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*Executive Director*

ELI J. DICKER  
*Chief Tax Counsel*

June 13, 2012

Please Respond to:  
David V. Daubaras  
Vice President, Taxation  
General Electric Canada  
2300 Meadowvale Blvd.  
Mississauga, ON L5N 5P9  
905.858.5309  
david.daubaras@ge.com

Expert Panel on Tax  
Ministry of Finance  
Government of British Columbia  
Room 105 – 617 Government Street  
Victoria, BC V8W 9V8

## Re: *British Columbia – Tax Competitiveness*

Dear Expert Panel Appointees:

Earlier this year, the Ministry of Finance appointed the Expert Panel on Business Taxation (Expert Panel) “to provide analysis and recommendations to the Province on business tax competitiveness and administrative improvements to streamline the Provincial Sales Tax.”<sup>1</sup> The Expert Panel invited submissions from interested organizations to assist with developing recommendations “for a business tax system for British Columbia that balances the principles of competitiveness, fairness and simplicity.” Tax Executives Institute is pleased to provide the following comments and suggestions to assist the Expert Panel in its efforts.

Tax Executives Institute (TEI or the Institute) is the preeminent association of in-house tax executives worldwide. The Institute’s 7,000 professionals manage the tax affairs of 3,000 of the leading companies in Canada, the United States, Europe, and Asia. Canadians constitute 10 percent of TEI’s membership, with our Canadian members belonging to chapters in Calgary, Montreal, Toronto, and Vancouver, which together make up one of our nine geographic regions, and must contend daily with the planning and compliance aspects of Canada’s business tax laws. Many of our non-Canadian members including those in Europe and Asia work for companies with substantial activities in Canada. The comments set forth in this letter reflect the views of the Institute as a whole, but more specifically those of our B.C. and overall Canadian constituency.

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<sup>1</sup> British Columbia Ministry of Finance, Expert Panel on Business Taxation, *available at* [www.fin.gov.bc.ca/experts\\_panel\\_tax.htm](http://www.fin.gov.bc.ca/experts_panel_tax.htm).

For ease of reference, we have grouped our recommendations into four categories:

1. Income Tax
2. Carbon Tax and Motor Fuel Tax
3. Provincial Sales Tax
4. Reciprocal Taxation Agreement

On November 15, 2011, in response to the Ministry of Finance's Action Plan to Re-implement Provincial Sales Tax, TEI provided a number of common sense administrative improvements to make the PST more efficient and administrable to the benefit of both taxpayers and the Province. A delegation of TEI representatives subsequently met with officials from the Ministry of Finance in Victoria on December 12, 2011, to discuss TEI's recommendations. Some of the simplification measures proposed in TEI's November 15 letter were adopted in the proposed *Provincial Sales Tax Act* that was tabled in the British Columbia legislature on May 14, 2012. A copy of our letter is attached for your reference.

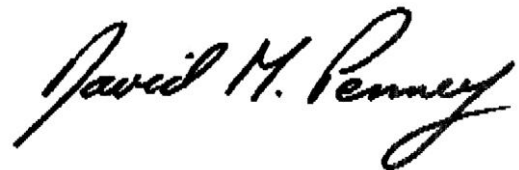
Enactment of the attached recommendations, which build upon our earlier comments, will improve the business climate in British Columbia, make the Province more competitive, and reduce the administrative complexity of complying with the Province's tax laws. The Institute would be pleased to meet with the Expert Panel to discuss our recommendations and other British Columbia taxation matters.

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TEI's comments were prepared under the aegis of the Institute's Canadian Commodity Tax Committee, whose chair is Kim N. Berjian. If you should have any questions about our recommendations, please do not hesitate to call Ms. Berjian at 403.233.5480 (or [Kim.N.Berjian@conocophillips.com](mailto:Kim.N.Berjian@conocophillips.com)) or David V. Daubaras, TEI's Vice President for Canadian Affairs, at 905.858.5309 (or [david.daubaras@ge.com](mailto:david.daubaras@ge.com)).

Respectfully submitted,

**Tax Executives Institute**



David M. Penney  
*International President*

cc: David V. Daubaras, 2011-2012 TEI Vice President for Canadian Affairs  
Kim N. Berjian, 2011-2012 Chair of TEI's Canadian Commodity Tax Committee  
Carmine Arcari, 2011-2012 Chair of TEI's Canadian Income Tax Committee

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**TAX EXECUTIVES INSTITUTE, INC.**

**BRITISH COLUMBIA – EXPERT PANEL ON BUSINESS TAXATION**

**BUSINESS TAX COMPETITIVENESS AND ADMINISTRATIVE IMPROVEMENTS**

**June 13, 2012**

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The Expert Panel on Business Taxation (Expert Panel) has invited interested organizations to submit written comments to further its assessment of British Columbia's business tax system. Tax Executives Institute (TEI) applauds the Ministry of Finance for undertaking this study, and has compiled the following comments and suggestions regarding improvements that would result in a more competitive, efficient, and administrable tax system in the Province. We invite the opportunity to meet with the Expert Panel to discuss our recommendations.

