D&G ACCOUNTING SERVICE

TAX FACTOR 2014-01
CANADIAN SALES TAX IMPLICATIONS OF SELLING GOODS OVER THE INTERNET

Over the past several years, the sale of goods over the internet has become something that both vendors and consumers have grown accustomed to. This is largely because many businesses operate on-line stores and have the capability of delivering goods right to the door of their customers. While some retailers offer goods for sale over the internet in addition to maintaining physical stores, others simply operate solely on-line. No matter what type of retailer you may be, you will likely agree that it is necessary to understand the Canadian sales tax implications of transacting on-line with customers in Canada.

This article highlights some of the sales tax considerations that you, as a business owner, need to be aware of. For purposes of this article, we will limit our discussion to sales made by Canadian on-line retailers in Canada. Note that Canadian on-line retailers selling into the United States (US) should seek advice on sales tax issues to ensure their tax collection and remittance policies are compliant with the relevant US rules.

The basics of GST/HST and interprovincial on-line sales

As you know, the Goods and Services Tax (GST) is a federal tax that is applied on most goods and services supplied across Canada. The current GST rate is 5%. Certain provinces, which are often called, participating provinces, have harmonized their provincial sales tax systems with the GST. The tax that is imposed by participating provinces is referred to as the Harmonized Sales Tax (HST) and is effectively the GST at a rate of 5% plus a provincial component which can range from 8% to 10%. Once a business is registered for GST, it is automatically registered for HST as there is effectively one tax system administered by the federal government. The current participating provinces and their respective HST rates for 2014 are:

- Ontario — 13%;
- Nova Scotia — 15% (rate reduction to 14% in 2014 is not likely);
- Newfoundland — 13%;
- New Brunswick — 13%; and
- Prince Edward Island — 14%.

There are rules which provide that all Canadian retailers making sales in Canada, either through a physical location or over the internet, are required to be registered for GST/HST unless they are considered a small supplier (which is an entity with sales on an associated basis of less than $30,000 annually). Further to this, a retailer (that is not a small supplier) with only one physical location in Canada that makes sales across Canada through their on-line store would be required to charge and collect GST/HST at the rate that applies to the province in which the taxable goods are delivered to. For example, a retailer with a store in Alberta that sells and delivers a computer to an Ontario consumer would be required to charge and collect GST/HST at the Ontario rate of 13%.

In addition, a Canadian resident on-line retailer with no physical stores would also be required to charge GST/HST at the rate that applies to the province in which the taxable goods are delivered to. For example, let's say a company incorporated in British Columbia (BC) that does not have any physical stores, sells taxable sporting goods over the internet. If the company arranges for the delivery of its product to a consumer in New Brunswick, it is required to charge and collect GST/HST at a rate of 13% from the consumer in New Brunswick, even though the company was established in BC.

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Québec Sales Tax

The Québec Sales Tax (QST) system is very similar to the GST/HST. Although the rules are generally harmonized with the GST/HST, you should note that it is a separate and distinct system governed by separate legislation and it is administered by Revenue Québec. As such, unlike the rules that apply to the participating provinces, if your business is registered for GST/HST, it is not automatically registered for QST.

It is worth pointing out that under the QST legislation, every person (defined for sales tax purposes to include a corporation, individual, partnership or trust) that makes a taxable supply (sale) in Québec in the course of a commercial activity carried on in Québec is required to be registered for QST, except where:

1. The person is a small supplier;
2. The only activity is making sales of real property otherwise than in the course of a business; or
3. The person is not a resident of Québec and does not carry on business in Québec.

Note that with respect to point 3 above, the concept of "carrying on business in Québec" is not defined in the legislation. Therefore, one must look at certain administrative guidelines to help make the determination. Keep in mind that each situation must be determined on a case-by-case basis to take into account the specific facts of the situation. For example, let's say there is an on-line retailer incorporated in Ontario with no place of business, no employees or agents, no bank accounts and no inventory in Québec. In this example, the retailer makes sales of taxable raw materials that are only sold to other businesses and not to individual consumers located in Québec. As a non-resident of Québec who is not carrying on business pursuant to administrative guidelines, the on-line retailer would not be required to register for QST. This means that only GST at a rate of 5% would apply.

