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Tax Alert – Canada

Canada's new reporting rules for digital platform operators take effect 1 January 2024

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.

Legislation introduced by the Canadian government to implement model rules developed by the Organisation for Economic Co-operation and Development (OECD) for digital platform operators received Royal Assent over the summer. These rules take effect on 1 January 2024, with the first reporting – and exchange of information by the Canada Revenue Agency (CRA) with its partner jurisdictions' tax administrations – occurring in early 2025 with respect to the 2024 calendar year.

Digital platform operators should determine if they are subject to these rules and, if so, they should review their processes and systems to assess whether they are able to comply with the reporting requirements.

In this Tax Alert, we provide a summary of certain key features of the new reporting rules.

Background

On 3 July 2020, the OECD released its "Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy" (the OECD model rules). In general, these rules require digital platform operators to collect information on revenues earned by sellers offering accommodation, transport and personal services through platforms and to report the information to tax authorities. The OECD indicated that it developed these rules to limit the proliferation of different domestic reporting requirements and to facilitate information exchange agreements between interested jurisdictions.

Building a better working world

In its 2022 budget, the federal government highlighted tax compliance issues associated with the increasing use of online platforms. For example, it was noted that not all platform sellers were aware of the tax implications of their online activities. Identifying non-compliance was also an issue, as digital transactions occurring on such platforms were not always visible to the CRA and other tax administrations. To address these concerns, the federal government proposed to implement the OECD model rules for reporting by digital platform operators.

On 3 November 2022, the Department of Finance released draft legislative proposals, and accompanying explanatory notes, for new reporting rules for digital platform operators. Notably, these proposals adopted the optional module to expand the scope of the OECD model rules to include the sale of goods and the rental of means of transportation. As well, the draft legislative proposals did not contain an exclusion from the reporting rules for certain platform operators, which was included in the 2022 federal budget documents. Specifically, there was no exclusion for platform operators that facilitated the provision of relevant activities for which the total consideration over the previous year was less than €1 million and that elected to be excluded from reporting.

On 22 June 2023, Bill C-47, *Budget Implementation Act, 2023, No. 1*, received Royal Assent. Bill C-47 enacts Part XX of the *Income Tax Act* (the Act), *Reporting Rules for Digital Platform Operators*, which implements the draft legislative proposals released on 3 November 2022, subject to minor modifications. The provisions in Part XX of the Act must be interpreted consistently with the OECD model rules unless the context requires otherwise.

Reporting platform operators

For Part XX purposes, a *platform* is any software, including all or part of a website and applications (including mobile applications) that is accessible by users and allows sellers to connect with other users for the provision of relevant services or the sale of goods. This includes platforms that facilitate the collection and payment of consideration for relevant activities, but excludes software exclusively allowing (without any further intervention):

- The processing of payments in relation to relevant activities;
- Listing or advertising in relation to relevant activities; or
- The redirection or transfer of users to another platform.

A *platform operator* includes any entity that contracts with sellers to make a platform available to sellers. In general, platform operators are *reporting platform operators* (and thereby subject to Part XX due diligence and reporting requirements) if they are resident in Canada. A reporting platform operator also includes a nonresident platform operator that facilitates the provision of relevant activities by sellers resident in Canada, or with respect to renting immovable property in Canada. A nonresident platform operator may elect to be a reporting platform operator if it is resident, incorporated or managed in a *partner jurisdiction* (i.e., a jurisdiction that has an agreement with Canada to share information collected under the OECD model rules).

Relevant activity means a relevant service or the sale of goods for consideration. A relevant service includes the rental of real or immovable property, the rental of a means of transport, or a personal service. A *personal service* is a service involving time- or task-based work performed by one or more individuals at the request of a user. The Department of Finance has indicated that this term encompasses a broad range of services, such as transportation and delivery services, manual labour, tutoring, copywriting, data manipulation, and clerical, legal or accounting tasks. However, it excludes a service provided by a seller pursuant to an employment relationship with the platform operator or a related entity of the operator.

A reporting platform operator does not include an excluded platform operator. An *excluded platform operator* is a platform operator that demonstrates (to the satisfaction of the minister) that its entire business model does not allow sellers to derive a profit from the consideration received for relevant services, such as ride-sharing services, or that does not have reportable sellers (e.g., large-scale hotel operators).

Reportable sellers

Reportable sellers are active sellers (i.e., sellers that provide relevant services or sell goods, or that have received consideration for such relevant activities during a reportable period) that are determined by a platform operator:

- To be resident in a reportable jurisdiction; or
- That have provided relevant services for the rental of immovable property located in a reportable jurisdiction or have received consideration in respect of such services.

Certain sellers are considered to present a limited compliance risk and are excluded from the list of reportable sellers. The Act defines an *excluded seller* as:

- An entity for which more than 2,000 relevant services for the rental of immovable property are provided during a calendar year (i.e., large-scale providers of hotel accommodation);
- A governmental entity;
- An entity, or a related entity of the entity, whose stock is traded regularly on an established securities market; and
- A seller for which the platform operator facilitated fewer than 30 relevant activities for the sale of goods and for which the total amount of consideration paid or credited did not exceed $2,800[1] during the reportable period.

[1] Under the original draft legislative proposals released on 3 November 2022, this threshold was set at €2,000.