**Income Tax**

The Province's income tax system provides simplicity and transparency through harmonization with the federal system. With the recently implemented 10-percent provincial income tax rate, British Columbia is now recognized as a jurisdiction with a competitive income tax rate. TEI encourages the Province to maintain the status quo on income tax and to work with the federal and other provincial governments to foster a single, competitive corporate income tax system in Canada.

**Carbon Tax and Motor Fuel Tax**

In 2008, British Columbia became the only jurisdiction in the Pacific Northwest with a Carbon Tax on most sources of energy other than hydro-electric. While several other jurisdictions appeared ready to enact similar measures, none did. The B.C. tax, imposed on the volume of fuel purchased, is intended to encourage the reduction of greenhouse gas (GHG) emissions. Despite this laudable goal, companies doing businesses in the Province now have higher energy costs than their competitors in other jurisdictions.

Because of its structure, recent decreases in energy costs have exacerbated the adverse effect of the Carbon Tax on businesses in B.C. compared with other provinces, especially neighbouring Alberta. For example, the Carbon Tax on natural gas is currently \$1.24 per gigajoule (GJ), with the rate slated to increase to \$1.49 /GJ on July 1, 2012. Currently, the cost of natural gas in the Vancouver area is approximately \$3.00/GJ. At this rate, the Carbon Tax will be nearly 50-percent of the cost of the fuel on which it is levied. With British Columbia's natural gas reserves located

adjoining Alberta, the cost of the Carbon Tax alone may prompt producers to move their operations to Alberta where there is no Carbon Tax on natural gas used in production.

TEI applauds the review of the Carbon Tax announced in the recent Provincial Budget and urges the British Columbia government to create a more competitive business environment by repealing the tax.<sup>2</sup> Doing so would put the Province in line with other jurisdictions in the region, and encourage investment in manufacturing and processing facilities in British Columbia.

In addition to the Carbon Tax, British Columbia imposes its Motor Fuels Tax on fuel used in production, processing, and transportation creating an additional layer of tax on supplies necessary for industry to engage in business in the Province. While other jurisdictions levy a Motor Fuels Tax, those competing taxes do not apply to fuel used in production or processing. B.C.'s pyramiding of taxes provides a disincentive for industry to invest in production facilities located in the Province.

The Province could level the playing field by imposing compensating taxes on products imported into the Province that consume a significant amount of fossil fuels to produce, but such taxes would be extremely difficult to structure and administer. Additionally, businesses producing products in British Columbia for export should be eligible for rebates of Carbon and Motor Fuel Tax paid on energy used in their production. This approach would advance the "revenue neutral" aspects of the Carbon Tax system and equalize the treatment of goods and services produced in British Columbia with those produced elsewhere. While the procedures required to track imports and exports of such products would be onerous for the affected businesses, the benefit to British Columbia producers from a more competitive tax structure would be significant.

Finally, TEI encourages the Province to consider other ways of using tax and incentives to reduce GHGs such as redirecting Carbon Tax revenue to grants and subsidies for energy reduction projects undertaken by businesses located in the Province. This strategy could include exempting purchases of goods and services used for GHG reduction from the Provincial Sales Tax, or the introduction of a refundable Investment Tax Credit for energy conservation expenditures.

### **Provincial Sales Tax (PST)**

On May 14, 2012, the Province introduced Bill 54-2012 which includes the first reading of the proposed *Provincial Sales Tax Act* (PSTA); and expects the regulations for the PSTA will be released in the fall of 2012. Representatives from the Ministry of Finance have stated on several occasions that the exemptions that were available under the former PST will be included in the PSTA and its accompanying regulations. The following comments are based on a preliminary review of the PSTA, and experience with the former PST levied under the *Social Service Tax Act* (SSTA).

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<sup>2</sup> The British Columbia government recently acknowledged the effect of the Carbon Tax on the greenhouse industry and offered relief from the tax. The effects of this tax on other industries should be reviewed and similar relief considered. The relief would be best provided by amending the *Carbon Tax Act* to give businesses the certainty necessary to factor such relief into their pricing decisions.

To differentiate between the former “PST” that was levied under the SSTA and the “new” PST created under the PSTA, the comments refer to the tax that will be levied under the PSTA as the PST2.

Please note that our suggestions have been numbered for ease of reference only, and do not reflect their priority.

### 1. Filing and Compliance

Under the PSTA, the due date for PST2 returns has been extended from 15 days after the end of the previous month to a full month after that date. This is a welcome change, and will result in fewer amended returns. There remains room, however, for additional improvements to increase the efficiency of the system without affecting overall revenues collected by the Province. For example, closely related legal entities should be able to file consolidated tax remittances. As currently drafted, the PSTA requires each entity to file a separate return creating an unnecessary administrative burden. To recognize the common management of closely related entities, a deeming provision should be added to the PSTA to deem the tax paid by one legal entity on goods and services consumed by other closely related entities to have been paid in compliance with the PSTA. This deeming provision would reduce the administrative effort necessary to report and collect the tax due without reducing overall tax revenues.

