

Manitoba's retail sales tax rules expand to online sales and streaming platforms

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On December 1, 2021, new rules came into effect expanding the requirements for businesses to register for, and collect, Manitoba retail sales tax (RST). The expanded requirements were previously announced in the province's 2021 budget and follow similar changes made by several other jurisdictions including [Québec](#), [Saskatchewan](#), [British Columbia](#) and the [federal government](#). As of December 2021, Manitoba has also released [Information Bulletin no. 064 \[PDF\]](#) (the Bulletin) which contains new administrative guidance on the RST changes relating to streaming services and online platforms in Manitoba.

Online sales and accommodation platforms

Similar to the changes in other jurisdictions, the new rules generally require persons operating "online sales platforms" or "online accommodation platforms" to register for a Manitoba RST number. An "online sales platform" for this purpose generally means an online marketplace that facilitates retail sales of tangible personal property in Manitoba and the collection of payment on behalf of an "online seller". An "online accommodation platform" generally means an online marketplace that facilitates retail sales of lodging in Manitoba and the collection of payment on behalf of the person providing the lodging.

Unlike the legislation underlying similar changes in Saskatchewan, the new Manitoba legislation appears to anticipate a technical problem where a registered online seller makes supplies over an online sales platform. To avoid having two persons required to collect and remit the same tax, the Manitoba legislation includes a specific provision providing that where a vendor has remitted the tax payable on a transaction, no other vendor is required to remit the tax or file a return in respect of the transaction.

While the legislation does not appear to state that the primary obligation is on either the online seller or the person operating the online sales platform, the Bulletin suggests that Manitoba considers the online sales platform operator to be primarily responsible for collecting and remitting RST, irrespective of whether the online seller is registered. Consistent with this position, the Bulletin states that if the platform operator collects and remits the tax with respect to a sale, the online seller has no RST obligations in respect of that sale. The Bulletin does not make a similar statement that the online sales platform operator has no RST obligations in respect of a sale where the online seller remits the RST, though this would also appear to be the case based on the legislation.

The same principles set out above appear to apply with respect to online accommodation platforms, with the Bulletin stating that the online accommodation platform operator is responsible for collecting and remitting RST irrespective of whether the online seller is registered.

Neither the legislation nor the Bulletin appears to contemplate a due diligence defence where either the platform operator or the online seller represents to the other that it is taking responsibility for collecting and remitting RST but in fact fails to do so. This factor should be taken into account when parties are negotiating who should be remitting any applicable taxes.

Streaming services

The new legislation also “clarifies” (according to the Explanatory Notes) that streaming services are taxable telecommunication services. Specifically, the new legislation expands the definition of “telecommunication service” to include a right, whether exercised or not, to download, view or access an audio program, music, a ring tone or a television program, motion picture or other video by means of an electronic device. The Bulletin notes that a “electronic devices” for this purpose include computers, mobile phones, smartphones, tablets, portable media players and TV-based or automobile-based media receivers.

The new changes have many nuances and expand the scope of the RST. Businesses should therefore be aware of the new legislation and seek legal advice as necessary to ensure that they are complying with their obligations.