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**Tax Executives Institute – British Columbia Ministry of Finance
Liaison Meeting – Additional Information**

Tax Executives Institute, Inc. ("TEI") welcomes the opportunity to participate in the liaison meeting with the British Columbia ("BC") Ministry of Finance and share its recommendations on the following issues.

1. About TEI

TEI was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 56 chapters across North and South America, EMEA, and Asia, including four chapters in Canada. Our nearly 6,300 members represent 2,800 of the world's leading companies, many of which either are resident or do business in Canada. Over 15 percent of TEI's membership comprises tax professionals who work for Canadian businesses in a variety of industries across the country. TEI members are responsible for tax affairs of their employers and must contend daily with provisions of the tax law relating to the operation of business enterprises. The following recommendations reflect the views of TEI as a whole but, more particularly, those of our Canadian constituency.

As the preeminent association of in-house tax professionals worldwide, TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the mutual benefit of government and taxpayers. TEI is committed to fostering a tax system that works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the recommendations discussed herein.

2. TEI Comments and Recommendations

a) Partnership as a Person for PST Purposes – Please provide an update

Under the PSTA, partnerships can register as collectors for PST purposes but are not treated as separate legal persons to own partnership property. Instead, each partner is treated as if it owns a fractional interest in all the partnership's property. This places responsibility on the partners to collect or pay PST on property utilized by the partnership when an interest in the

partnership is purchased or sold. In contrast, there is no requirement to account for PST on property owned by a corporation when shares in the corporation are purchased or sold.

We request that the Ministry amend the PSTA and its regulations to treat partnerships as persons for PST purposes, including the ability to sell/purchase a partnership interest without triggering a PST liability related to the partner's proportionate share of underlying partnership property, and the ability to use exemptions for transactions within a closely related group. Such treatment would be consistent with the treatment of partnerships under the ETA and other jurisdictions, such as Saskatchewan, Manitoba, and certain states in the USA.

b) Intercompany Transactions – Please provide an update

Part 9 of the Provincial Sales Tax Exemption and Refund Regulation to the PSTA ("Regulation") includes a PST exemption for transfers among related corporations. These exemptions prevent PST from being paid more than once on tangible personal property ("TPP") or software when transferred among related corporations for operational reasons or as the result of restructuring. To qualify for this PST exemption, a related corporation must be a wholly-owned subsidiary of the other, or they must be wholly-owned subsidiaries of the same corporation. To qualify as a wholly-owned subsidiary of another corporation, the corporation must beneficially own at least 95% of the outstanding shares of each class of the share capital.

The requirement for the corporation to own 95% of each class of shares makes it impracticable for corporate groups to use preferred shares or non-voting common shares as a vehicle to raise capital, leaving debt financing as the only option. In competitive markets, related corporations require flexibility in how to raise capital. Issuing non-voting or preferred shares should not result in a PST expenditure.

By comparison, for GST purposes, the criteria for closely-related corporations are set out in Section 128 of the ETA:

> [Q]ualifying voting control in respect of the other corporation is held by, and not less than 90% of the value and number of the issued and outstanding shares, having full voting rights under all circumstances, of the capital stock of the other corporation. . .

This threshold provides businesses with flexibility to use alternative structures for raising capital.

We request that the Ministry revise the criteria for the PST exemption on transfers among related corporations where, to qualify as a wholly-owned subsidiary of another corporation, the corporation must beneficially own at least 90% of the outstanding voting shares of the subsidiary corporation, similar to the criteria for ownership outlined in the ETA.

c) Exports – Customers Shipping Property Using Their Own Conveyance – Please provide an update

The Regulation provides a point-of-sale exemption for exported TPP, but only if the TPP is shipped by the seller to a location outside BC.

For operational reasons, such as the physical attributes of the item being shipped, the location and capacity of available conveyances, and project requirements, a business operating outside of BC may choose to ship TPP it acquired in BC to a location outside BC using its own conveyance or by directly hiring a common carrier.

If the purchaser operating outside BC uses its own conveyance or hires a common carrier to export TPP from BC, it must pay PST to the seller and claim a refund directly from the Ministry under section 158 of the PSTA, a refund provision specific to TPP exported for business use. The refund process is time-consuming for the Ministry and the business and essentially taxes exports if the business is not aware of the refund process. BC-based retailers and wholesalers selling TPP for export would be more competitive if fewer tax compliance burdens were imposed on businesses exporting TPP using their own conveyances.

