, along with Canadian and non-Canadian sellers of software and telecommunication services, may be required to register if their annual revenues from sales in B.C. exceed \$10,000—even if they do not have a permanent establishment or carry on business in B.C.

The changes are a significant broadening of the rules that will likely require the registration of many businesses that were not previously required to register. Historically, B.C. has only required persons not located in B.C. to register for PST in specific circumstances, such as if they were soliciting persons in B.C. for orders by advertising or other means or if they were holding tangible personal property in inventory in B.C. As set out in the current draft legislation, however, persons located in Canada but not in B.C. will be required to register in certain circumstances if they merely cause tangible personal property to be delivered in British Columbia, while persons not resident in Canada (as well as Canadians not resident in B.C.) will be required to register in certain circumstances if they provide “software for use on or with an electronic device ordinarily situated in British Columbia or provide a telecommunication service.” ([T]elecommunication service is very broadly defined and includes the right to access a variety of media).

The new requirements follow recent legislative amendments by [Québec](#) and [Saskatchewan](#) to require non-residents of the province to register for and collect sales tax. The Québec requirements apply to most taxable supplies of services or incorporeal movable property made to Québec consumers while the Saskatchewan requirements apply to most retail sales of tangible personal property, taxable services and leases of taxable goods in Saskatchewan.

The changes relating to telecommunication services are made amid ongoing global controversy over what have variously been termed “digital taxes” and the “Netflix tax”—i.e., tax collecting obligations that appear to be aimed at a handful of large American companies providing “digital economy” products and services to consumers in other jurisdictions, where such companies do not have any physical presence or carry on business. Unlike more ambitious taxes, such as France’s 3% “digital tax,” the changes made in Québec, Saskatchewan and B.C. arguably only seek to more effectively collect existing sales taxes from consumers in Canada. Most provincial sales taxes and the federal goods and services tax/harmonized sales tax (GST/HST) generally already require consumers to self-assess the tax on supplies of digital content they receive from non-resident companies that are not registered to collect these taxes. That said, we understand that very few consumers are aware of this obligation and even fewer report and remit these taxes on such supplies.

Imposing extra-provincial registration requirements may be an effective way to recover taxes from Canadian consumers that are technically owing under existing legislation but seldom paid in practice. This does not, however, make it any easier on the non-resident entities which are now being required to register for and collect these taxes as an agent for the government.

The new requirements in B.C. raise several questions. First, it is debatable whether the \$10,000 annual revenue threshold is appropriate. This threshold is extremely low and could be expected to extend the registration requirements to many non-residents making only minimal sales to consumers in B.C. Whereas much of the conversation about the "digital tax" at the OECD and elsewhere has focused on "digital giants," the \$10,000 threshold may unfairly extend the requirements to many much smaller businesses. As a point of comparison, both the GST/HST and the Québec sales tax generally only require businesses to register if they make more than \$30,000 in taxable supplies annually. Given the administrative costs of registration, smaller businesses may be less likely to sell to consumers in B.C.

Second, there are both legal and practical questions about the enforceability of provincial registration requirements outside B.C. Specifically, under Canada's constitution, it is questionable whether B.C.'s *Provincial Sales Tax Act* (or other similar provincial acts) can force a company which is not resident in the province and is not carrying on business in the province to act as a collection agent for the province. It is possible that a court may find that B.C. does not have the power to impose the new requirements on non-B.C. residents elsewhere in Canada, let alone in other countries. It is also not clear from a practical perspective how B.C. could enforce the new requirements on persons with no assets in Canada (or possibly even against Canadians with no assets in B.C.); however, the experience in Québec would suggest that many non-resident companies have been at least reasonably amenable to registering and collecting Québec taxes and may be so inclined in B.C. as well.

Third, although the B.C. PST does already distinguish between persons located elsewhere in Canada and persons located outside Canada, it is arguably unfair to sellers of goods in other Canadian provinces to require them to register while not extending the same treatment to persons located outside Canada. The extended requirements may thus put Canadian businesses at a tax disadvantage as compared to similar non-resident companies when selling to consumers in B.C.

Fourth and finally, the adoption of these tax changes in a third province raises the question whether similar such changes may be forthcoming for GST/HST in the next federal budget. Such an extension of the federal registration requirements would bring Canada into line with the tax policy of many countries in the European Union and elsewhere. This route may also be preferable to attempts to levy a digital tax of the kind proposed in France, which could trigger retaliatory tariffs from major trade partners—the very reason that France ultimately deferred implementation of the tax until the end of 2020 and why the future of a similar tax in the United Kingdom is unclear.