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February 28, 2018

The Honorable Catherine McKenna
Minister of Environment and Climate Change Canada
The Honourable Bill Morneau
Minister of Finance

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RE: Comments on Greenhouse Gas Pollution Pricing Act and Related Regulations

Dear Sir or Madam:

On behalf of Tax Executives Institute (TEI), we write to provide our comments on the proposed Greenhouse Gas Pollution Pricing Act (Act) and Draft Fuel Charge Regulation (Regulations) (collectively, Proposed Legislation) released by the Department of Finance (Finance) and Ministry of Environment and Climate Change (Environment) on January 15, 2018. TEI appreciates the opportunity to provide feedback as part of the Government of Canada's (Government) continuous engagement with industry and other stakeholders regarding the design of this important piece of federal legislation. TEI notes the design and implementation of the Proposed Legislation raises significant challenges requiring input and collaboration from many government agencies and stakeholders to ensure Canadians are provided a fair and consistent national carbon policy across the country.

About Tax Executives Institute

TEI was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 56 chapters in North and South America, Europe, and Asia, including four chapters in Canada. Our approximately 7,000 members represent 2,800 of the largest companies in the world, many of which either are resident or do business in Canada.

As the preeminent association of business tax professionals worldwide, TEI has a significant interest in encouraging the uniform and equitable enforcement of tax laws, and reducing the cost and burden of tax administration and compliance to the benefit of taxpayers and government. TEI is committed to maintaining a system that works — one that builds upon the principle of voluntary compliance, is consistent with sound tax policy, is easy to administer, and is efficient.

Comments on the Proposed Legislation

The Pan-Canadian Framework on Clean Growth and Climate Change (Framework) is Canada's plan to grow the economy while reducing greenhouse gas emissions and building resilience to adapt to a changing climate. In October 2016, the Canadian government published a federal carbon pricing benchmark (Federal Benchmark) mandating the application of carbon pricing to a broad set of emission sources throughout Canada by 2018. The Federal Benchmark provided provinces and territories flexibility to implement their own carbon pollution pricing systems and committed to implement a federal carbon pricing backstop (Federal Backstop) that would be imposed upon any province or territory that did not have a qualifying carbon pricing system in place by 2018. The Proposed Legislation sets forth the proposed Federal Backstop (Proposed Federal Backstop).

It is our understanding that the Proposed Legislation will apply in provinces and territories that do not have a carbon pricing system or do not have a carbon pricing system that aligns with the Federal Benchmark. The Proposed Federal Backstop is comprised of two key elements – a federal carbon levy (FCL) applied to fossil fuels and an output-based pricing system for industrial facilities emitting above a certain threshold, with an opt-in capability for smaller facilities with emissions below the threshold.

TEI's comments are summarized in the following order:

A. Timing and Notification
B. Listed Provinces
C. Double Regulations
D. Joint Ventures
E. Trading and Exports
F. Existing Facilities
G. Inequities Between Provinces

A. Timing and Notification

The Minister of Environment and the Minister of Finance indicated that each province/territory must advise the Government, by March 30, 2018, of its intention to have the Federal Backstop apply, thus allowing for implementation by fall 2018. Further, provinces/territories planning to establish or maintain their own carbon pricing systems must outline their plans by September 1, 2018 so the Government may confirm whether the province/territory meets the Federal Benchmark. Provinces/territories that do not meet the Federal Benchmark will be subject to the

Federal Backstop. The Proposed Legislation also indicates that Government intends to implement the Federal Backstop, in whole or part, on January 1, 2019 in any province/territory that does not meet the Federal Benchmark.

It is not clear when the Government will make its determination whether a province or territory meets the Federal Benchmark. TEI's members represent many industries, including airlines, railways, energy companies, and others. Such industries will require sufficient lead time to plan, test, and implement complex changes to their legacy information technology (IT) systems to properly collect these fuel charges on behalf of the Government. These changes cannot commence until companies know which carbon pricing regime will apply. Moreover, companies wishing to outsource these IT changes may be confronted with service providers who have limited resources to meet these demands under short time frames. TEI thus requests that appropriate lead time be provided so that companies, as the agent of collection for the Government, can ensure the accuracy and appropriateness of the changes.

B. Listed Provinces

Section 3 of the Act defines "Listed Province" as "a province or area listed in Part 1 of Schedule 1." Listed Provinces will be subject to the Federal Backstop. However, the Proposed Legislation does not specify how the Government will determine whether a province/territory is a Listed Province.

