The Future of Business Success
L'avenir de la réussite en affaires

September 8, 2023

The Honourable Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance
House of Commons
Ottawa, ON K1A 0A6

[sent via e-mail to Chrystia.Freeland@fin.gc.ca]

RE: Digital Services Tax Consultation

Dear Deputy Prime Minister:

The Canadian Chamber of Commerce welcomes the opportunity to participate in Finance Canada's consultation on the Digital Services Tax (DST). In brief, we urge you to standstill on the Digital Services Tax Act, drop its retroactive application, and fully support the implementation of the OECD/G20 two-pillar plan that has been agreed to by over 130 countries.

Our membership is alarmed over pressing ahead with a unilateral DST that will hurt Canadian consumers and businesses by increasing the costs of doing business in an already precarious economic climate. Further, our members remain deeply concerned over the prospect of directly undermining the US-Canada trading relationship and our commitments to the OECD.

At a time when affordability is top of mind for Canadians, this new tax will make life more expensive. If implemented, a DST would force Canadian consumers to pay more for online services. The example of France's equally punitive DST demonstrates that costs will inevitably trickle down to consumers, causing an estimated 2-3 percent price increase in services consumed. Ultimately, a DST would indirectly burden ordinary citizens even as they grapple with rising costs of living.

Further, he administrative challenges this legislation would impose on Canadian businesses must not be underestimated. Businesses will need time to design and establish new compliance systems to track transactions that would fall under the scope of the tax. Administering the tax would also be complicated by uncertainties in the legislation where definitions and revenue allocations are unclear. Even in the wake of administrative guidance, the result of retroactive application will force businesses to set aside funds that could otherwise be invested productively. This amounts to applying the tax now, which defies the spirit of the OECD/G20 two-pillar plan.

Consider also the prospect of imposing double taxation by design. In general, taxing gross revenue will create a higher tax burden than a net income tax. As related costs are not deductible against gross revenue, a three percent DST could result in an effective overall tax rate that is higher than the proposed DST rate. OECD officials have noted the problem, warning explicitly that ". . . [e]conomic double taxation could also arise through cascading effects where a certain supply of e-services is made to a person that incorporates those services into an onward supply that is itself subject to the tax".

We are also concerned that the DST would apply to a much wider swath of the Canadian economy than intended. All businesses with global revenues over €750M (in-scope or not) would be required to undertake a cumbersome analysis of their operations to determine if they have in-scope revenue that exceeds $20 million from associated Canadian users. It remains to be seen whether all affected businesses will recognize that they are carrying on activities subject to the tax. For instance, some businesses with digital-based loyalty programs may fall under the scope of a DST.

Further, the prospect of straining our trading relationship with the United States could not come at a more unwelcome time. Indeed, the OECD/G20 process to develop an Inclusive Framework on Base Erosion and Profit Shifting cemented Washington's opposition to unilateral tax targeted at non-resident multinational corporations. This should not be taken lightly. Successive US Administrations have criticized the DST, and the Office of the United States Trade Representative invoked the possibility of retaliatory action. The Canadian Chamber therefore urges the government to consider the economic consequences of DST-induced retaliatory tariffs on Canadian goods and services, whether or not affected businesses are DST-liable.

Of course, reaching a consensus-based, two-pillar solution with the OECD/G20 to address the tax challenges of an increasingly digitizing global economy was no small feat. Notably, the plan calls for the removal and standstill of all DST-like measures:

> *No newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the Multilateral Convention.*

Despite Ottawa explicitly agreeing to this, the Digital Services Tax Act provides that "the DST would be payable as of the year that it comes into force in respect of revenues earned as of January 1, 2022" should the OECD Pillar One framework not be implemented. Imposing a retroactive tax not only violates the spirit of the OECD/G20 agreement, but also sets a worrisome precedent for Canadian businesses.

Globally, the unilateral implementation of DSTs has introduced substantial instability and created double and even multilayer taxation. The significance of a stable and predictable tax system that effectively addresses these unilateral measures cannot be overstated. Only a multilateral and widely implemented solution can achieve this goal. As the aforementioned global tax rules are currently being developed and negotiated in their final stage, we must underscore the importance of lending Canada's full support for the adoption of a multilateral solution while underscoring the need to resolve issues about the ongoing instability in the international tax system.

These issues are of particular importance to the business community as they are a pivotal feature for restoring stability within the international tax framework. Consequently, it is crucial that the standstill and withdrawal commitment with respect to DSTs and similar measures not only prevent jurisdictions from implementing DSTs but also prohibit other similar unilateral tax measures that may lead to double taxation and over-taxation in the case of gross-based taxation measures which do not allow recovery of costs and expenses attributable to revenues.

Acknowledging the time needed for the ratification and implementation of Pillar One, we encourage you to consider the extension of the so-called DST standstill agreement within the OECD/G20 Inclusive Framework. This will prevent the enactment of new DSTs while the ratification and implementation processes are ongoing. We remain concerned that the proliferation of DSTs will undermine the possibility of reaching an agreement at the OECD/G20 Inclusive Framework, which would exacerbate ongoing tax and trade tensions while creating new uncertainty and instability for the economy as businesses become more digitalized.

Indeed, digital commerce will remain a key driver of global economic growth for the foreseeable future. Yet Canada's unilateral, discriminatory DST only adds to the headwinds facing Canadian businesses as they seek to compete with international peers within the context of an uncertain global economy. To ensure the predictability and stability Canadian business need, we reiterate the necessity of holding off on the Digital Services Tax Act, dropping its retroactive application, and fully supporting the implementation of the G20/OECD two-pillar plan that has been agreed to by over 130 countries.

Sincerely,

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