Connect. Engage. Impact.

1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
202.638.5601
tei.org

September 8, 2023

Department of Finance
Canada Tax Policy Branch
90 Elgin Street
Ottawa, ON K1A 0G5

Via Email: Consultation-Legislation@fin.gc.ca.

RE: Canada Digital Services Tax

Dear Sir or Madam:

Tax Executives, Inc. ("TEI") writes to provide comments on the revised draft of the proposed *Digital Services Tax Act* ("Proposed DSTA") dated August 4, 2023, pursuant to the Department of Finance's request for comments. We appreciate the opportunity to comment on the Proposed DSTA and would be pleased to further discuss our comments with the Department of Finance.

About Tax Executives Institute

TEI was founded in 1944 to serve the needs of business tax professionals.[1] Today, the organization has 56 chapters in North and South America, Europe, and Asia. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting sound 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 around the world. Canadians constitute over 15 percent of TEI's membership, with our Canadian members belonging to chapters in Calgary, Montreal, Toronto, and Vancouver, and they must contend daily with the planning and compliance aspects of Canada's business tax laws. Many of our non-Canadian members work for companies with substantial activities in

[1] TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the Code.

Canada as well.

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 benefit of both government and taxpayers. These goals can be attained only through the members' voluntary actions and their adherence to the highest standards of professional competence and integrity. 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 this issue. The comments set forth in this letter reflect the views of the Institute as a whole, but more particularly those of our Canadian constituency.

TEI Comments

As you are aware, TEI made a submission on June 18, 2021, in response to the Canadian government's 2021 consultation on the approach to implementing the Digital Services Tax ("DST"), which included 14 recommendations. This letter builds on the former submission. While some of the issues and questions previously raised have been addressed in the second draft of the Proposed DSTA, many of the recommendations and questions previously raised remain outstanding. This submission focuses on four critical areas we believe must be prioritized should Canada continue down the path to enact the Proposed DSTA. In conjunction with the reading of this letter, we therefore encourage the Canadian government to review TEI's prior submission of June 18, 2021, which is attached as Appendix A, for our remaining outstanding concerns.

Executive Summary of TEI Recommendations

TEI recommends the following:

1. The Canadian government should join with the other 138 countries to support the extension of the multilateral negotiations and extend the moratorium on implementing Canada's standalone DST.
2. Canadian corporate income taxes should be creditable against DST liabilities under the Proposed DSTA to eliminate double taxation.
3. The retroactive application of tax with respect to revenues earned since 2022 should be removed from Proposed DSTA.

4. The Canadian government should take into consideration other transitional terms with respect to the DST and OECD's Pillar One solution, as agreed upon between the United States and countries which have enacted DSTs into law.[2]

Detailed Discussion of TEI's Recommendations

1. Support Extension of Multilateral Approach and Delay Implementation of Standalone DST

We would like to commend Canada on their work and participation in the OECD process and the progress made on the Two-Pillar Solution. Although we address certain concerns with respect to the Proposed DSTA below, it is critical that Canada join the other 138 members of the OECD/G20 Inclusive Framework and commit to an extension of the DST moratorium. Implementing a unilateral DST puts at risk the significant progress made by Canada and the international community on the multilateral approach and further risks trade challenges from Canada's closest trading partners, most notably the United States.

2. Double Taxation for Canadian Businesses

The expressed "commitment" of the Proposed DSTA is to ensure that digital businesses without a physical presence in Canada pay their fair share of tax to Canada on money earned in Canada. However, the Proposed DSTA does not take into consideration the fact that many in-scope companies are already subject to Canadian corporate income tax because they are Canadian residents or have presence in Canada.

In effect, businesses operating in Canada are potentially subject to double taxation on the same dollar of revenue, once under the Proposed DSTA and once under the Canadian income tax system. This puts Canadian businesses and non-Canadian businesses which have invested into Canada at a clear disadvantage over their non-Canadian digital competitors without presence in Canada who are only subject to Canadian tax once under the Proposed DSTA.

