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Select Standing Committee on Finance and
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Room 224, Parliament Buildings,
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Via Email: financecommittee@leg.bc.ca

Re: British Columbia Budget 2021 Consultation

Dear Sir or Madam:

Tax Executives Institute, Inc. ("TEI") welcomes the opportunity to participate in British Columbia's Budget 2021 Consultation ("Consultation"). TEI has 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* ("PSTA"), *Motor Fuel Tax Act* ("MFTA"), and *Carbon Tax Act* ("CTA"). TEI appreciates the opportunity to share its views with BC's Select Standing Committee on Finance and Government Services through the Consultation process and welcomes the opportunity to meet with the Standing Committee to discuss these recommendations further.

About Tax Executives Institute, Inc.

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 57 chapters in Europe, North and South America, 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 7,000 individual members represent over 2,800 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.

COVID-19 PST Exemption for Health and Safety Equipment

Sections 32 to 35 of the PST Exemption and Refund Regulation (the "Regulation") provide a provincial sales tax ("PST") exemption for listed safety equipment to promote the safety of workers in BC. These rules require the equipment to be acquired to comply with various occupational health and safety regulations. In certain instances, the exemption is only available when acquired by an employer, a self-employed worker, or an educational institution. Thus, the PST exemption does not cover all the equipment and consumables required to prevent or mitigate worker or student injuries.

With the global COVID-19 pandemic now into its fourth month, businesses must provide health and safety not just for employees and students, but also patients, customers, suppliers, and the general public.

The BC Government has enacted various programs to assist businesses and citizens during the COVID-19 pandemic; however, there has been no change to the PST exemption for safety equipment. Businesses are incurring significant expenditures to operate in a safe and healthy manner to protect against the spread of COVID-19. These expenditures will not only prevent illness but will ultimately reduce public healthcare costs and increase productivity.

The following is a list of consumables and equipment, all subject to PST, that businesses, charities, and public sector bodies must acquire to prevent the spread of COVID-19 and satisfy the health and safety protocols established by the BC Government:

- Re-usable and disposable face masks
- Latex gloves
- Hand sanitizer and disinfectant wipes
- Face shields not mandated by the Occupational Health and Safety Regulation
- Air filtering apparatuses
- Acrylic barriers

- Cleaning and fogging equipment
- Signage and promotional materials

TEI recommends the Ministry simplify and expand BC's exemption for safety equipment to include all items required for businesses to operate to prevent the spread of COVID-19.

Intercompany Transactions

Part 9 of the Regulation includes a PST exemption for transfers among related corporations. These exemptions prevent PST from being paid more than once on tangible personal property ("TPP") or software when transferred among related corporations for operational reasons or as the result of restructuring.

To qualify for this PST exemption, a related corporation must be a wholly-owned subsidiary of the other, or they must be wholly-owned subsidiaries of the same corporation. To qualify as a wholly-owned subsidiary of another corporation, the corporation must beneficially own at least 95% of the outstanding shares of each class of the share capital.

The requirement for the corporation to own 95% of each class of shares makes it impracticable for corporate groups to use preferred shares or non-voting common shares as a vehicle to raise capital, leaving debt financing as the only option. In competitive markets, related corporations require flexibility in how to raise capital. Issuing non-voting or preferred shares should not result in a PST expenditure.

By comparison, for Goods and Services Tax ("GST") purposes, the criteria for closely-related corporations are set out in Section 128 of the *Excise Tax Act* ("ETA"):

[Q]ualifying voting control in respect of the other corporation is held by, and not less than 90% of the value and number of the issued and outstanding shares, having full voting rights under all circumstances, of the capital stock of the other corporation

This threshold provides businesses with flexibility to use alternative structures for raising capital.

TEI recommends the Ministry revise the criteria for the PST exemption on transfers among related corporations by adopting criteria for ownership outlined in the ETA.

Taxation of Gift Cards

The Ministry recently amended several BC PST Bulletins to require the collection of tax on sales of gift cards designed to be used as payment for subsequent purchases of taxable software or

telecommunication services as defined in the PSTA. It appears this change was made to ensure PST is collected even if the vendors of such taxable software or telecommunication services are not registered with BC for the collection and remittance of PST.

