



TaxNewsFlash

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B.C. Sales Tax Changes Target Digital Products and Services

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Businesses that buy or sell software and cloud computing services may be affected by recent changes that essentially ensure that the British Columbia (B.C.) provincial sales tax (PST) applies to a broad range of products and services delivered electronically. These significant changes, which apply retroactively to 2013 and broaden certain definitions under the PST rules, specifically address the B.C. Supreme Court's comments in a recent 2023 decision that found that certain specific cloud computing services and online chat technical support services were not subject to PST. The new rules also feature new non-compliance penalties, including for third-party providers.

Although these changes were expected, software and cloud computing businesses may be surprised to see the extensive scope of British Columbia's new rules, especially given their retroactive application. Businesses that may have applied the previous PST legislation to determine the tax status of some of their digital products and services should review these changes to understand how they may affect their position on cloud services or other digital products. In particular, these businesses, including suppliers and purchasers, will have to determine whether they may face a tax liability for past years now that these changes are enacted.

Background

British Columbia released legislation with its 2024 provincial budget that was intended to reflect its (unpublished) administrative position that cloud computing services, software and other electronically delivered services are subject to PST. The legislation to enact these proposals received Royal Assent on April 25, 2024. British Columbia originally

announced its intention to propose retroactive changes in a 2023 Notice, following the B.C. Supreme Court decision.

Under the previous rules, a purchaser in British Columbia who buys software for use on or with an electronic device ordinarily situated in British Columbia must generally pay the PST on that transaction under the charging provision in the PST legislation. The recent changes generally expand this charging provision and the meaning of “software”. In general, a vendor must register to sell software in the province at a retail sale, unless the vendor only sells software that is exempt from the tax under the law.

For details of British Columbia’s budget announcement, see *TaxNewsFlash-Canada* 2024-04, “[Highlights of the 2024 British Columbia Budget](#)”.

PST changes

British Columbia’s new rules explicitly provide that most digital products and services will be subject to PST, effective retroactively to April 1, 2013. In particular, the changes ensure that more digital products and services are considered software, by broadening certain definitions and the rules on how software is accessed, and by limiting certain PST exceptions that some businesses may have previously relied on. These new rules, many of which address specific conclusions reached by the B.C. Supreme Court, include several notable wording changes to the definitions of “software”, “use” and “sale” under the PST legislation. These changes may affect businesses who have previously sold digital products and services without collecting and remitting the PST, as well as businesses who may be required to register and/or self-assess, among other effects of these proposals.

Qualifying more digital products and services as “software”

Businesses that previously determined that their digital products and services did not qualify as “software”, as defined under the former PST legislation, should reconsider whether these products and services may now be captured under the new definition.

Specifically, these businesses may want to review their positions in light of these changes that significantly broaden the definition of “software” so that it is no longer an exhaustive definition. By substituting the word “means” with “includes”, the definition of “software” could now include other items even if they are not expressly listed in the definition.

Further, the new rules no longer differentiate between “software” and “software program”, as they have removed references to “program”, from the definition of “software”. The recent changes effectively expand the previous definition to now possibly include certain digital services and products where the users may not interact with an application in a way that would allow them to create an output, such as a simple portal.

The rules also now specifically include the following digital products and services under the definition of “software”:

- Infrastructure as a Service (IaaS)
- Software as a Service (SaaS)
- Application Programming Interfaces (also known as APIs).

Expanding ways to access under taxable software — Changes to consider

The new rules also ensure that more digital products and services are subject to the PST rules regardless of how they are actually used or accessed by users. In particular, the changes broaden the previous taxing provision for software to provide that software that is accessed “on, through or with” the use of a device ordinarily situated in British Columbia is generally subject to the PST rules. Under the former PST rules, software that was used “on or with” such a device was generally considered taxable for PST purposes. It appears that this change expands the application of PST to situations where software may not be used “on or with” but rather “through” such a device.

The new rules also change the definition of “use” to now address circumstances where a person may access software directly or indirectly, including where the software is accessed on, through, or with other software or a device. As a result, software that may have not been considered taxable for PST because of how it is used or accessed under the previous rules may now be taxable, and retroactively to April 1, 2013.

Limiting the “merely incidental” exception

Finally, a business that offers certain software or telecommunication services will find these services may no longer qualify for the de minimis PST exemption.

This change may affect businesses that have previously determined that their sales of software or telecommunication services were not subject to the PST under the exclusion for “merely incidental” to other products and service that are non-taxable. The former PST rules provided an exclusion under the definition of “sale” for PST-taxable goods and services that are “merely incidental” to other goods and services that are non-taxable under the PST rules. The new rules eliminate this exclusion for prescribed software and telecommunication services. British Columbia has not identified which prescribed software or telecommunication services are affected.

KPMG observations

Although British Columbia has made extensive changes to certain definitions under the new rules, businesses should be aware that these changes could raise certain interpretation challenges. Among other potential issues, the new rules do not specifically define certain terms such as “Application Programming Interfaces” and “computational services”.

It is also interesting to compare the new rules to the B.C. Supreme Court case, as many of the changes appear to address the court’s comments and conclusions. For example, the change that eliminates the word “program” from the broadened definition of

“software” seems to directly correspond to the court’s finding that “software” and “software program” had different meanings under the previous British Columbia PST legislation (i.e., while the term “software” may be considered to include a “software program”, a “software program” doesn’t necessarily include “software”).

In addition, it’s also worth noting that the PST rules have now been updated so they can be more easily expanded in the future to accommodate technology developments. For example, by substituting the word “means” with the word “includes”, British Columbia will be able to consider future new technology and services to be PST-taxable software as they become available.

Businesses should also be aware that there is a concern that the new changes to the “merely incidental” rule could be used to tax all or part of otherwise-exempt services, such as financial services, where the price for a financial service includes access to software, such as an app or a website.

Penalties

The new rules also include new penalties under the PST rules that generally apply as of July 1, 2024. These penalties may apply where a taxpayer:

- Fails to file a return or repeatedly fails to file a return
- Fails to provide any required details in a return
- Fails to comply with various rules related to audit and records.

The changes also introduce a new penalty for misrepresentation by a third party.

We can help

Your KPMG adviser can help you assess the effect of these new developments. For more details, contact your KPMG adviser.

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