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Sandhya Edupuganty, International President
Tax Executives Institute
300 – 1200 G St NW
Washington DC USA
20005

Kelly Madigan, Tax Counsel
kmadigan@tei.org

Jun Ping, Chair
TEI's Canadian Commodity Tax Committee
Jun.Ping@Enbridge.com

Dear Sandhya Edupuganty, Kelly Madigan and Jun Ping:

Thank you for your letter dated on March 29, 2024, regarding the retroactive *Budget 2024* amendments made to the *Provincial Sales Tax Act* regarding software. We appreciate you taking the time to share your ideas and feedback.

As you are aware, [PST Notice 2023-005](#), posted in June 2023, made clear that government intended to introduce legislation as part of *Budget 2024* to retroactively support how the PST was administered prior to the decision in *Hootsuite Inc. v. British Columbia (Finance)*, 2023 BCSC 358.

Retroactive legislation should not negatively affect people, from compliance or competitiveness perspectives, who had been following the Ministry's guidance since April 1, 2013. The Ministry's administration of the relevant provisions in the *Provincial Sales Tax Act* consists of

.../2

many administrative functions in addition to public information, including rulings, refund practice, audit practice, and appeal decisions.

The Ministry interpreted “software program” more broadly than that expressed in the *Hootsuite Inc. v. British Columbia (Finance)* court decision. While the pre-*Budget 2024* definition was self-referential, the Ministry had for many years interpreted “software program” generally to mean the instructions that make hardware (e.g., a computer) do something. This was communicated in older public information and in rulings. The addition of “coded instructions ... designed to cause an electronic device to perform a task” and “application programming interface”, merely codifies this past interpretation of “software program”.

Additionally, “coded instructions ... designed to cause an electronic device to perform a task” is used by several sales tax jurisdictions as a common way to describe software in sales tax legislation. For example, Washington State (British Columbia’s closest sales tax jurisdiction) uses similar language.

The Ministry applied tax to cloud computing for many years before the amendments. It was the Ministry’s position, as expressed by a significant number of rulings and audits, that the pre-*Budget 2024* definition of software applied to cloud computing. This application of tax began under the older *Social Service Tax Act* when software began to be delivered in new ways; first as “remote access to software” and then as Software as a Service (primarily under the PSTA). The Ministry took a similar approach to Infrastructure as a Service and considered it software. The clearest evidence of the Ministry’s previous interpretation is the decision in *Hootsuite Inc. v. British Columbia (Finance)*. The Ministry’s position in the case was consistent with the Ministry’s historical position taken in rulings and audits regarding Infrastructure as a Service.

The change to Bulletin PST 107, Telecommunication Services, regarding data back-up services brought the bulletin in line with the Ministry’s practice in rulings. For several years prior to *Budget 2024*, the Ministry had been taking the position in rulings that data backup services were taxable as software (as essentially the same as Infrastructure as a Service). While the Ministry endeavors to ensure that public information and rulings are consistent, updates are not always immediately made.

The Ministry has existing rules and policies to help with uncertainty concerning how tax applies to software and telecommunication services. The examples you raised regarding accessing a bank account or health services through a laptop or app are situations the Ministry considered many years before the *Budget 2024* amendments. Software involved in these types of examples was, in the Ministry’s view, clearly within the pre-*Budget 2024* definition of “software program.” In response to situations like these, the Ministry developed a detailed policy to help

Ministry staff and the public apply the legislation. This policy is available to the public in our Tax Interpretation Manual located on our website under [GR.13/R.1: Nontaxable Service Provided Online](#).

If you or your members have questions regarding the application of the amendments once they have been released or the amendments in *Budget 2024*, please send in a ruling request to CTBTaxQuestions@gov.bc.ca.

Each year, government reviews provincial taxes and considers changes in preparation of the provincial budget. Government then implements tax changes that it considers to be appropriate within the context of the Province's fiscal situation and other priorities. This includes adjustments to legislation to ensure that tax laws are applied as intended and consistent with longstanding government policy.

Thank you again for taking the time to write. We appreciate your support and input on how we can build a better BC.

Sincerely,

Office of the Minister