

2021 Issue No. 05
3 March 2021

Tax Alert – Canada

British Columbia's expanded Provincial Sales Tax registration requirements to take effect on 1 April 2021

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 2 September 2020, the Government of British Columbia (BC) announced that 1 April 2021 is the effective date for the implementation of the expanded Provincial Sales Tax (PST) registration requirements introduced by the 2020 BC Budget on 18 February 2020.¹ The original implementation date was 1 July 2020; however, the date was postponed as part of the COVID-19 relief measures. Under the new registration requirements, Canadian providers of goods, along with Canadian and foreign providers of software and telecommunication services, would be required to register as tax collectors and collect PST at 7% from customers located in BC if their BC gross revenue exceeds the set threshold of CAD \$10,000.

The expanded registration requirements apply to both business-to-business (B2B) and to business-to-consumer (B2C) sales of software and telecommunication services. Additional administrative guidance on actual application of the rules is yet to be provided by the BC government.

¹ Refer to [EY Tax Alert 2020 Issue No. 04](#).

Legislative background

Under section 92 of Canada's *Constitution Act, 1867*, a province in Canada is limited to making laws "in the province" and even then, only in relation to matters coming within enumerated classes of subjects. Those limited classes of subjects include direct taxation within the province, property and civil rights in the province, and generally all matters of a merely local or private nature in the province.

Accordingly, historically, only businesses who in the ordinary course of their business in BC sold PST-taxable goods and services were required under BC's sales tax law to register to charge and collect BC PST. For purchases made by residents of BC from out-of-province vendors, the legislation imposes an obligation on them to report and self-assess tax on such purchases.

Regardless of the constitutional limit to its authority, in 2000, BC passed legislation requiring anyone located outside BC to register for PST purposes if, in the ordinary course of business, they solicited for orders to purchase taxable goods by advertising or any other means from persons in BC and caused the goods to be delivered in BC. At the time, administratively, the province clarified that the law only applied to businesses located outside BC but in Canada, i.e., not to foreign sellers. Subsequently, in 2013, the province formalized this requirement in its new *Provincial Sales Tax Act* (PSTA), making it clear that this rule only applied to persons located outside BC but in Canada.

In 2015, BC claimed jurisdiction over a broader spectrum of businesses outside its province. The amendment required any business located outside BC, located in Canada or abroad, to register if they accepted orders from persons in BC and had inventory in BC at the time of the sale.

With BC's 2020 budget, the province has asserted even more extra-territorial jurisdictional authority by requiring Canadian sellers of goods, and Canadian and foreign sellers of software and telecommunication services, to register for BC PST if their BC revenue exceeds CAD \$10,000. Initially, the proposed amendments were to come into effect on 1 July 2020; however, on 23 March 2020, the province announced a delay in implementing these amendments due to the COVID-19 pandemic. On 2 September 2020, it was announced that these new extra-territorial registration requirements will be effective on 1 April 2021.

Non-residents and residents of Canada

Under the new registration requirements, anyone (regardless of where they are located) who sells software or telecommunication services to a person in BC would be required to register and comply with BC PST legislation if their annual revenues from BC residents exceed CAD \$10,000.

In addition, anyone located in Canada, but outside BC, who accepts orders for PST-taxable goods from persons in BC and delivers the goods in BC would also have to be registered for, and charge and collect, BC PST on such sales if their annual revenues from BC residents exceed CAD \$10,000.

It is relevant to note that these registration requirements are in addition to those previously enacted and described above.

The new BC PST non-resident vendor registration requirements

The new provisions added to the PSTA² require out-of-province vendors who remotely sell digital products and services into BC to register and collect the BC PST at 7% on those sales if they do all of the following:

- a) Accept orders originating in BC for the purchase of software for use on or with electronic devices ordinarily situated in BC or for the purchase of telecommunication services;
- b) In response to the acceptance of the orders set out in a), sell or provide software or telecommunication services for amounts meeting the minimum revenue threshold³ of CAD \$10,000 in the preceding 12 months, or their reasonable estimate of their gross revenue from all sales and provisions of software and telecommunications is expected to exceed \$10,000 in the next 12 months; and
- c) Sell or provide software for use on or with an electronic device ordinarily situated in BC or sell or provide a telecommunication service to a person in BC.

Location of stationary electronic devices (such as desktop computers, televisions, etc.) shall be determined based on the billing address or IP address. Similarly, the location of mobile electronic devices (such as smart phones) shall be determined based on their assigned area code (BC area codes being 250, 604, 778 and 236).