Information to be reported

In accordance with section 292 of the Act, a reporting platform operator must report certain identifying information for its own business, including its name, registered office address and tax identification number (TIN). As well, an operator must collect certain specified information for each reportable seller that provided relevant services, rented out a means of transportation, or sold goods. Such information includes:

- Information collected in accordance with the due diligence provisions (see *Due diligence requirements* below), including certain identity-related information;
- Any other TIN, including the jurisdiction that issued it, available to the reporting platform operator;
- Any financial account identifiers (i.e., the unique identifying number or reference of the bank account or other payment account to which consideration is paid or credited);
- If different from the name of the reportable seller, the name of the holder of the financial account to which the consideration is paid or credited;
- Each jurisdiction in which the reportable seller is resident;
- The total consideration paid or credited during each quarter of the reportable period and the number of relevant activities for which it was paid or credited; and
- Any fees, commissions or taxes that the reporting platform operator charges or withholds during each quarter of the reportable period.

A reporting platform operator is required to report additional information in respect of a reportable seller that provides relevant services for the rental of immovable property, including:

- The address of each property listing and the corresponding land registration number, if available; and
- The number of days each property listing was rented during the reportable period and the type of each property listing (e.g., hotel, apartment, parking space), if available.

Due diligence requirements

For the purpose of meeting their reporting requirements, a reporting platform operator must determine whether a seller is a reportable seller in accordance with the due diligence procedures set out in the Act. Specifically, reporting platform operators must collect certain information from each reportable seller that is not an excluded seller. For example, if a reportable seller is an entity (i.e., a person other than a natural person, such as a corporation or partnership), the operator must collect the entity's legal name, its primary address, the TIN issued to the entity (including the jurisdiction of issuance) and its business registration number.

The Act also sets out various due diligence procedures for verifying collected information. For example, a reporting platform operator must determine whether the information it has collected is reliable by using all records available to it, as well as any publicly available electronic interface, to ascertain the validity of a TIN. If the CRA has informed a reporting platform operator that information collected in accordance with due diligence procedures may not be accurate, the operator must verify the information using reliable, independent-source documents, data or information.

A reporting platform operator must complete the due diligence procedures by 31 December of the reportable period. As a transitional relief measure for new reporting platform operators, the due diligence procedures must be completed by 31 December of the second reportable period for which the entity is a reporting platform operator. This relief applies in relation to sellers that were already registered on the platform on 1 January 2024 or the date on which the entity became a reporting platform operator.

For administrative relief purposes, a reporting platform operator may elect to complete the due diligence requirements for active sellers only. As well, an operator may rely on due diligence procedures conducted for previous reportable periods, if the operator:

- Has collected the seller's primary address and verified it within the last 36 months; and
- Does not have reason to know that information collected in accordance with due diligence procedures is unreliable or incorrect.

A reporting platform operator may use third parties, including other platform operators, to fulfill its reporting and due diligence obligations. If a platform operator that is resident in a partner jurisdiction fulfills a reporting platform operator's due diligence obligation for the same platform, it may rely on the rules in its own jurisdiction to conduct the due diligence procedures, as long as the rules are substantially similar. While a reporting platform operator may rely on a third-party service provider to fulfill these obligations, the operator remains responsible for them.

Filing requirements

Reporting platform operators must file an information return containing the required information relating to reportable sellers no later than 31 January of the year following the calendar year in which a seller is identified as a reportable seller. As well, they must provide the same information to the reportable seller to which it relates no later than that date. This provision is intended in part to ensure that reportable sellers are aware of the information provided to the CRA on their behalf. However, a reporting platform operator is not required to report this information nor to make it available to the reportable seller if the operator obtains adequate assurances that another platform operator has completed or will complete the reporting obligations.

A reporting platform operator must report the required information electronically in the prescribed form. The Department of Finance has indicated it is likely that information will be reported in the standardized extensible markup schema developed by the OECD.

Information relating to consideration paid or credited must be reported in the currency in which it was paid or credited. If the consideration was paid or credited in another form, the operator must report the amount in Canadian currency, using a consistent conversion or valuation method. Information relating to consideration must be reported for the quarter in which it was paid or credited.

It should be noted that the *Excise Tax Act* requires certain persons to file information returns in accordance with the specified GST/HST regime applicable to e-commerce supplies. Specifically, an accommodation platform operator that facilitates supplies of short-term accommodation in Canada must file an annual information return relating to accommodation providers making supplies through the platform. Similarly, a distribution platform operator that is a registrant and that facilitates supplies of goods through a digital platform must file an annual information return relating to the vendor making sales through the platform. However, as a result of the adoption of the OECD model rules, the CRA has indicated that neither accommodation platform operators nor distribution platform operators are required to file these returns until further notice.

Keeping records

Every reporting platform operator must keep records that it obtains or creates for the purpose of Part XX compliance, including records of documentary evidence. An operator must keep such records at their place of business, or another place designated by the minister. Records must be kept for a minimum of six years following the end of the calendar year to which the record relates.

Penalties

A reportable seller who fails to provide their TIN to a reporting platform operator on request is liable to a $500 penalty for each failure. However, no penalty applies if:

- The reportable seller applies to the relevant reportable jurisdiction for a TIN no later than 90 days after the operator makes the request; and
- The reportable seller provides the TIN to the operator within 15 days after receiving it.

As well, no penalty applies if the reportable seller cannot obtain a TIN from the relevant reporting jurisdiction; for example, if the jurisdiction does not issue TINs.

The Act defines a *TIN* as a number used by the minister to identify an individual or entity, such as a social insurance number, business number or an account number issued to a trust. For a jurisdiction other than Canada, a TIN is a taxpayer identification number, including a VAT/GST registration number issued by the jurisdiction of the seller's primary address.

Penalties described under subsection 162(7.01) would apply to a reporting platform operator who fails to file one or more information returns in accordance with Part XX of the Act.

Anti-avoidance

A person who enters into an arrangement or engages in a practice primarily to avoid an obligation under Part XX of the Act remains subject to the obligation.

Learn more

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