

Québec government introduces amendments to An Act respecting the Québec Sales Tax dealing with the digital economy and e-commerce previously announced in the 2018 Budget

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In this Update

- The Québec government recently introduced legislative amendments to *An Act respecting the Québec Sales Tax* (the QSTA) and the *Tax Administration Act* dealing with the digital economy and e-commerce previously announced in the 2018 Budget.
- Pursuant to the amendments, non-resident suppliers and digital platforms could be required to register for the purposes of the QSTA and to be required to collect and remit Quebec Sales Tax applicable to certain taxable supplies made to specified Québec consumers, such as services and incorporeal movable property, including downloadable media content, supplied outside of Canada.
- If approved, these amendments will come into force on January 1, 2019, in respect of foreign specified suppliers and operators of specified digital platforms, and on September 1, 2019, in respect of Canadian specified suppliers and operators of specified digital platforms in respect of supply made by other specified suppliers.

The Québec government recently introduced legislative amendments to *An Act respecting the Québec Sales Tax* (the QSTA) and the *Tax Administration Act* to enact measures regarding registration for Québec Sales Tax (QST) by non-resident suppliers that were announced in the 2018 Budget (see our [Osler Update](#)).

Albeit the QSTA already contemplates that Québec consumers are required to self-assess QST in respect of the acquisition of corporeal movable property supplied from within Canada but outside of Québec, and the acquisition of services and incorporeal movable property such as downloadable media content, supplied outside of Canada, the 2018 Budget acknowledged that there is very low level of compliance with this requirement.

Under the new rules, assuming that the minimum threshold is satisfied, non-resident suppliers will be required to register under this new registration system and will be required to collect and remit QST applicable to taxable supplies made to specified Québec consumers. This collection requirement will apply in respect of supplies of incorporeal movable properties and services made by non-residents and in the case of non-residents that are located in Canada outside Québec, it will be extended to corporeal movable properties. Digital platforms that provide services to a non-resident supplier enabling them to make supplies of incorporeal movable property or services to specified Québec consumers will also

be subject to the registration requirements imposed on non-resident suppliers, where the platform controls the key elements of transactions.

Legislative process

These amendments were introduced by way of amendments to Bill 150, previously entitled *An Act respecting mainly the implementation of certain provisions of the Budget Speeches of 17 March 2016 and 28 March 2017*. The amendments were brought forward at the committee stage, after a version of the Bill that did not include these measures had been adopted in principle by the National Assembly. As part of the package of amendments approved by the Committee on Public Finance, the title of the Bill would be amended to *An Act to better regulate the digital economy as regards e-commerce, remunerated passenger transportation and tourist accommodation and to amend various legislative provisions*^[1]. The committee report, with amendments, was tabled in the National Assembly on May 17, 2018, and Bill 150 is expected to be approved and passed into law before June 15, 2018, the end of the current session of the National Assembly.

The government's approach is procedurally highly unusual, as these measures were not before the National Assembly when it adopted the bill in principle. In fact, the vast majority of the provisions that were initially introduced in Bill 150 were withdrawn. Although the National Assembly must give its final approval to the Bill, the measures have effectively bypassed several steps of the normal legislative procedure in order to ensure that the e-commerce amendments are enacted before the end of 2018.

Proposed amendments

The central element of the amendments is the introduction of new Chapter VIII.1 to the QSTA, which contains definitions and the operative provisions in respect of collection and remittance of QST by non-resident suppliers.

The key definitions of the new regime are summarized hereinafter:

- **Specified supplier:** a supplier who does not carry on business in Québec, does not have a permanent establishment in Québec, and is not registered under Section I of Chapter VIII of the QSTA.
- **Canadian specified supplier:** a specified supplier who is registered for GST, and "foreign specified supplier [fournisseur désigné étranger]" is defined as a specified supplier who does not carry on business in Canada, does not have a permanent establishment in Canada, and is not registered for GST.
- **Specified digital platform:** a digital platform for the distribution of property or services by which a given person allows a specified supplier to make taxable supply in Québec of incorporeal movable property or of services, where the given person controls the essential elements of the transaction between the specified supplier and the acquirer of the supply, such as billing, the terms and conditions of the transaction, and the terms of delivery.
- **Québec consumer:** a consumer who is ordinarily resident in Québec, as determined in accordance with new provisions, discussed below. A "specified Québec consumer" is a recipient whose usual place of residence is in Québec, as determined in accordance with new provisions, and who is not registered under Section I of Chapter VIII of the QSTA.

Obligation to register

A specified supplier, or the operator of a specified digital platform that isn't registered under Chapter VIII, is obliged to register under new Chapter VIII.1 of the QSTA as of the first day of a month as of which it made taxable supplies of services or incorporeal movable property in Québec to acquirers who may reasonably be considered to be consumers totalling at least \$30,000 over the 12 previous months. In the case of specified Canadian suppliers, the supply of corporeal movables in Québec is also counted towards that total.