To achieve its intended policy, TEI recommends the Proposed DSTA either exclude revenue which is already subject to taxation under Canadian income tax

[2] Austria, France, Italy, Spain, and the United Kingdom

from the definition of "Canadian digital services revenue" or incorporate a credit mechanism where Canadian corporate incomes taxes paid by taxpayers can be applied to reduce their DST liability. This will help eliminate double taxation for businesses in Canada without creating unintended consequences where Canadian corporate income taxes are relevant (e.g., with respect to Pillar Two calculations),

3. Retroactive Application of the Proposed DSTA

The Proposed DSTA creates a potential tax liability for in-scope companies with respect to revenues earned since January 1, 2022. The outcome of this liability remains at the discretion of the Governor-in-Council with consideration to "the intent of the [October 2021 Statement]" and "Canada's preference for a multilateral approach to addressing the tax challenges arising from the digitalization of the economy and the status of international negotiations and implementation in respect of such an approach".[3]

We appreciate that Canada has long signalled its intention to implement a DST in the event a Pillar One solution has not come into force. Many businesses alongside Canada have since advocated for a Pillar One solution and have been encouraged by the recent progress made by the international community.[4] Nonetheless, since the Canadian government's first announcement in the 2020 Fall Economic Statement, companies have faced the intractable dilemma regarding whether to set aside funds, that could otherwise be reinvested, in case the Proposed DSTA comes into force. True to the spirit of "certainty and simplicity" as widely accepted general tax principles that continue to be relevant in the digital economy, businesses need to be able to anticipate tax consequences in order to make informed decisions and respond to policy choices.[5] The Proposed DSTA's contingent application of tax with respect to revenues from January 1, 2022, despite a coming into force date at the earliest in 2024, is a clear breach of foundational tax policy principles.

Businesses are faced with the additional challenge of determining whether to reflect a contingent liability on their public financial statements in the event that

---

[3] The Coming into Force provision, *Digital Services Tax Act* (Draft of August 4, 2023)

[4] OECD, *Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (2023)

[5] OECD/G20 Base Erosion and Profit Shifting Project, *Addressing the Tax Challenges of the Digital Economy*, at p. 20 (Action 1: 2015 Final Report).

the Proposed DSTA is enacted. This is especially difficult given the uncertainty around enforcement. If a contingent liability is recorded and later removed (e.g., upon the introduction of Pillar One), that will result in unusual and unwarranted fluctuations in costs and income on taxpayers' public financial statements.

TEI recommends that the retroactive application be removed from the Proposed DSTA so that it is applicable to revenues on a prospective basis from the date the Proposed DSTA comes into force. This recommendation aligns with international tax principles and Supreme Court of Canada's recent statement that "[t]he principles of predictability, certainty, and fairness… are the bedrock of tax law."[6]

4. Transitional Considerations

While we continue to believe this unilateral DST should not be implemented, if it does move forward, we expect it would be aligned with principles of the standstill arrangement. We appreciate Canada recognizing the Proposed DSTA as an "interim measure" until an appropriate multilateral solution can be agreed upon. However, Canada has yet to address certain transitional matters which other countries with DSTs have addressed.

Under the Unilateral Measures Compromise, countries which have enacted DSTs are not required to withdraw them until Pillar One takes effect.[7] However, to the extent that taxes that accrue to these countries with respect to existing DSTs during a defined period after political agreement is reached, and before Pillar One takes effect, exceed an amount equivalent to the tax due under Pillar One in the first full year of Pillar One implementation (prorated to achieve proportionality with the length of the Interim Period), such excess will be creditable against the portion of the corporate income tax liability associated with Amount A as computed under Pillar One in these countries, respectively.

TEI recommends that Canada does everything in its power to negotiate similar transitional terms with the United States if it continues down the path of implementing the Proposed DSTA. This will ensure alignment with the aforementioned grandfathered countries with similar measures.

[6] *Canada v. Alta Energy Luxembourg S.A.R.L.*, 2021 SCC 49 at para. 1

[7] U.S. Department of the Treasury, *Joint Statement from the United States, Austria, France, Italy, Spain, and the United Kingdom, Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 is in Effect* (2021)

***

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. If you have questions, please contact Ms. Ping at Jun.Ping@enbridge.com or (416) 753-4684.

