





Thriving in the Canadian customs and GST jungle

October 18, 2023

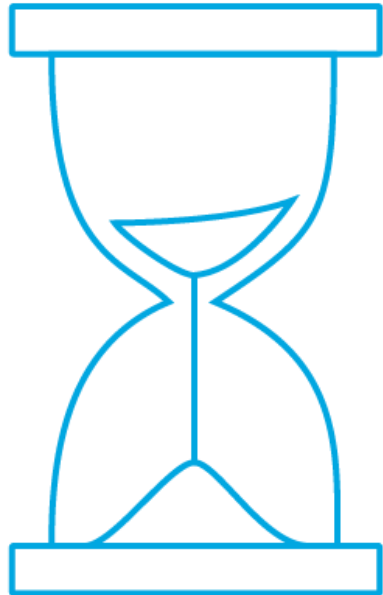
Today's speakers



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- GST/HST registration regular regime
- New simplified regime for Intangible Personal Property (IPP) and services
- New simplified regime for Tangible Personal Property (TPP)
- Canadian customs and trade developments

Learning objectives

By the end of this presentation, participants will be able to:

1. Explain registration requirements for non-resident suppliers;
2. Compare simplified vs. regular regime requirements
3. Interpret definitions of qualifying tangible personal property, and digital services and products;
4. Identify collection and remittance obligations under the new rules for digital economy businesses

GST/HST registration regular regime

Registration requirement under standard regime

- 240. (1) Excise Tax Act ("ETA") Every person who makes a taxable supply in Canada in the course of a commercial activity engaged in Canada, except where
 - (a) the person is a small supplier;
 - (b) the only commercial activity of the person is the making of supplies of real property by way of sale otherwise than in the course of a business; or
 - (c) the person is a non-resident person who does not carry on any business in Canada
- The term “carrying on business” ("COB") in Canada is not a defined term in the legislation.
- Jurisprudence and CRA’s guidance (Policy Statement P-051R2 and TIB-090 Electronic Commerce) – service/IPP
- **Example 14** (person downloading audio files) contracting, solicitation and payment in Canada – not CoB in Canada
- **Example 15** (software applications) contracting, solicitation, payment, after-sale support and server in Canada – CoB in Canada

- New GST/HST registration requirements under **a new simplified GST/HST** (Subdivision E of Division II) apply on digital products and services provided by non-residents suppliers of digital products and services to consumers in Canada
- New GST/HST registration requirements **under the regular regime** (Subdivision D of Division V) will apply GST/HST on sales of TPP that are located at fulfillment warehouses in Canada and sold to purchasers in Canada by:
 - non-resident vendors that sell directly to consumers in Canada on their own account
 - online marketplace platforms that facilitate the sale of these goods by non-registered vendors to consumers in Canada

New simplified regime for Intangible Personal Property (IPP) and services

New simplified regime for IPP and services

Specific registration requirement under the simplified regime for non-registrant and non-resident suppliers
Registration required 211.12 (2) under the simplified regime
Threshold amount 211.12 (1)

Specified non-resident supplier

- NR
- Not CoB
- Not registered under Subdivision D of Division V

Specified supply

- Taxable supply of intangible personal property or a service other than exclusions

Specified Canadian recipient

- Not provided to evidence satisfactory to the Minister that it is registered under Subdivision D of Division V
- Usual place of residence of the recipient is situated in Canada

Threshold amount

Total amount of supplies exceeds \$30,000 for any period of 12 months (excluded sales through GST/HST registered distribution platform operators ("DPO"))

New simplified regime for IPP and services

- **specified supply** means a taxable supply of intangible personal property or a service other than
 - (a) a supply of intangible personal property that
 - (i) may not be used in Canada,
 - (ii) relates to real property situated outside Canada, or
 - (iii) relates to tangible personal property ordinarily situated outside Canada;
 - (b) a supply of a service that
 - (i) may only be consumed or used outside Canada,
 - (ii) is in relation to real property situated outside Canada, or
 - (iii) is rendered in connection with criminal, civil or administrative litigation (other than a service rendered before the commencement of such litigation) that is under the jurisdiction of a court or other tribunal established under the laws of a country other than Canada or that is in the nature of an appeal from a decision of a court or other tribunal established under the laws of a country other than Canada;
 - (c) a supply of a service that is deemed under subsection 180.1(2) to have been made outside Canada;
 - (d) a supply of a service
 - (i) that is made to a person in connection with a supply of short-term accommodation made to the person, and
 - (ii) the consideration for which represents a booking fee, administration fee or other similar charge; and
 - (e) a prescribed supply.