For example, PST Bulletin 311 - *Promotional Materials and Special Offers* previously stated:

PST does not apply to a purchase of gift cards and gift certificates if the customer is purchasing store credit, which may or may not be redeemed later. When the credit is redeemed, PST will apply if the item purchased is subject to PST.

This rule also applies to cards that may be purchased or redeemed online. For example, PST does not apply to the purchase of a \$50 gift card that is redeemable at an online digital media store that sells and leases movies, music and other digital items. When the gift card is used to make purchases and leases, PST will apply if the items that are purchased and leased are subject to PST.

PST Bulletin 105 – *Software*, PST Bulletin 107 – *Telecommunication Services*, and PST Bulletin 311 - *Promotional Materials and Special Offers* were amended to include an additional statement regarding gift cards and gift certificates that can only be used to purchase software or telecommunications services :

Purchases of prepaid gift cards or gift certificates are generally not subject to PST as they are a purchase of store credit a customer may redeem later at a store or online. When a customer redeems the credit, PST applies to the purchase as if the credit was cash. PST will apply if the item purchased is subject to PST.

However, prepaid gift cards or gift certificates are subject to PST if they can only be used to purchase taxable telecommunication services or software....

(Emphasis added.) The Ministry changed its position in these Bulletins without the required legislative amendments. The Ministry's new position is problematic for several reasons.

First, the Ministry's new position is inconsistent with, and not supported by, the PSTA. When a retailer receives consideration and provides the purchaser with such gift cards and gift certificates, this exchange is neither a "sale" nor a "retail sale" as defined in the PSTA.

Second, the Ministry's new position subjects sales of telecommunications services and software purchased with gift cards and gift certificates to double tax – first when the card or certificate is acquired from a vendor, and next on the sale of the actual underlying services or software. Imposing double tax on a single sale of telecommunication services or software contradicts basic tenets of tax policy.

Third, it appears the Ministry's new approach was intended to ensure PST is collected even if the vendors of telecommunication services and software are not registered with BC for the collection and remittance of PST. However, the 2020 BC Budget announced the Ministry would be expanding the PST registration requirements to address this concern:

Effective July 1, 2020, new registration requirements apply. Canadian sellers of goods, along with Canadian and foreign sellers of software and telecommunication services, will be required to register as tax collectors if specified BC revenues exceed \$10,000.... These requirements will result in provincial sales tax being collected by a greater number of businesses in the digital economy.

BC's expansion of the registration requirements to include foreign sellers more directly addresses the Ministry's concerns regarding tax leakage. Continuing to impose PST on such gift cards and gift certificates, given these new foreign registration requirements, will further increase the potential for double taxation.

Finally, the Ministry has relied upon its new position to issue assessments against registered vendors not collecting PST on the sale of such gift cards and gift certificates. Such assessments are particularly egregious because they are inconsistent with PSTA, are not supported by a legislative amendment detailing the parties' rights and responsibilities and may subject a single purchase of telecommunications services or software to double taxation.

TEI recommends the Ministry reverse its new position and amend its PST Bulletins to confirm PST is not payable on gift cards and gift certificates designed to be used as payment that can only be used to purchase taxable telecommunications services or software.¹

Web-Based Services is Not a Right to Use Software

As time passes, traditional services are increasingly offered via platforms designed for use on a handheld device (called an "app") or "web-based services" available over the internet using a handheld device, tablet, or personal computer.

Many apps and web-based services are nothing more than a modern way to deliver services traditionally handled using paper-based processes. For example, financial institutions typically have an

¹ TEI notes BC's long-standing practice treats prepaid long distance cards differently. As detailed in PST Bulletin 107 – *Telecommunications Services*, prepaid long distance cards may be purchased in various dollar amounts from retail outlets and are not linked to a specific phone number or account. BC imposes PST on prepaid long distance cards purchased in BC because they provide the purchaser with the right to make phone calls from a phone ordinarily situated in BC. BC does *not* deduct PST from such cards when a call is made; therefore, there is no double taxation. TEI maintains prepaid long distance cards should continue to be taxed in this manner.

app or provide web-based banking to allow customers to check their account balance, pay bills, or transfer money. The customer only has online access to the financial institution's system to request the transfer; the customer does not receive a separate right to use the software.

The fees charged by financial institutions for online services and in-branch services remain non-taxable for PST purposes. A similar outcome should occur for other non-taxable services, such as web-based surveys, web-based training and testing, and web-based payroll processing. A fee for these services should not be treated as a payment for the right to use the software when the customer merely obtains the ability to use the internet to transfer data or other information to/from the service provider.