Respectfully Submitted,

Sandhya Edupuganty

Sandhya Edupuganty
International President
Tax Executives Institute

Attachment: TEI Comments-Proposed Digital Services Tax-Final to Department of Finance 18 June 2021

1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
202.638.5601
tei.org

2020–2021 OFFICERS

JAMES A. KENNEDY
International President
TEI Denver Chapter
Denver, CO

MITCHELL S. TRAGER
Senior Vice President
TEI Atlanta Chapter
Atlanta, GA

WAYNE G. MONFRIES
Secretary
Visa, Inc.
Foster City, CA

SANDHYA K. EDUPUGANTY
Treasurer
E2open, LLC
Dallas, TX

JOSEPHINE SCALIA
Vice President, Region 1
Nestlé Health Science
Westmount, QC

BRUCE R. MAGGIN
Vice President, Region 2
Medidata Solutions, Inc.
New York, NY

TIMOTHY F. WIGON
Vice President, Region 3
Duck Creek Technologies, LLC.
Wellesley, MA

WALTER B. DOGGETT, III
Vice President, Region 4
E*TRADE Financial Corporation
Arlington, VA

CHRISTOPHER A. TRESSLER
Vice President, Region 5
Wacker Chemical Corporation
Adrian, MI

CATHLEEN STEVENS
Vice President, Region 6
Brunswick Corporation
Mettawa, Illinois

MICHAEL F. ROACH
Vice President, Region 7
SM Energy Company
Denver, CO

BRADLEY PEES
Vice President, Region 8
Nestlé USA, Inc.
Arlington, VA

PETER WATERSTREET
Vice President, Region 9
VMware Inc.
Palo Alto, CA

LINDA S. KIM
Vice President, Region 10
The Wonderful Company
Los Angeles, CA

LIONEL B. NOBRE
Vice President, Region 11
Dell Inc.
Eldorado du Sul, RS
BRAZIL

A. PILAR MATA
Executive Director

W. PATRICK EVANS
Chief Tax Counsel

June 18, 2021

Department of Finance Canada
Tax Policy Branch
90 Elgin Street
Ottawa, ON K1A 0G5

Via Email: DST-TSN@canada.ca

RE: Comments on Proposed Digital Services Tax

Dear Sir or Madam:

Canada's Deputy Prime Minister and Finance Minister, Chrystia Freeland, delivered the 2021 Canadian Federal budget in the House of Commons on April 19, 2021. The 2021 Budget, entitled *A Recovery Plan for Jobs, Growth, and Resilience* (the "Budget"),[1] includes a proposal to "implement a Digital Services Tax at a rate of 3 percent on revenue from digital services that rely on data and content contributions from Canadian users" (the "Proposed DST"). Tax Executives Institute, Inc. ("TEI") writes to provide comments on the Proposed DST, pursuant to the Department of Finance's request for comments in the Budget. We appreciate the opportunity to comment on the Proposed DST and would be pleased to further discuss our comments with the Department of Finance.

About Tax Executives Institute

TEI is the preeminent international association of in-house tax professionals worldwide. The Institute's nearly 7,000 professionals manage the tax affairs of over 3,000 of the leading companies across all industry sectors in North America, Europe, and Asia. Canadians constitute approximately 15 percent of TEI's membership.

TEI Comments

Remembering the words of Prime Minister Trudeau and the Governor General of Canada, the aims of the Proposed DST are "to ensure that multinational technology giants pay appropriate corporate tax on the revenue that they generate

[1] The Budget is available at https://www.budget.gc.ca/2021/home-accueil-en.html.

within Canada"[2] and to "address[] corporate tax avoidance by digital giants . . . ."[3] Many types of businesses other than those contemplated by the Department of Finance, (i.e., "social media platforms", "search engines" and "intermediation platforms that create online markets for sellers and buyers of goods or services")[4] may be subject to the Proposed DST; in particular, non-digital and Canadian businesses. Revenue streams other than digital revenue may also be taxed under the Proposed DST. Several vital clarifications and changes are therefore needed to capture the Proposed DST's intended aim and prevent these unintended consequences.

Executive Summary of TEI's Recommendations

TEI recommends the following:

1. The worldwide income threshold of €750 million in global revenue from all sources should be determined via reference to in-scope revenue only.
2. As an alternative to 1., a safe harbour should be implemented so a minimum amount of a taxpayer's global revenue (more than 20 percent) must be derived from in-scope services to subject the taxpayer to the Proposed DST, even if the local, in-scope income threshold of CAD20 million is breached.
3. The in-scope local income threshold of CAD20 million should be increased to be in line with DSTs implemented in countries of similar size to Canada.
4. The definition of an "Online Marketplace" should only include multi-sided interfaces.
5. In-scope revenue from "user data" should only include data gathered from online interfaces included within the three targeted categories, online marketplaces, social media platforms, and targeted advertising.
6. The Proposed DST should include a complete exclusion for revenue derived via related party transactions from both the calculation of the local and worldwide revenue thresholds and from in-scope revenue.
7. Businesses operating in Canada and subject to Canadian corporate income tax should either be exempt from the Proposed DST or be given a credit against Canadian income tax for any DST payable.
8. The government should provide an election to utilize any credit or deduction for DST paid within any group company as the DST is applied on a consolidated basis.
9. The Proposed DST, as an interim measure, should be as similar to the anticipated global solution being developed via the OECD's Inclusive Framework on BEPS as possible to minimize compliance and switching costs once the global solution is agreed upon and the Proposed DST repealed.