New simplified regime for IPP and services

- Specific registration requirement for DPO that operates a specified distribution platform:
- through which supplies of IPP and services are made by specified nonresident suppliers to specified Canadian recipients
- the value of the consideration for those supplies is over \$30,000 in any past or future period of 12 months

- Tax collection requirement for DPO: required to collect GST/HST from:
 - specified Canadian recipients (if registered under the simplified regime) or
 - from all recipients (if registered under normal regime)
- on specified supplies made through its platforms by specified non-resident suppliers (DPO is deemed to be making a taxable supply)
- It is not required to collect GST/HST from specified non-resident suppliers on its fees for the services relating to the specified supplies (DPO is deemed not to be making a supply of related services to those suppliers)

New simplified regime for Tangible Personal Property (TPP)

New simplified regime for TPP

Specific registration requirement under the simplified regime for non-resident suppliers

- Registration required 211.12 (2)
- Threshold amount 211.12 (1)

Person required to register	Qualifying tangible personal property	Specified recipient	Threshold amount
<ul style="list-style-type: none"> • NR supplier • Not CoB 	<ul style="list-style-type: none"> • Sale of TPP that is, under the agreement for the supply, to be delivered or made available to the recipient in Canada • Other than exempt, zero-rated, sent by mail or courier, deemed to be outside or prescribed 	<ul style="list-style-type: none"> • Person (other than a non-resident person that is not a consumer of the property) that is the recipient of the supply and that is not registered under Subdivision D of Division V. • After registered, required to collect on all QTPP sales (whether the recipient is registered or not) 	<ul style="list-style-type: none"> • Total amount of supplies of QTPP exceeds \$30,000 for any period of 12 months • (excluded sales through GST/HST registered distribution platform operators)



New simplified regime for TPP

- **Definition of specified recipient**

- **211.22 (1)** In this section, specified recipient, in respect of a supply of property, means a person (other than a non-resident person that is not a consumer of the property) that is the recipient of the supply and that is not registered under Subdivision D of Division V.

- ***Qualifying tangible personal property supply*** means a supply made by way of sale of tangible personal property that is, under the agreement for the supply, to be delivered or made available to the recipient in Canada, other than
 - **(a)** an exempt or zero-rated supply;
 - **(b)** a supply of tangible personal property sent by mail or courier to the recipient at an address in Canada from an address outside Canada by the supplier or by another person acting on behalf of the supplier, if the supplier maintains evidence satisfactory to the Minister that the property was so sent;
 - **(c)** a supply that is deemed under subsection 180.1(2) to have been made outside Canada; and
 - **(d)** a prescribed supply.
- Please note: when goods are shipped to the consumer from outside Canada by mail or courier by non-registered vendors or non-registered DPOs, there should not be a registration requirement unless they are “carrying on business in Canada” under the existing rules.

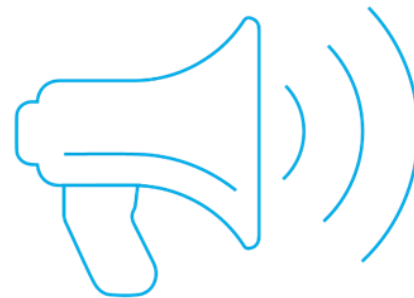
New simplified regime for TPP

- Specific registration requirement for DPOs under the regular regime
- DPO that operates a specified distribution platform
- Through its specified distribution platform qualifying TPP supplies are made to specified recipients
- The value of the consideration for those supplies is over \$30,000 in any past or future period of 1 year
- Tax collection requirement
- Pursuant to the deeming rules under s.211.23, a DPO that is registered or CoB in Canada
- Is required to collect GST/HST from all customers (registered or non-registered) of qualifying TPP supplies made through its platforms by non-registered suppliers - (whether resident or non-resident) (i.e. DPO is deemed to be the supplier)
- Is not required to collect GST/HST on its fees for the related services provided to unregistered suppliers (DPO is deemed not to be making a supply of related services to the suppliers)

Canadian customs and trade developments

Reminders: Import considerations

- Admissibility - Are the goods restricted controlled or prohibited? If so, do I require a permit, license or certificate (D9 example)?
- What is the value for duty purposes?
- What is the tariff classification of the proposed import?
- What is the origin of the goods? Is a tariff preference available if dutiable, should the goods be marked?
- Quantity
- Records - imported goods records regulations – also exports