The new registration requirements will broadly apply to both B2B and B2C retail sales of software and telecommunication services made in BC.

Digital products and services captured under the new registration requirements

Based on the broad definitions of “software”⁴ and “telecommunication service”⁵ under the PSTA, the province is of the view that not only will non-resident vendors of traditional types of software be covered by these new requirements to collect and remit BC PST on their sales into BC, but also sellers of digital products and services such as Software as a Service (SaaS), Infrastructure as a Service (IaaS), and Platform as a Service (PaaS) if providing these services

² Section 172.1 of the PSTA is amended by adding subsection (1.1), which lists the conditions for the application of the new registration requirement with respect to non-resident suppliers of software and telecommunication services.

³ Added section 172.2 of the PSTA.

⁴ Software is defined as “a software program that is delivered or accessed by any means, the right to use a software program that is delivered or accessed by any means, or, a right under an optional software maintenance agreement to receive software updates if they become available.”

⁵ Telecommunication services are defined to mean:

- *The right, whether exercised or not, to utilize a telecommunication system to send or receive one or more telecommunications by means of an electronic device ordinarily situated in BC. This includes services such as phone (mobile or landline) and fax, television (TV), radio (including satellite radio), Internet access, email and text, and picture and video messaging services.*
- *Utilizing a telecommunication system to send or receive telecommunications, such as phone calls (mobile or landline) and faxes, TV and radio signals, emails and text messages (including where the message is not limited to text) by means of an electronic device ordinarily situated in B.C*

to BC customers. However, there are appeal applications and cases pending before the BC courts challenging the province’s broad interpretation of its legislation, particularly with respect to IaaS and PaaS.

Registration, collection and remittance of tax

Businesses can register online using [eTaxBC](#), or by fax or mail, by completing form FIN 418, *Application for Registration for PST*, available on the [BC government website](#). All businesses that must be registered to collect and remit PST are considered to be collectors whether or not they are actually registered.

As of now, the BC government has not provided further clarification on the liability to collect tax for supplies made through digital platforms, so it is unclear if the digital platform or the actual seller of the digital supply is required to be registered.

Businesses that are required to register must charge and collect tax, unless a specific exemption applies to the sale or lease. BC PST registrants must report and remit to the government any tax charged, whether or not they have actually collected it from the customer. BC PST registrants must remit all tax charged within a reporting period no later than the last day of the month following the end of the reporting period.

If a business has CAD \$1.5 million or more in total Canadian sales and leases in the last 12 months, it is required to file tax returns and remit taxes electronically.

The following chart shows how BC government generally determines a registrant’s reporting periods.

PST collectable per year	Ongoing reporting period
More than CAD \$12,000	Monthly only
More than CAD \$6,000 up to CAD \$12,000	Monthly or quarterly
More than CAD \$3,000 up to CAD \$6,000	Quarterly or semi-annual
CAD \$3,000 or less	Quarterly, semi-annual or annual

Considerations for businesses now

It remains an open issue as to whether British Columbia (or any of the Canadian provinces that continue to administer their own sales tax) have the constitutional jurisdiction to impose any of these registration and reporting requirements on persons outside their province who do not otherwise carry on business in their territory. Nevertheless, non-resident businesses making taxable supplies in BC should assess their requirement for registration. Businesses that decide that they are required to register should also program their accounting systems to properly charge and collect the tax and generate reports that will enable preparation of periodic returns.

Learn more

For more information, please contact your EY or EY Law advisor or one of the following professionals:

East

Jean-Hugues Chabot

+1 514 874 4345 | jean-hugues.chabot@ca.ey.com

Jadys Bourdelais

+1 514 879 6380 | jadys.bourdelais@ca.ey.com

West

David D. Robertson

+1 403 206 5474 | david.d.robertson@ca.ey.com

Thomas Brook

+1 403 826 7316 | thomas.brook@ca.ey.com

Cristina Gutiu

+1 604 648 3648 | cristina.gutiu@ca.ey.com

Deidre Feist

+1 604 891 8452 | deidre.a.feist@ca.ey.com

Jasvin Sethi

+1 604 891 8487 | jasvin.sethi@ca.ey.com

Central

Jan Pedder

+1 416 943 3509 | jan.s.pedder@ca.ey.com

Sania Ilahi

+1 416 941 1832 | sania.ilahi@ca.ey.com

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