---

[2] Office of the Prime Minister, Deputy Prime Minister and Minister of Finance Supplementary Mandate Letter (Jan 15, 2021).

[3] Speech from the Throne, (Sept 23, 2020)

[4] Department of Finance, Annex 7 Consultations on Other Tax Matters – Supplementary Information, (Apr 19, 2021)

10. The implementation of the Proposed DST should include a provision providing the DST is automatically repealed should a multilateral solution formulated by the OECD be introduced and apply in Canada.
11. Loss-making global groups should be exempt from the Proposed DST and an alternative method of calculation of the DST for those with low margins should be provided, as explained in more detail in section 4. below.
12. The government should provide a safe harbour for businesses unable to determine user location based on information currently collected.
13. The Proposed DST should be consistent with the Personal Information Protection and Electronic Documents Act (PIPEDA) to avoid irreconcilable conflicts between PIPEDA and the DST.
14. The Proposed DST should not come into force until at least one year after legislation implementing the DST is passed.

Detailed Discussion of TEI's Recommendations

1. Non-digital and Canadian Businesses

The Proposed DST risks targeting Canadian large businesses and international businesses already subject to Canadian corporate income tax. This does not comport with the stated aim of the Proposed DST, nor the Minister of Finance stating the DST will "introduce a level playing field for international and Canadian companies when it comes to the Internet space."[5] Businesses based in Canada or international businesses operating in Canada via a permanent establishment are already subject to Canadian corporate income tax. Therefore, it would increase the Canadian tax burden of these companies and result in double taxation, rather than levelling the playing field, if these companies are subject to the Proposed DST.

Many large businesses have worldwide income of more than the proposed threshold of €750 million (the "Worldwide Income Threshold") and more than the proposed threshold of CAD20 million from in-scope digital revenue in Canada (the "Local Income Threshold") yet are not large digital businesses as this term is commonly understood. Income from in-scope digital services could represent as little as 1.8 percent of business's worldwide income,[6] based on the proposed Worldwide and Local Income Thresholds. TEI recommends the Worldwide Income Threshold be determined via reference to in-scope digital revenue only (i.e., income from out-of-scope operations should not be included in calculating whether the Worldwide Income Threshold is breached), to prevent businesses that are not large digital businesses from being subject to the Proposed DST. This recommendation is aligned with the stated aim of the Proposed DST to tax large digital companies,[7] as well as with DSTs introduced in

---

[5] The statement is available at https://www.ourcommons.ca/DocumentViewer/en/43-2/FINA/meeting-41/evidence.
[6] €750 million is approximately CAD1.108 billion; CAD20 million is approximately 1.8% of CAD1.108 billion.
[7] Department of Finance, Annex 7 Consultations on Other Tax Matters – Supplementary Information, (Apr 19, 2021)

other large countries. Failing to align the Proposed DST with those enacted in other countries may give rise to anomalies whereby a large foreign group is not subject to its local DST and yet subject to the Canadian DST by breaching Canada's Worldwide Income Threshold when out-of-scope income is included therein.

An alternative approach, to prevent the unintended consequence of subjecting companies that are not large digital businesses (particularly large Canadian companies) to the Proposed DST, would be to include a safe harbour rule based on a minimal level (more than 20 percent) of worldwide income derived from in-scope digital services. When a group has worldwide income of €1 billion, for example, but less than €200 million is derived from in-scope digital services, then the business should not be subject to the Proposed DST even if the Local Income Threshold is breached.

The proposed Local Income Threshold of CAD20 million is considerably lower than enacted DSTs in other similarly sized countries. Many large businesses may therefore fall within the scope of the Proposed DST thus the Department of Finance should consider an increased Local Income Threshold for consistency across jurisdictions.