The import process and payment - refresh

- Goods imported are reported to the Canada Border Services Agency (CBSA) (12CA) and then released if report is satisfactory (RPP)
- Goods reported are then accounted for to the CBSA (32) – current cycle - trade data to account sent in 5 days with some exceptions (RPP)
- Importers with RPP privileges settle their duty and tax bill on the last business day of the month (in general).
- CBSA Assessment Revenue Management (CARM) the payment due date will be 10 weekdays (defined as Monday to Friday, inclusive of holidays) after the 17th of the calendar month (mainstream change)

CARM & CARM Security

CARM (CBSA Assessment Revenue Management) portal account will be required for RPP by May 2024 – security deferral if registered for portal account prior to release 2 – May 2024

RPP-cash planning considerations

Current: resident registrants - GST not secured – able to use broker's bond

Future: May 2024– Business Number driven, CARM Portal Account and security required to import using RPP

Security formula

- Equal to or greater than 50% of the importer's highest monthly accounts receivable (inclusive of duties and **taxes**) within the last 12 months of historical payments to the CBSA at the time of enrolment.
- A minimum amount of **\$25,000** is required per RM (import-export) importer program account. An importer may choose to post the minimum amount however they must keep their accounts within their security limits by making interim payments or increasing the amount of security posted.
- The maximum amount of security will be capped at \$10 million for each RM importer program account number.

Liability for duty - what does change mean?

- **Liability-current (17CA)**
- (3) Whenever the importer of the goods that have been released or any person authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods becomes liable under this Act to pay duties on those goods, the owner of the goods at the time of release becomes jointly and severally, or solidarily, liable, with the importer or person authorized, to pay the duties.
- **Liability (C-19 November 2022) Implementation TBD – Royal Assent Received – CBSA Consulting on date...**
- **Liability**
- (3) Whenever the importer of the goods that have been released or any person authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods becomes liable under this Act to pay duties on those goods, the owner of the goods at the time of release and the importer of record become jointly and severally, or solidarily, liable, with the importer or person authorized, to pay the duties.
- **Definition of *importer of record* (New)**
- (4) In this section, ***importer of record*** means the person identified as the importer when goods are accounted for under subsection 32(1), (2), (3) or (5).
- (*BN Number*)

Recovery of duties from person other than importer

- **81 (1)** Notwithstanding anything in this Act, if any duty payable under this Act in respect of goods has not been paid within thirty days after a demand for payment of the duty has been made under this Act, the President may, by notice in writing, *require any person in Canada to whom the goods are sold to pay a sum in respect of the duty not exceeding the amount of the duty payable in respect of the goods sold to that person, which sum is, after the notice has been given, a debt due and payable to Her Majesty by that person and may be recovered at any time by action in any court of competent jurisdiction, together with costs of the action.*
- Let's discuss:
 - [Measures in force \(cbsa-asfc.gc.ca\)](https://www.cbsa-asfc.gc.ca)



Valuation for Duty Consultations: a brief discussion

- The CBSA is currently consulting on changing the Valuation for Duty law. Their plan is to have importers use the last sale price to their customer in Canada. Currently, the Regulations provide for a different test. Here's a brief discussion on current rules to proposed (current below):
- 2.1 (a) Resident
 - (b) Permanent Establishment
 - (c.i) Own Use
 - (c.ii) Speculation of Sale

Basic requirements for importers – compliance

- **32.2 (1)** An importer or owner of goods for which preferential tariff treatment under a free trade agreement has been claimed or any person authorized to account for those goods under paragraph 32(6)(a) or subsection 32(7) shall, within ninety days after the importer, owner or person has reason to believe that a declaration of origin for those goods made under this Act is incorrect,
 - **(a)** make a correction to the declaration of origin in the prescribed manner and in the prescribed form containing the prescribed information; and
 - **(b)** pay any amount owing as duties as a result of the correction to the declaration of origin and any interest owing or that may become owing on that amount.
- **(2)** Subject to regulations made under subsection (7), an importer or owner of goods or a person who is within a prescribed class of persons in relation to goods or is authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods shall, within ninety days after the importer, owner or person has reason to believe that the declaration of origin (other than a declaration of origin referred to in subsection (1)), declaration of tariff classification or declaration of value for duty made under this Act for any of those goods is incorrect,
 - **(a)** make a correction to the declaration in the prescribed form and manner, with the prescribed information; and
 - **(b)** pay any amount owing as duties as a result of the correction to the declaration and any interest owing or that may become owing on that amount.