TEI is particularly concerned about provinces/territories that may be outside of the scope of the Act at its implementation but which may become a Listed Province at later date. For example, it is possible a province/territory may meet the guidelines indicated in the Act and not be a Listed Province at implementation date, but would be reconsidered at a future date and made a Listed Province if the provincial/territorial rates no longer align with the Federal Benchmark or there were changes to the existing FCL (such as reform or repeal).

TEI respectfully requests that the Government provide insights into the post-implementation review and processes for Listed Provinces, such as the type of notice and lead time that will be provided if a province/territory's status is changed. Again, sufficient lead times will be required for businesses to modify their IT systems and facilitate a smooth transition to ensure seamless compliance with the Act.

C. Double Regulations

TEI members are concerned that they may be faced with complying with two levels of government on the same fuel. They are particularly concerned about the possibility of a partial backstop where a province/territory that is not currently listed has rates that may not be materially different or identical to the Federal Benchmark. Greater alignment and clarity needs to be provided to ensure non-listed provinces and Listed Provinces that provide that carbon tax, levy, or exemptions/relief only applies at one level of government on the same fuel.

This single charge needs to be achieved without a burdensome process that will impact the competitiveness of companies domestically and internationally. TEI proposes that the Government enact certain tolerances or materiality standards for differing rates between provinces/territories and the Federal Benchmark to eliminate the risk of a partial backstop and potential compliance with two or more carbon systems for the same transaction. Failure to do so will have a multiplier effect for businesses (i.e., a partial backstop in Saskatchewan and Quebec means a person may be required to comply with both provinces and two processes for each of the partial backstop provinces).

D. Joint Ventures

TEI also has significant concerns over the Proposed Legislation as it applies to joint ventures. The current definition of a "person" under Section 3 of the Act includes joint ventures. Under the various registration provisions of the Act, commencing at subsection 55(1), a person, which includes a joint venture, would be required to register and report in accordance with provisions of the Act.

The use of joint venture arrangements is common in many industries, especially the oil and gas industry. Under these arrangements, the operator of the joint venture is generally designated responsibility for financial and regulatory reporting activities associated with the joint venture activities. While the individual participants of the joint venture remain liable for their proportionate share of the joint venture's activities, it is the operator that is responsible for conducting day-to-day operations and administration of the joint venture, including the statutory compliance and remittance of indirect taxes.

A joint venture agreement may exist for an activity as small as a single oil and gas well. Further, in the oil and gas industry, joint venture working interests are constantly bought and sold, creating new joint ventures as the participants change. Consequently, there are thousands of upstream oil and gas joint ventures in existence, which are operated by a significantly smaller number of upstream producers or operators. The proposed requirement to have each individual joint venture register for purposes of the Act will create an unnecessary and inefficient administrative burden for both industry and the Government.

TEI proposes that the requirement for each joint venture to register, report and/or remit for purposes the Act be removed and that the requirement to register be imposed at the operator level. Under this recommendation, the joint venture operator would report all activities of each individual joint venture on behalf of all the working interest owners, not just the operator's working interest share, on a single return.

With this proposal, we reference the existing joint venture rules provided for under section 273 of the Excise Tax Act (ETA). However, if the Proposed Legislation is amended to allow for similar joint venture treatment under the ETA, we strongly recommend that a requirement to file documentation not be introduced as this would create further administrative burden for businesses and the Government that, in our view, adds no significant value. As previously mentioned in the case of the upstream oil and gas industry, a joint venture may exist for a single

oil or gas well, and joint venture working interests are constantly bought and sold. A filing requirement would require industry to file new notifications every time a property is bought and sold, and would require Government resources to accept, process, and record each change.

E. Commodity Trading, Exports, and Exemptions

TEI is concerned that natural gas trading activities may have been unexpectedly and/or unintentionally captured in the Proposed Legislation which, as drafted, requires significant compliance effort for volumetric reporting of wholesale trading of natural gas, where no FCL would be applicable.