In determining whether a person is obliged to register, the presumption in section 23 of the QSTA that certain supplies are made outside Québec is deemed not to apply.

Further, in determining whether the recipient of the supply is ordinarily resident in Québec, the supplier must, at the time of making the supply, have obtained in the course of its operations at least two of the following non-contradictory indicia:

1. Recipient's billing address
2. Recipient's home or business address
3. IP address, or similar data obtained by geolocation, of the device used to make the purchase
4. Payment-related bank information of the recipient or the billing address used by the bank
5. Data from a SIM card used by the recipient
6. The location of a landline telephone supplied to the recipient
7. Any other relevant information

The Minister may permit an alternate method if, for commercial reasons, a supplier cannot obtain two non-contradictory indicia enumerated above allowing for determination of the ordinary residence of a recipient.

If a supplier obtains two indicia indicating the ordinary residence of a recipient is located in Québec, and at least two indicia supporting the conclusion that the recipient's ordinary residence is outside Québec, the supplier must choose which indicia are most reliable in determining residence.

Obligation to collect QST

A specified supplier who is registered under Chapter VIII.1 and makes a taxable supply of a service or incorporeal movable property in Québec to a specified Québec consumer must collect QST on behalf of the Minister on such supply.

A Canadian specified supplier registered under Chapter VIII.1 must also collect QST on a supply in Québec of corporeal movable property to a specified Québec consumer.

An operator of a specified digital platform registered under Chapter VIII.1 who receives an amount in respect of a taxable supply of a service or incorporeal movable property by a specified supplier to a specified Québec consumer must collect QST in respect of such supply.

If the purchaser of the supply informs the supplier or operator of a digital platform that it is registered under Chapter VIII and provides a QST registration number, that purchaser may be considered not to be a specified Québec consumer.

When QST is charged on a supply, the supplier must show on the receipt the amount paid or payable for the supply and must show the QST applicable, or state that the total amount includes QST.

Reporting and payment to the Minister

Every person registered under Chapter VIII.1 (hereinafter a “registrant”) will be required to produce quarterly returns in the month following the end of each calendar quarters, and to remit QST in accordance.

If a registrant is paid by a recipient in prescribed currency, which include the U.S. dollar and the Euro, it may elect to file its returns calculated in such currency and to remit QST in the same currency.

If the registrant is paid in a foreign currency other than a prescribed currency, or is paid in a prescribed currency but does not elect to calculate and remit QST in such currency, amounts received for supplies on which QST was required to be collected must be converted to Canadian dollars using the exchange rate applicable on the last day of the reporting period, or using another method acceptable to the Minister. In all cases, method of calculating foreign exchange must be consistent for a period of at least 24 months.

In the event that a registrant collects QST from a person who is registered under the general program (and therefore is not a specified Québec consumer), the registrant is required to refund such amount to the person who was overcharged. The registrant, in turn, will be entitled to deduct the amount refunded in its return for the quarter in which the refund is issued. If the registrant’s deductions exceed the amount it must remit for a quarter, it will be entitled to a refund.

Further, persons resident in Canada to whom a supply of incorporeal movable property or a service is made remotely by a foreign specified supplier, are entitled to a refund from the of QST paid in respect of such supply to the extent that it is acquired for consumption, use, or supply in a participating province within the meaning of the *Excise Tax Act* (i.e., Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador, PEI). This refund is only available when HST was paid in respect of the supply and satisfactory evidence is presented to the Minister to demonstrate this.

Penalty for evasion

A recipient who seeks to evade payment of the QST on supply of a service or incorporeal movable property faces a penalty of the greater of \$100 or 50% of tax evaded or sought to be evaded.

Coming into force

If approved by the Legislative Assembly these amendments will come into force on January 1, 2019, in respect of foreign specified suppliers and operators of specified digital platforms in respect of supply made by foreign specified suppliers, and on September 1, 2019, in respect of Canadian specified suppliers and operators of specified digital platforms in respect of supply by specified suppliers other than foreign specified suppliers.

As a result of these rules, many non-Canadian suppliers, including digital platforms, will have to register and to start to collect QST in respect of supplies of services and intangible

personal property to specified Québec consumers. As part of this process, these non-Canadian suppliers will have to review their systems prior to January 1, 2019, to be able to administer the QST pursuant to this new regime. They may also want to determine whether it makes more sense to voluntarily register for the regular QST regime (so that they can potentially claim input tax refunds for any QST they pay).

The new measures proposed by Québec are similar to other sales tax regimes that have been enacted across the globe in respect of e-commerce, but constitute the first attempt in Canada, to implement such registration and collection requirement on suppliers having limited ties with Canada.

For questions relating to the above, please contact any of the following members of the Osler tax team:

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^[1]In French : *Loi favorisant un meilleur encadrement de l'économie numérique en matière de commerce électronique, de transport rémunéré de personnes et d'hébergement touristique et modifiant diverses dispositions législatives.*