CBSA policy (revenue neutral)

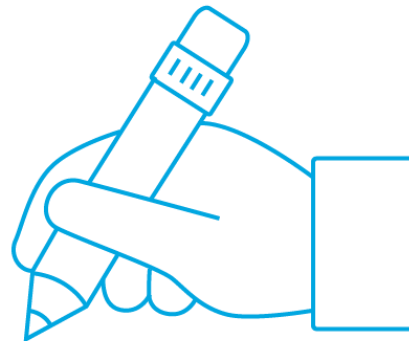
- Adjustments - Money Payable to the CBSA or Revenue Neutral
- Section 32.2 of the Act places the responsibility on the importer to make a correction to an accounting declaration of origin, tariff classification, and value for duty when the importer has **reason to believe** that the declaration was incorrect. This obligation applies to a correction that would result in either money payable to the CBSA or is **revenue neutral**
- 32.2 Correction not to result in refund
- **(5)** This section does not apply to require or allow a correction that would result in a claim for a refund of duties.

Voluntary disclosures (no name/named)

- Where importers have made errors, they can fix the errors and in many cases avoid both penalty and punitive interest (additional 6%) in many cases
- Typical errors
 - Wrong value declared
 - Tariff preference claimed with no support
 - Goods not reported or accounted for
- Errors not corrected within 90 days of 'reason to believe' (RTB) require a disclosure to avoid penalty. Statute open 4 years in most cases, longer in other cases. Disclosure can in some cases be repetitive see D11-6-4 para 15 (e)
- No name voluntary disclosure (NNVD) or named voluntary disclosure (NVD) if under audit or other enforcement

Export considerations

- Are the goods restricted controlled or prohibited – if so, do I require a permit, license or certificate
- What is the value to be declared to the CBSA if filing an export report is required
- What is the tariff classification of the proposed export
- What is the origin of the goods – is a tariff preference available if dutiable, should the goods be marked?
- Quantity
- Records - exported goods records regulations – also exports
- Export Report Required (CERS)



New developments – 2023 – annual report requirement: Forced labour / child labour in the supply chain

Annual Reporting Requirement for certain entities. Report due after January 1, 2024, but before May 31, 2024 for 2023 – Business that are impacted need to ensure mechanism in place now to capture the requirements to report

- 2-part test for non-government entities that are required to file

Test 1 (Entity Test)

- **(a)** is listed on a stock exchange in Canada;
- **(b)** has a place of business in Canada, **does business in Canada** or has assets in Canada and that, **based on its consolidated financial statements**, meets at least **two** of the following conditions for at least one of its two most recent financial years:
 1. **(i)** it has at least \$20 million in assets,
 2. **(ii)** it has generated at least \$40 million in revenue, and
 3. **(iii)** it employs an average of at least 250 employees; or
- **(c)** is prescribed by regulations. (entité)

Test 2 (Activity Test)

- *This Part applies to any entity*
 - **(a)** *producing, selling or distributing goods in **Canada** or **elsewhere**;*
 - **(b)** ***importing** into Canada goods produced outside Canada; or*
 - **(c)** ***controlling** an entity engaged in any activity described in paragraph (a) or (b).*

Annual report elements

The report must also include the following information in respect of each entity subject to the report:

- **(a)** its structure, activities and supply chains;
- **(b)** its policies and its due diligence processes in relation to forced labour and child labour;
- **(c)** the parts of its business and supply chains that carry a risk of forced labour or child labour being used and the steps it has taken to assess and manage that risk;
- **(d)** any measures taken to remediate any forced labour or child labour;
- **(e)** any measures taken to remediate the loss of income to the most vulnerable families that results from any measure taken to eliminate the use of forced labour or child labour in its activities and supply chains;
- **(f)** the training provided to employees on forced labour and child labour; and
- **(g)** how the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.

Current CBSA national audit targets

- Russian and Belorussian origin goods - 25% duty on most goods (origin not disclosed properly)
- Apparel (value for duty)
- Various Classifications - Discuss
- Local CBSA offices may also, in addition to the national priorities, select their own audit priorities

THANK YOU FOR
YOUR TIME AND
ATTENTION

Today's speakers



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QUESTIONS AND ANSWERS

Additional resources

Duties

- *Duties* means any duties or taxes levied or imposed on imported goods under the [Customs Tariff](#), the [Excise Act, 2001](#), the [Excise Tax Act](#), the [Special Import Measures Act](#) or any other Act of Parliament, but, for the purposes of subsection 3(1), paragraphs 59(3)(b) and 65(1)(b), sections 69 and 73 and subsections 74(1), 75(2) and 76(1), does not include taxes imposed under Part IX of the [Excise Tax Act](#); (*droits*)
- *Includes Division III tax under the ETA for import collection purposes, but not for refund purposes