### 2. Appeal Procedures

Unlike the federal *Excise Tax Act*, which allows a taxpayer to initiate a court appeal 180 days after filing a Notice of Objection, there is no provision in the PSTA permitting B.C. courts to consider an appeal before the B.C. Minister of Finance’s decision is issued. Thus, there is no incentive for the Minister to issue decisions in a timely manner, which could result in a large inventory of unresolved cases and therefore uncertainty for taxpayers. TEI recommends that British Columbia’s system parallel that set forth in the *Excise Tax Act*. Indeed, the PSTA should be amended to permit taxpayers to seek an expeditious resolution of their tax disputes by commencing an appeal in the Supreme Court 180 days after filing a Notice of Objection with the Minister.

### 3. Safety Exemptions

Worker safety is an important public policy issue as injury prevention saves lives, reduces public healthcare costs, and increases productivity.<sup>3</sup> In an effort to promote workplace safety, the SSTA provided an unconditional PST exemption for work-related safety equipment and clothing designed to be worn or attached to workers. This exemption, however, did not cover all equipment that — while not worn by, or attached to, a worker — is intended to prevent worker injuries. Examples of workplace safety equipment that remained taxable under the SSTA include:

- anti-fog equipment
- fire suppression equipment and blankets
- caution tape
- eye wash stations and showers

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<sup>3</sup> WorkSafe BC reports that the 2010 cost of work-related injury claims was in excess of \$1.2 billion.

- grease resistant mats
- lamps for miners' hardhats
- portable manhole ventilators
- fall prevention equipment and railings
- seatbelts for stationary equipment
- fire sprinkler systems
- welding curtains, screens, blankets and ducting

TEI recommends the creation of a PST2 exemption for all goods and services purchased by businesses to fulfill their obligations to protect workers under the *Workers Compensation Act*, Part 3 – Occupational Health and Safety, British Columbia Fire and Building Codes, and all similar federal statutes. Creating PST2 exemptions for health and safety related purchases will not only emphasize the importance of accident prevention but encourage the competitiveness of the Province's business environment by reducing the number of worker injury claims and their related costs.

#### 4. Out-of-Province Registration

To ensure PST2 is collected on imports into the Province, the PSTA contains a provision requiring certain suppliers located in Canada, but not resident in the Province, to register and collect PST2 on sales to both retail and business customers. This requirement is unnecessary with respect to sales to businesses already resident and registered in British Columbia since the PSTA already requires them to self-assess PST2 on import purchases. Forcing businesses not resident in the Province to collect PST2 on those import sales duplicates that collection requirement and puts a collection and compliance burden on those businesses least familiar with the law (*i.e.*, businesses with so little activity in the Province that they need not register for PST collection). Further, there is a significant question whether B.C. has the legal authority to impose tax collection requirements on businesses that do not operate in the Province. Businesses based in the Province will then be unable to confirm whether the out-of-province supplier is legally required to collect PST2 creating uncertainty with respect to their related self-assessment obligation.

To minimize the compliance burden associated with import purchases, TEI recommends the PSTA be amended to allow British Columbia registered businesses to claim a general exemption from the requirement to pay PST2 to out-of-province suppliers, and instead self-assess and remit the appropriate tax to B.C. To ensure compliance with this exemption, the PSTA or its regulations could require British Columbia registered businesses to provide documentation of their qualification for the exemption to non-registered, out-of-province sellers.

#### 5. Manufacturing Exemption

Under the PSTA, manufacturers generally acquire production machinery and equipment exempt from PST2. In order to qualify for the exemption, the machinery and equipment must be used primarily and directly by the manufacturer in a manufacturing activity that is prescribed by regulation. The rules implementing this exemption lack clarity, which often leads to disputes between the taxpayer and an auditor. To minimize disputes, TEI recommends the manufacturing exemption embrace an integrated plant concept where all sales to a manufacturing plant location are

exempt from PST2. Further, the definition of manufacturing should be broadened to include processes that increase value rather than just procedures that result in substantial change in form and substance to reflect more modern manufacturing techniques and practices.

### **Reciprocal Taxation Agreement**

Under the PST, businesses were forced to contend with the Province and Federal Government not paying each other's tax on purchases of goods and services. When the HST was introduced on July 1, 2010, both levels of government paid the HST and effectively rebated the portion of the HST that would otherwise not be payable on the supply. This change under the HST was welcomed by businesses that otherwise had to program special rules into their billing systems to handle sales to the federal and provincial governments.

With the Province moving back to the GST/PST2, there is concern that businesses will again be forced to manage the process of determining which governments must pay which tax. TEI recommends that the Province and Federal Government continue using a process similar to that in place under the HST to rebate GST/PST2 revenue in the background on governmental purchases.

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TEI's comments were prepared under the aegis of the Institute's Canadian Commodity Tax Committee, whose chair is Kim N. Berjian. If you should have any questions about the recommendations, please do not hesitate to contact Ms. Berjian at 403.233.5480 (or [Kim.N.Berjian@conocophillips.com](mailto:Kim.N.Berjian@conocophillips.com)) or David V. Daubaras, TEI's Vice President for Canadian Affairs, at 905.858.5309 (or [david.daubaras@ge.com](mailto:david.daubaras@ge.com)).