2. Differing Digital Revenue Streams

Many businesses, including those based or operating in Canada, have a significant online presence. Due to differing business models, businesses may also sell goods or services as an agent for another business or advertise goods or services on behalf of another business in a non-targeted manner, in the same way as their "bricks and mortar" selling channels. These companies should not be treated as digital companies for purposes of the Proposed DST.

By way of an example, a hotel company may operate a website enabling customers to book rooms at hotels it (or an affiliate) owns or manages (including management for a third-party hotel owner). The website may also: (i) allow booking for ancillary activities such as excursions for purchase (for which it is the selling agent of a third-party), or (ii) provide non-targeted advertising for such ancillary activities via a link to a third-party website, in addition to the website's core room-booking function. The same hotel company may also perform the same hotel room booking and third-party booking and non-targeted advertising functions via its staff located in its hotels and/or via its call center (i.e., their "bricks and mortar" sales channels). An airline presents a similar example where it refers passengers in a non-targeted manner to hotel, care hire, and insurance businesses on its website in exchange for a referral fee.

The activities or revenue streams contemplated above should not be subject to the Proposed DST. The Proposed DST should be clarified to state an "Online Marketplace" only relates to multi-sided interfaces, *i.e.*, interfaces permitting both sellers and buyers to use the platform to advertise or sell their goods or services, to prevent application of the DST to the above business activities. This would exclude revenue earned by a business from the operation of a transactional platform for the sale of goods or services on its own account or on the account of another company, which does not actively participate in the platform, other than revenue from targeted advertising services. This aligns with the objectives of taxing revenue where "user participation is a key input in the platform business's production process in

a way similar to labour and physical capital in a more traditional business . . .[8]" and the "online business models in which the participation of users, including by the provision of data and content contributions, is a key value driver . . ."[9] rather than revenue from online operations/sales channels.

The Budget provides only high-level concept of the Proposed DST as applying to revenue from "User data," which the Budget describes as "the sale or licensing of data gathered from users of an online interface, including anonymized and aggregated data."[10] Such user data, however, may unintentionally capture broader scenarios involving the use of data generally by a business necessary for the function of a revenue generating service or to improve services and offerings that are not distinctly commercialized or tracked, but made available as improved services. The scope of "data" gathered from an "online interface" in the Proposed DST should be clarified by defining an "online interface" as only interfaces included within the three targeted categories (online marketplaces, social media, and targeted advertising).

TEI also recommends the Proposed DST contain a complete exclusion for revenue from related party transactions from both the calculation of revenue thresholds and from in-scope revenue. This ensures there will be no double or cascading DST on the same group revenue and no additional DST would be imposed on a group's use of related legal entities. This is especially important for corporate groups with several entities subject to Canadian income tax, which may result in such activities being taxed by both the Proposed DST and income tax without a related party DST exclusion. The related party exclusion should exclude all revenue from related parties for the provision of access to online marketplaces, targeted advertising, data, and other services provided through online interfaces, regardless of whether the group also has "in-scope" revenue from such services supplied to third parties. The Proposed DST is based on a group level concept including its revenue threshold calculation and in its administration, as set out in the Budget. The Proposed DST for online marketplaces also specifically excludes revenue from the sale of goods and services by a seller on its own account and therefore should also exclude sales by a party related to the owner of the marketplace. A broad DST exclusion for all related party transaction revenue is consistent with a group approach.

3. Additional Considerations for Canadian Companies

The expressed "commitment" of the Proposed DST is to ensure digital businesses without a physical presence in Canada pay their fair share of tax to Canada on money earned in Canada and to build on announced GST changes requiring non-residents of Canada to register for and collect GST. TEI recommends businesses resident in Canada who already pay their fair share of taxes and levies to Canada's Federal, Provincial, and Municipal governments (e.g., Canadian income tax, numerous CRTC contribution amounts) either be exempt from the Proposed DST or be given a credit against Canadian income tax for any DST payable to achieve these commitments.

---

[8] *Id*.

[9] *Id*.

[10] *Id*.

The Proposed DST without an exemption or income tax credit would increase or maintain Canadian-based and operating businesses competitive disadvantage relative to non-Canadian competitors who operate in lower tax jurisdictions and result in double taxation for these Canadian businesses. Large non-Canadian digital competitors operating in lower tax jurisdictions would maintain their competitive low tax advantage, because although they would have to pay Canada's new Proposed DST so too would Canadian businesses. There is also the possibility other jurisdictions will provide tax credits for Canada's DST to the non-Canadian businesses, resulting in Canada's DST further disadvantaging Canadian businesses who pay the DST and receive no credit.