Please note, however, that there are special registration rules for residents of Canada (outside Québec) who solicit orders in Québec for the sale of taxable goods to individual consumers that are to be delivered within Québec. In this case, the on-line retailer would be required to register for QST. For example, consider a business incorporated in Manitoba that is an on-line retailer that solicits orders for the sale of hair products to individual consumers in Québec. The products are delivered to customers in Québec. In this example, the Manitoba retailer would be required to register for QST and the goods would be subject to GST at a rate of 5% and QST at a rate of 9.975%.

British Columbia PST

As you are well aware, BC recently re-introduced a Provincial Sales Tax (PST) at a rate of 7% that is based on the consumption of goods in the province. It is worth noting that the PST in BC is not a value added tax and is imposed on the end user. As well, there are many exemptions under the PST legislation. For example, goods acquired for purposes of resale are not subject to PST.

Bear in mind that generally an on-line retailer is required to register to collect PST if they carry on business through an establishment in BC. In addition, a business located in Canada, but outside of BC, is also required to be registered for PST if that business:

1. Solicits orders for sale to purchasers in BC by advertising or other means;
2. Accepts purchase orders that originate from locations in BC;
3. Sells goods to persons in BC for use or consumption (not for resale); and
4. Delivers the goods into BC.

Quite clearly, a Canadian on-line retailer who delivers taxable goods to customers in BC will have to review these requirements to determine if they must register to collect PST.

Manitoba PST

The province of Manitoba has a PST system similar to that of BC, but the tax is imposed at a rate of 8%. Where an on-line retailer has a fixed place of business (i.e. a head office) in Manitoba, it is required to register to collect PST on the sale of taxable goods. A business outside of Manitoba may also be required to register for PST if it has on-line sales of taxable goods where all of the following criteria are met:

1. The goods are acquired to be used in Manitoba (and not for resale);
2. The vendor delivers the goods into Manitoba;
3. The vendor, directly or through an agent, solicits orders for the sale of goods in Manitoba by advertising or by any other means. This would include solicitation by email targeted towards Manitoba customers; and
4. The vendor accepts purchase orders that originate in Manitoba.

Keep in mind that the rules are quite similar to the rules that apply in BC. For instance, an on-line retailer who does not have a physical place of business in Manitoba may be required to register to collect PST where all of the above criteria are met. Therefore, it is advisable for on-line retailers outside of Manitoba with sales to customers in Manitoba to carefully review these rules to determine if they are required to register for this tax.

Saskatchewan PST

The province of Saskatchewan also imposes PST, but at a rate of 5%. However, unlike Manitoba and BC, the Saskatchewan PST legislation does not have specific rules governing the registration requirements for non-residents of the province. However, the province has posted a "Q & A" on their website which states that it is recommended that a non-resident of Saskatchewan who is making a retail sale of taxable goods which are delivered to a location in Saskatchewan, register for PST "as a convenience" to their customer who would otherwise have to self-assess the tax. This is quite different from BC and Manitoba where there are specific provisions in their respective legislation dealing with non-residents of those provinces. It is advisable for on-line retailers outside of Saskatchewan that have sales in Saskatchewan to carefully consider the legislative requirements to determine if they need to register for PST in the province.

Summary

As you will likely agree, all on-line retailers selling taxable goods across Canada need to be aware of the various types of sales tax that apply within our country. Although the GST was intended to be a national sales tax system with uniform application, you can see that this is clearly not the case today. The Canadian sales tax landscape is still divided between the provinces as there are different rates charged in the HST provinces and separate rules governing the sales tax systems in Québec, BC, Manitoba and Saskatchewan.

For more information about the sales tax implications of on-line sales, please contact D & G Accounting Services at 416.579.5882 or info@dgaccountingservice.com.

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