Many oil and gas producers have marketing divisions/entities that trade in various fuel products, including natural gas, that are not for immediate use/combustion by a purchaser (i.e., another wholesale trader). Commodity trading of this nature can occur multiple times without the product physically leaving a pipeline system. Given the broad application of Section 55, the Act would require these trading entities to register and create significant administrative reporting requirements without the FCL being applicable to their activities. TEI proposes that the Government adopt provisions similar to those in Alberta's Climate Leadership Act, which provides relief from imposition of the Alberta Carbon Levy if such commodities are traded within the pipeline.

With respect to exportation, TEI seeks additional information concerning the documentation that will be required by the Act to confirm export for administration. Subject to confirmation, our preliminary review of the Proposed Legislation suggests that an export exemption from FCL is not available for exports by non-registrants of the province/country. If this initial interpretation is correct, a non-registered foreign fuel wholesaler/exporter would not be eligible to purchase fuel on an FCL-exempt basis at the point of sale, resulting in cash flow considerations and commercially disadvantaging fuel sales to these types of counterparties.

Accordingly, TEI proposes that the Act provide for a FCL point-of-sale exemption for sales of product to non-registered customers that are exporting the product from a Listed Province to a place outside Canada. Although we acknowledge the Act appears to provide rebates for FCL in these instances, such processes create additional administrative burdens for industry (i.e., the requirement to file rebate claims and cash flow considerations) and the Government (i.e., additional resources to review, audit, and pay such rebates).

With respect to the airline industry, TEI's airlines members maintain the overall objective of the Federal Backstop can be accomplished by allowing upfront exemption from FCL at time of purchase. However, we request that the Government remove the distinction between a Registered Specified Air Carrier and a Registered Air Carrier, as this distinction increases the administrative burden to the airlines, requiring annual calculations to determine eligibility. This administrative burden will increase if certain provinces/territories fail to align with the Federal Benchmark and become a Listed Province, as Registered Air Carriers could be exempt from the levy under the provincial regime but not be exempt under Proposed Legislation. TEI

reaffirms the need to ensure that the Federal Backstop is administered in a manner that achieves administrative ease and efficiency.

F. Existing Facilities

TEI supports the overall approach to encourage sectors and subsectors to reduce the overall carbon intensity of their operations by converting to less emission-intensive fuels and adopting innovative technologies. However, our members maintain that the proposed mechanisms should not unfairly penalize a person's performance or cause increasingly competitive disadvantages based on the age of a person's facilities, which are a result of unique aspects of their industrial processes, investments, and/or technology choices made based on past government policies or economic realities. While we understand the challenges of identifying an appropriate standard metric for all sectors and subsectors, TEI's members believe a reasonable approach to increasing stringency requires further collaboration with Canada's wide range of industries.

G. Inequities Between Provinces

Finally, with respect to pre-existing carbon pricing policies (i.e., Ontario, British Columbia, and Alberta) and the Federal Backstop, there is opportunity for individual provincial/territorial pricing schemes to differ from the federal pricing schedule. It is important that these differences be addressed while also respecting provincial jurisdictions in a way that enables provinces/territories to determine the most effective means of reducing emissions within their jurisdiction, while at the same time, protecting each respective provincial/territorial industry that collectively contributes to Canada's economy.

As examples:

- Presently, British Columbia's carbon tax system (consumption tax model), computed on the basis of $30/tonne of carbon emission, works out to be approximately $0.057 per cubic meter of natural gas. Under Ontario's carbon tax system (cap and trade model), the rate equates to $0.03 per cubic meter for natural gas delivered. This is significantly less than British Columbia and it has been stated that Ontario already has achieved its 2020 – 2021 targets under the Act because of other steps it has taken.
- Furthermore, Alberta has provided certain exemptions to oil and gas producers. The Proposed Legislation did not implement similar exemptions, potentially putting certain industries and businesses in provinces, such as Saskatchewan, at a significant competitive disadvantage.

TEI encourages Government to work collaboratively with industry experts and provincial/territorial authorities to develop an approach that limits the impact of these pricing discrepancies and seeks to harmonize pricing over the long-term.

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TEI's comments were jointly prepared under the aegis of TEI's Canadian Commodity Tax Committee, whose Chair is David Card. Pilar Mata, Tax Counsel for TEI, coordinated the preparation of TEI's comments. If you have questions about TEI's comments, please contact Mr. Card at +1(403) 920-8124 or david_card@transcanada.com or Ms. Mata at +1(202) 464 -8346 or pmata@tei.org.

Respectfully submitted,
Tax Executives Institute

Robert L. Howren
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