By comparison, the ETA eliminates the requirement to pay GST and HST on TPP that is exported using a business' own conveyance, or common carrier. Specifically, Section 1 of Part V of Schedule VI to the ETA provides a zero-rating on the supply of TPP exported by a business if the seller maintains "evidence" of the export of property. Such "evidence" typically includes customs clearance certificates, waybills, movements of dangerous goods tickets, carrier invoices, contracts of sale, purchase orders, and invoices. This zero-rating provision is not available for sales to purchasers that are consumers, thus limiting the zero-rating to exports for business use.

The decision regarding how to transport TPP should be based on operational and environmental concerns only; exporting property using the Business' own conveyance should not create an additional tax and/or compliance burden.

We request that the Ministry amend the Regulation to mirror the ETA's zero-rated export provision.

d) Legal Services – Exemption for Services Relating to Other Provinces – Please provide an update

The application of PST to legal services is based on the location of the service provider and its client. If the legal service provider and client both reside in BC, PST is payable on all legal services under subsection 126(1) of the PSTA, regardless of the jurisdiction to which the services relate. In contrast, when a BC-based client acquires legal services from a service provider located outside of BC, the fees are taxable under subsection 127(1), and an exemption is available for legal services relating to a jurisdiction other than BC. A similar outcome is achieved by subsection 126(2), whereby a non-resident of BC is only required to pay PST on legal services relating to BC.

These rules inadvertently encourage businesses with national operations to use legal service providers located outside BC to provide legal services for matters relating to a jurisdiction other than BC. The selection of a legal services provider should be based on their skills and experience, not on the PST status of the legal fees. Moreover, PST should not be payable on legal services acquired in BC relating to a jurisdiction other than BC. The payment of PST on the purchase of legal services in BC for matters outside the jurisdiction can create double taxation if the jurisdiction to which the services relate also imposes sales tax on the legal services.

For example, if a business with operations in BC and Saskatchewan acquires legal services relating to Saskatchewan from a BC-based service provider, the service will be subject to tax in both BC and Saskatchewan. In contrast, an exemption is available in Saskatchewan for legal services provided in Saskatchewan relating to BC, resulting in tax applying only once to the service.

Example of legal services subject to double taxation (BC PST and SK PST)

Facts

- A joint venture was formed between ABC and CDE on a 50-50 basis. The joint venture (JV) was formed to conduct a construction contract to construct a real property situated in Saskatchewan.
- ABC is not registered for BC PST and is not a resident of BC. ABC carries on business across Canada, except in BC.
- CDE is registered for BC PST and carries on business across Canada, including in BC.

- As the project progressed, several disputes arose which gave way to a claim brought by the Client which forced the JV to incur legal costs.
- The law firm representing the JV resides in BC and provided its services in BC. However, the legal services, other than having been performed in BC, have nothing to do with BC (none of the provisions of section 126(2) apply).
- BC PST was invoiced by the legal firm and paid by the joint venture.
- The law firm invoiced the JV by adding BC PST but eventually ABC was reimbursed by the law firm for their portion of BC PST paid as BC PST was, in fact, not applicable under any provision of the BC PSTA.
- After the refunds were issued to ABC, the law firm started to invoice ABC and CDE separately. Thus, the invoices addressed to ABC relate only to its portion of the total legal fees and no BC PST was collected on this part. ABC was not subject to BC PST on the same legal services while CDE was and CDE continued to pay the BC PST for its share.

Application of the PST laws of BC and SK

- BC PST was paid by CDE as per subsection 126(1) of the BC Provincial Sales Tax Act.
- Since the services related to Saskatchewan, the SK PST was also applicable as per subsection 5(10) of the Saskatchewan Provincial Sales Tax Act. As the law firm did not collect the SK PST, CDE self-assessed and remitted it.
- This situation resulted in a double taxation to CDE (7% BC PST and 6% SK PST).
- ABC was not subject to BC PST on the same legal services; it was only subject to 6% SK PST.

Comments

- This example shows:

    - Inequity between purchasers/recipients (CDE is subject to BC PST because it carries on business in BC while ABC is not because it does not carry-on business in BC).
    - Double taxation issue (CDE has to bear the cost of BC PST and SK PST).

- Since the legal services are related to real estate in SK, it seems more appropriate that they should only be subject to SK PST. Incidentally, BC has this same concept. The issue seems more at the level of the

residence of the purchaser (or the fact that the purchaser carries-on a business in BC). Indeed, it seems that BC PST applies in this case only because the purchaser resides or operates a business in BC.