TEI further recommends the Government provide an election to utilize any credit or deduction for DST paid within any group company because the DST is applied on a consolidated basis. This would help avoid double taxation, similar to providing a credit against Canadian corporate income tax, as discussed above.

4. Practical Considerations

TEI commends the Canadian Government's strong preference to develop a multilateral approach within the OECD's Inclusive Framework on BEPS to address the tax issues presented by the development of new business models using digital technology. We also appreciate Government recognizing the Proposed DST as an "interim measure" until an appropriate multilateral solution can be agreed upon.[11] TEI recommends the Proposed DST, as an interim measure, be as similar to the anticipated global solution as possible to minimize compliance and switching costs once the global solution is agreed upon. TEI further recommends the legislation implementing the Proposed DST include a provision automatically repealing the DST should a multilateral solution formulated by the OECD's Inclusive Framework on BEPS be agreed upon and subsequently applied in Canada.

The Department of Finance's statement, "[l]arger, more mature firms are more likely to be profitable and able to bear the burden of a tax on revenue, which is not sensitive to profitability"[12] is inaccurate. A large group or business is not necessarily profitable. This is particularly the case in the hospitality and tourism sectors, which have been adversely impacted by COVID-19, as well as some traditionally low margin industries. Loss-making global groups should be exempt from the Proposed DST and an alternative method of calculation of the DST for those with low margins should be provided. An alternative method of calculation should be a calculation of "Taxable Income for DST" x "Net Profit Margin." Where "Net Profit Margin" is calculated based on IFRS (or other relevant) group consolidated financial statements (which is already the standard for inclusion of an entity within a group for the purposes of the Proposed DST) and equal to "Profit Before Tax" / "Total Revenue" as disclosed in such consolidated financial statements. For example, a group having: (i) worldwide income of CAD2 billion; (ii) in scope Canadian revenue of CAD100 million (so Taxable Income for DST of CAD80 million (over

[11] *Id*.
[12] *Id*.

threshold amount)); and (iii) Profit Before Tax of CAD20 million, would be subject to DST of only CAD800,000[13] compared to CAD2.4 million without alternative calculation method.[14]

The Proposed DST will require businesses to collect various types of information to comply with, and for CRA to administer, the new tax. Collecting such information will involve significant retooling of internal processes and IT systems. The new tax would also require businesses to segregate information they do currently collect in a manner not provided for by existing IT systems. Information not currently collected by many in-scope businesses includes customer location. The Proposed DST requires tracing revenue to "relevant users in Canada" if it is possible to trace such revenue to specific users; otherwise a "specified formulaic allocation would be required." The DST proposes to use the "ordinary location" of a user or business "based on information generally available to the digital service provider." Nothing in the proposal addresses what a business must do if it cannot determine the location of its users. TEI recommends the implementation of a safe harbour for businesses unable to determine user location based on information currently collected by the business. Further, TEI recommends the Proposed DST be consistent with the Personal Information Protection and Electronic Documents Act (PIPEDA) to avoid irreconcilable conflicts between PIPEDA and the DST.

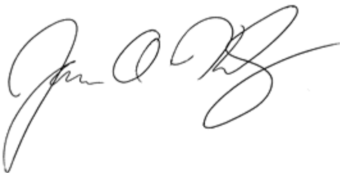
The DST has a proposed effective date of January 1, 2022. A January 2022 effective date, considering it is now June 2021, is inappropriate because it does not allow sufficient time for companies to introduce the necessary internal systems to compile the data and allocate income to properly comply with the Proposed DST (this is particular the case if large Canadian companies that are not true digital companies remain within the scope of the DST). TEI recommends an implementation date of at least one year after the legislation is passed.

• • •

We thank you for the opportunity to provide these comments. Please contact Don Mills, Chair of TEI's Canadian Commodity Tax Committee, at don.mills@canopygrowth.com or 613-852-5641 should you have any questions.

Respectfully Submitted,

TAX EXECUTIVES INSTITUTE



James A. Kennedy
International President

---

[13] CAD20million/CAD2billion = 1% CAD80 at 1%

[14] CAD80million at 3%