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Tax Policy Branch  
Ministry of Finance  
PO Box 9547 Stn Prov Govt Victoria, B.C.  
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Via Email: [PST.Consultations@gov.bc.ca](mailto:PST.Consultations@gov.bc.ca).

**Re: British Columbia 2023 Consultation on the PST application for Partnerships**

Dear Sir or Madam:

Tax Executives Institute, Inc. ("TEI") welcomes the opportunity to participate in British Columbia's 2023 Consultation on the Provincial sales tax application to partnerships ("Consultation"). TEI has ongoing annual liaison meetings in Victoria, British Columbia ("BC") with representatives from the BC Ministry of Finance ("Ministry") Taxation Programs and Tax Policy branches. At these meetings, TEI and Ministry representatives discuss administrative and technical issues relating to British Columbia's Provincial Sales Tax Act, Motor Fuel Tax Act, and Carbon Tax Act. TEI appreciates the opportunity to now share its views with BC on this Consultation and welcomes the opportunity to meet with the Ministry to discuss further.

**About Tax Executives Institute, Inc.**

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 56 chapters in North and South America, Europe, and Asia, including four chapters in Canada. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our nearly 6,000 individual members represent over 2,900 of the leading companies in the world. Approximately 15 percent of TEI's members are

resident in Canada and many of our non-Canadian members' companies do business in Canada and BC.

### **TEI supports the transition to recognize BC Partnerships as Separate Legal Persons**

Presently, BC is the only province with a current sales tax regime that does not recognize a partnership as a separate legal entity. The decision to follow the BC Court of Appeal decision of *Seven Mile Dam Contractors v. British Columbia*, [1980] 5017 ETC (BCCA), 25 B.C.L.R. 183 ("Seven Mile Dam"), has created different tax rules for each of the provinces and overall confusion in the market. These rules also limit the use of partnerships in BC because of their PST treatment. This confusion is further exasperated with the fact that Limited Partnerships ("LPs") are treated differently than General Partnerships ("GPs") through long standing administrative policies. TEI welcomes the opportunity to move to a legislative environment that treats partnerships similar to how Manitoba treats partnerships (as laid out in Manitoba RST Information Bulletin No. 042).

The Ministry has asked for input on the following four facts:

1. Partnerships are separate legal persons for the purpose of the PST.
2. Tax application for transferring assets into a partnership.
3. Tax application for transferring assets out of a partnership.
4. Transitional Rules.

Please see the comments below as TEI's response.

#### **1. Partnerships are separate legal persons for the purpose of PST.**

Presently, when persons are contemplating the formation of a general partnership or joining a general partnership for commercial activity in BC, they must look to the Seven Mile Dam case. The implication of this case is that contributions of taxable tangible personal property ("TPP") to a partnership are treated as a sale to all the members of a partnership for the purposes of BC PST. This means on the formation of a partnership, a taxable sale of TPP contributed to the partnership is deemed to be sale to the other partners. Additionally, when a person joins a partnership, they are deemed to have purchased a portion of the underlying assets of the partnership. If there are PST taxable assets within the partnership, they are deemed to have purchased their prorated share of the

assets and they are subject the BC PST on this purchase. Therefore, anyone joining the partnership or even contributing capital to a general partnership is deemed to have purchased the assets of the partnership. TEI feels that this limits the use of this excellent commercial vehicle within BC.

Manitoba treats partnerships as a separate legal entity and, as such, it allows for the transfer or issuance of partnership units without triggering Manitoba PST to the partners. This means that a partnership can raise funds through the issuance of partnership units without PST being exigible to the purchasers of the units. It also means that partners can add their expertise by joining the partnership, without PST being exigible on the units. It also means that partners can contribute PST paid assets to the partnership, without it being deemed a supply to the other partners subject to PST. These rules encourage the use of partnership as a vehicle for commercial activity rather than discouraging their use. Treating partnership units like shares allows the use of partnerships as a business vehicle more easily.

The treatment of LP units should be treated as preferred shares with specific rules around them. The current administrative policy in BC for LPs deems there to be no ownership of the assets for limited partnership units. This is similar to preferred shares, which have specific rules around each issuance. In moving partnerships to a separate legal entity, the Ministry will have to ensure that they do not inadvertently change the ownership rules for LPs.

Treating the transfer and issuance of partnership units of both GPs and LPs as not subject to BC PST would align with these objectives.

## **2. Tax application for transferring assets into a partnership.**

TEI would recommend that if a partnership is deemed to be a separate legal entity and partnership units are treated like shares of a corporation, then the rules of contributions to a partnership should mimic the rules for contributions to a corporation.

To effectively do this, the Ministry will also need to amend the related party rules to include a partnership or have similar rules for partnerships. Contributions to corporations rely heavily on both the related party rules, the new formation of corporation rules and holding periods rules. Without aligning these rules, the Ministry may inadvertently trigger substantial taxable transactions which will further restrict the use of the partnerships.

Again, as stated above, LPs will have to be considered separately and limited partnership units should be reviewed as preferred shares are for corporations.

### **3. Tax Application for transferring assets out of a partnership.**

Not unlike what we have mentioned above, if partnerships are to be treated like separate legal entities, then the rules for transferring assets out or the dissolution of partnerships should follow the rules of corporations. Again, this will need to ensure that the Ministry includes partnerships in the related party rules, amalgamations, and wind ups or have similar rules specific to partnerships.

It is essential for both query 2 and query 3 for the partnership to be included in the related party legislation for the rules explained in BC PST Bulletin 210 – Related Party Assets Transfer to apply.

### **4. Transitional Rules**

TEI cannot effectively comment on the transitional rules because it will be dependent on how the Ministry moves forward with the process of deeming a partnership to be a separate legal entity. TEI would be more than happy to review draft legislation or comment on transitional rules in the future.

TEI can raise awareness of several important factors to be aware of when drafting this legislation. Partnerships often have specific rules written up within the partnership agreements. These rules include rights of ownership, rights to net income or revenue streams, rights to liabilities and losses to name a few. The Ministry will want to be cautious in its deeming rules that it does not legislatively override the partnership agreements themselves and inadvertently cause changes within the structure of the partnership agreements. The Ministry will also want to ensure that they are not triggering additional taxes when deeming the partnership to be a separate legal entity. For these reasons, TEI strongly encourages the Ministry to also engage in public consultation on any proposed legislative changes once drafted prior to the enactment of any such rules.

TEI would welcome the Ministry deeming a partnership to be a separate legal entity and we would suggest the Ministry look to Manitoba treatment rather than Saskatchewan treatment for an effective framework. The rules in Manitoba have been functioning effectively for many years. The removal of the Seven Miles Dam case rules and transition to a more common legislative framework would be beneficial for industry because it would provide clarity and allow for partnerships to be used more commonly without risk.

TEI would welcome the opportunity to further comment when legislation is being drafted.

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We thank you for the opportunity to provide these comments. TEI's comments were prepared under the aegis of TEI's Canadian Commodity Tax Committee, whose chair is Jun Ping and whose legal staff liaison is Kelly Madigan. Should you have questions about our recommendations, please call Ms. Ping at Jun.Ping@Enbridge.com or (416) 753-4684.

Respectfully submitted,

*Sandhya Edupuganty*

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