We request that the Ministry add a new provision to the PSTA or the Regulation to exempt PST on BC-based businesses obtaining legal services provided in BC relating to a jurisdiction other than BC.

e) Carbon and Motor Fuel Tax on Wholesale Transactions of Natural Gas Liquids in BC

BC has large deposits of liquids-rich natural gas. Natural gas liquids (NGLs) are extracted from natural gas and separated into propane (C3), butane (C4) and pentanes plus (C5+) to be further marketed. BC carbon tax applies to all sales of C3, C4 and C5+ in BC; motor fuel tax also applies to sales of C3.

Tax is charged as security on the first sale in BC and passed down the value chain until it is either recovered from the end user or a refund is filed for a non-taxable sale; there is no wholesale exemption available. A taxpayer in a refund position typically means that the NGLs were sourced in BC and exported to other markets or sold exempt as a non-combustible raw material.

In many cases, NGLs are sold at wholesale and never sold to an end user for combustion in BC. Propane can be used as a fuel however it is not common to burn in large industrial operations. Bulk wholesale propane is exported to Asia or other locations in North America or sold to a retailer. Butane is generally exported, to be used in refineries and as raw material. Butane would rarely be combusted in BC, particularly in bulk quantities. Condensate is also exported from BC, to be used in refineries and as a raw material and is not burned as a fuel.

The carbon tax rate is a volumetric price, not a percentage value of the good. Due to the high rates of carbon tax, the tax is nearly equal to, and potentially greater than, the cost of goods. For example, the carbon and motor fuel tax rate on propane is currently $150.8/L, increasing by $15/tonne annually. With an approximate propane price of $200/L, the carbon and motor fuel tax will soon be higher than the actual wholesale propane being taxed.

Refunds typically take 6+ months for audit staff to review and process. Taxpayers need accessible capital to sustain operations and develop new capital projects; carrying extended receivables nearly equal to the cost of goods is unsustainable. Payment terms in commercial sales of NGLs are typically less than 30 days, with an agreed upon monthly gas day settlement

date between counterparties to ensure cash flows are maintained. It is unreasonable for refunds to be held longer than 30 days.

BC has recently announced a new Expedited Refund Program. While more efficient refund handling is a welcome change, this program is still highly administrative and stringent in requirements with several months of reviews prior to entrance and refunds paid in 60 days. The new program still leaves an environment where it is undesirable to move BC-produced NGLs out of the province due to taxation. BC is the only province that does not have an exemption or license program for wholesale transactions. There are significant benefits to purchasing wholesale fuel supply in Alberta, or any other province in Canada, instead of in BC, due to the wholesale exemptions offered with the Federal Fuel Charge and other provincial fuel taxes.

Under the Federal Fuel Charge, taxpayers can register as a distributor and purchase and sell fuel at wholesale exempt of the fuel charge. Fuel taxes in other provinces and territories also have registrations for wholesale transactions. A wholesale exemption in BC would level the tax burden for BC taxpayers against competing jurisdictions.

With the introduction of the new BC OBPS and a registry of BC taxpayers, it is unclear what risk is being mitigated by continuing to charge carbon tax on wholesale fuel transactions, particularly fuels that do not have a market in BC and are non-combustible. Large emitters should be exempt from carbon tax on fuel combustion with emissions now payable through the annual OBPS filings.

Natural gas processing and production activities generate economic growth in remote areas and bring cleaner burning fuels to other markets; the current tax policy is punitive to the development and export of BC-produced NGLs and reinforces that purchasing in other jurisdictions is administratively and financially preferable due to carbon tax. Adding an exemption for wholesale transactions of NGLs would eliminate the large outstanding refunds taxpayers are trying to collect and help BC advance their natural gas and NGL export industry to compete more evenly with other jurisdictions in North America.

We request that the Ministry implement an exemption for wholesale transactions of natural gas liquids.

f) Failure to Provide Information Penalty

The *Budget Measures Implementation Act, 2024* introduced a new administrative penalty provision: section 205.3 Failure to provide required information. This section provides for a penalty to be levied where a person fails to include in a return any required information or fails to file with the return any other required information or records. The potential penalty is at the Director's discretion and is noted as $100 for each such failure.

The Ministry has previously noted there will be a policy document released to accompany this new discretionary penalty and do not expect to levy this penalty until after the release of this policy document. Can the Ministry advise when they expect to release this document, whether there may be any public consultation prior to its release, and from when will this penalty begin to apply?