Basic requirements for importers – RTB (Policy)

2. *Written communications from the CBSA to an importer, such as national customs rulings, advance rulings, or trade compliance verification final reports, will also apply to:*

(a) the same origin issue (e.g., a determination that specific goods do not qualify for preferential treatment);

(b) the same goods that were the subject of the written communication (e.g., tariff classification for particular goods);

(c) the tariff classification of goods that are similar to the goods that were the subject of the written communication (e.g., different size, colour, capacity) where the differences between the goods do not affect the tariff classification of the goods at the tariff item level;

(d) the same valuation issues (e.g., an "assist" - an adjustment made to the price paid or payable of the imported goods representing the value of a good or service provided free of charge by the purchaser to the vendor).

3. *A final report or final letter resulting from an importer-initiated audit or review may be considered to be specific information that gives an importer "reason to believe" provided that:*

(a) there was no previous information available that would be considered "reason to believe" that a declaration was incorrect;

(b) the CBSA had not already initiated a trade compliance verification; and

(c) the report identifies only revenue neutral corrections or ones resulting in duty payable to the CBSA.

Basic requirements for importers – RTB? (Policy/Not Law)

1. *With respect to section 32.2 of the Customs Act (the Act), specific information regarding the origin, tariff classification, or value for duty of the imported goods that gives an importer reason to believe that a declaration is incorrect, can be found in:*

(a) legislative provisions such as specific origin, tariff classification, or value for duty provisions that are prima facie (i.e., at first sight), evident (i.e., obvious, apparent), and transparent (i.e., clear, self-explanatory). For detailed examples of prima facie, evident, and transparent legislative provisions, refer to Appendix;

(b) formal assessment documents issued by the CBSA to the importer, relating to the imported goods, such as determinations (other than "deemed determinations"), re-determinations, further re-determinations, etc.;

(c) final tribunal or court decisions in which the importer was either the appellant, respondent or intervenor;

(d) information received from exporters, suppliers, etc. (e.g., cancellation of certificates of origin; vendor's invoice indicating retroactive price increase for goods already purchased);

(e) written communication, addressed directly to the importer from the CBSA, such as a ruling (e.g., national customs ruling, advance ruling issued under section 43.1 of the Act), a trade compliance verification final report, or an official notification as a result of an exporter origin verification;

(f) a final report from an importer-initiated internal audit or review, or, from an external company conducting an audit or review of an importer's company; or

(g) knowledge that the goods no longer qualify or comply with a condition of relief or a restriction imposed by the concessionary tariff item declared (e.g., goods diverted to a non-qualified conditional-use or conditional-user).

Voluntary disclosures (no name/named)

- *Conditions of a Valid Disclosure – D11-6-4*
- *15. A voluntary disclosure must meet the following conditions to be valid:*
 - *(a) It is voluntary, as described in paragraph 16;*
 - *(b) It involves the potential imposition of a penalty and/or specified interest or the potential of an action against the goods or person;*
 - *(c) It is complete when all of the following are disclosed (if applicable):*
 - *(i) all incidences of trade program(s) non-compliance for which the client could be subject to a trade compliance verification and reassessment (four years) in accordance with the requirements of Memorandum D11-6-6 and Memorandum D11-6-10, Reassessment Policy;*
 - *(ii) all incidences of non-report or failure to account for the same or similar imported goods for the six years prior to the disclosure; or*
 - *(iii) in the case of exported goods, all incidences of non-compliance up to six years prior to the disclosure in addition to the current year.*
 - *(d) It takes account of the special considerations identified in paragraphs 19 to 24, related to regulated or restricted imports and exports and prohibited goods; and*
 - **(e) With the exception of disclosures to comply with section 32.2 of the Act:**
 - *(i) it is non-repetitive – A voluntary disclosure may be denied when a previous voluntary disclosure has been granted for the same compliance issue; and*
 - *(ii) the client explains, to the satisfaction of the CBSA, how the non-compliance occurred and how it has been corrected or what measures have been put in place to reduce the risk of future non-compliance.*

- [Combating Forced and Child Labour with New Legislation - Does This Impact Your Business?](#)
- [A practical insight on proposed amendments to customs valuation](#)
- [CBSA releases second trade verification priorities for 2023](#)



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