While we understand the purpose of the penalty is to encourage compliance for those parties who are otherwise not filing required returns (including online marketplace facilitator information returns) under the PSTA, can the Ministry please advise when it views the penalty as being applicable, particularly in circumstances where a person is attempting to comply with requirements but may not have all the information available.

For example:

- Where a person has filed a return under the PSTA but, despite exercising diligence to ensure the return was complete, has inadvertently failed to provide an item of information due to a genuine error, i.e. potentially due to human error or an oversight.
  - Will there be a consideration for where the Ministry views an error to be genuine or deliberate?
- Where a person is filing an information return but does not have access to certain records that are requested to be reported on the return.
  - For example, an online marketplace facilitator filing an information return may not have Federal Employer Identification numbers for its US-based online marketplace sellers, either because (1) it's not required to be collected under the PTSA, or other laws, and is not otherwise necessary for the operation of the online marketplace or determining the taxability of products sold through the online marketplace; or (2) it may otherwise have been withheld from the online marketplace facilitator by the online marketplace seller for similar reasons noted in (1) above.

g) Request to Exempt Donations of Tangible Personal Property, Software, Taxable Services to Registered Charities

The PSTA does not currently provide for any exemptions in situations where tangible personal property, software, and/or taxable services are donated to a registered charitable organization in British Columbia. The request for an exemption on such donations was made in 2023 as part of the Budget Consultation process. As no such exemption was included within the 2024 Budget, TEI asks the BC Ministry of Finance to reconsider its position on the taxability of donations. The requirement to calculate and pay tax on these donations can be a barrier to charitable organizations receiving these desperately needed goods and services. Given the ongoing affordability challenges in the province, more and more British Columbians are turning to charitable organizations for everyday supplies needed to support themselves and their families. Any action that can be taken to ensure donations can more easily reach those who need them most is something TEI encourages the province to review.

We request that the Ministry provide for any exemptions in situations where tangible personal property, software, and/or taxable services are donated to a registered charitable organization in British Columbia.

h) Waivers

Subsection 200(2) of the *Provincial Sales Tax Act* provides that the Director may enter into a written agreement with a person in which the person waives the assessment limitation periods in subsection 200(1). While s. 200(2) provides for the ability to enter into waiver agreements, it does not limit the scope or form of such waiver agreement. Further, while both *Bulletin CTB-003 – Audits* and the Tax Interpretation Manual discuss waiver agreements, the scope and form are also not limited in either publication.

Previously, the Consumer Taxation Audit Branch (CTAB) had been willing to negotiate the terms of waivers and allow waiver agreements to limit the scope of such waivers.[1] Recently however, CTAB has insisted on broad waivers only, even in cases where only a single issue was holding up the completion of the audit.

Taxpayers are disadvantaged by this approach and often feel they have no choice but to sign a broad waiver or face a potentially arbitrary assessment and lengthy and costly path to appeal such assessment.

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[1] See *PST Audit Session: Insights from Practice and Government,* BC Finance and PwC, 2016 West Commodity Tax Symposium.

There should be the option/ability to restrict waivers to address issues that could not be resolved during the audit period despite the diligence of both parties.

We request the Ministry reconsider its approach to waivers and adopt an approach to waivers that allows for waiver agreements to be limited to unresolved issues and time periods (e.g. limit by issue, limit to sales or purchases and limit by PST account when taxpayers have multiple PST accounts for the same entity) and publish such approach in CTB-003.

i) Software

In June 2023, the Ministry released *PST Notice 2023-005 – Notice to Providers and Purchasers of Cloud Software and Services* indicating the government's intention to introduce legislation as part of Budget 2024 to retroactively support how PST was administered in relation to software prior to the B.C. Supreme Court decision in *Hootsuite Inc. v. British Columbia (Finance),* 2023 BCSC 358. At our 2023 BC liaison meetings that occurred shortly after Notice 2023-005 was released, Ministry officials reiterated that the Ministry's view of taxation of software has been consistent and would be addressed in the 2024 Budget provisions.

As a result of the changes to the PST treatment of software provided in *Bill 3 – Budget Measures Implementation Act, 2024,* TEI made a submission regarding several concerns with the proposals. Despite Bill 3 receiving Royal Assent, TEI would like to reiterate its concerns to Ministry officials.

We request that the Ministry provide official comments on TEI's submission and concerns.