If the intention is to broaden the tax base and treat web-based services as a right to use the software, then a mechanism is required in the PSTA or its regulations to recover all or a portion of the PST paid on the software that is treated as taxable through the web-based service. For example, if a payroll service provider acquires the right to use software for processing internal payroll transactions and preparing tax forms for its own staff, and the software is also used for paper-based systems available to third party customers, PST will be payable only once on the software license. However, if the same payroll service provider allows web-based access to its customers so they can directly input time entries and run reports, and this access is treated as a taxable right to use the software, PST would be applied twice to the same software license. The payroll service provider collecting PST on the taxable web-based service should be able to recover a portion of the PST paid on the initial software license.

Partnership as a Person for PST Purposes

Under the PSTA, partnerships can register as collectors for PST purposes but are not treated as separate legal persons to own partnership property. Instead, each partner is treated as if it owns a fractional interest in all the partnership's property. This places responsibility on the partners to collect or pay PST on property utilized by the partnership when an interest in the partnership is purchased or sold. In contrast, there is no requirement to account for PST on property owned by a corporation when shares in the corporation are purchased or sold.

TEI recommends the Ministry amend the PSTA and its regulations to treat partnerships as persons for PST purposes, including the ability to sell/purchase a partnership interest without triggering a PST liability related to the partner's proportionate share of underlying partnership property, and the ability to use exemptions for transactions within a closely-related group. Such treatment would be consistent with the treatment of partnerships under the ETA and other jurisdictions, such as Saskatchewan, Manitoba, and states in the United States of America.

Exports – Customers Shipping Property Using Their Own Conveyance

The Regulation provides a point-of-sale exemption for exported TPP, but only if the TPP is shipped by the seller to a location outside of BC.

For operational reasons, such as the physical attributes of the item being shipped, the location and capacity of available conveyances, and project requirements, a business operating outside of BC may choose to ship TPP it acquired in BC to a location outside BC using its own conveyance or by directly hiring a common carrier.

If the purchaser operating outside BC (in this case, the Business) uses its own conveyance or hires a common carrier to export TPP from BC, it must pay PST to the seller and claim a refund directly from the Ministry under section 158 of the PSTA, a refund provision specific to TPP exported for business use. The refund process is time-consuming for the Ministry and the Business, and essentially taxes exports if the Business is not aware of the refund process. BC-based retailers and wholesalers selling TPP for export would be more competitive if fewer tax compliance burdens were imposed on Businesses exporting TPP using their own conveyances.

By comparison, the ETA eliminates the requirement to pay GST and Harmonized Sales Tax (“HST”) on TPP that is exported using a Business’ own conveyance, or common carrier. Specifically, Section 1 of Part V of Schedule VI to the ETA provides a zero-rating on the supply of TPP exported by a Business if the seller maintains “evidence” of the export of property. Such “evidence” typically includes customs clearance certificates, waybills, movements of dangerous goods tickets, carrier invoices, contracts of sale, purchase orders, and invoices. This zero-rating provision is not available for sales to purchasers that are consumers, thus limiting the zero-rating to exports for business use.

The decision regarding how to transport TPP should be based on operational and environmental concerns only; exporting property using the Business’ own conveyance should not create an additional tax and/or compliance burden. TEI thus recommends the Ministry amend the Regulation to mirror the ETA’s zero-rated export provision.

Legal Services

The application of PST to legal services is based on the location of the service provider and its client. If the legal service provider and client both reside in BC, PST is payable on all legal services under subsection 126 (1) of the PSTA, regardless of the jurisdiction to which the services relate. In contrast, when a BC-based client acquires legal services from a service provider located outside of BC, the fees are taxable under subsection 127 (1), and an exemption is available for legal services relating to a

jurisdiction other than BC. A similar outcome is achieved by subsection 126 (2), whereby a non-resident of BC is only required to pay PST on legal services relating to BC.

These rules inadvertently encourage businesses with national operations to use legal service providers located outside of BC or to use service providers outside of BC to provide legal services for matters relating to a jurisdiction other than BC. The selection of a legal services provider should be based on their skills and experience, not on the PST status of the legal fees. Moreover, PST should not be payable on legal services acquired in BC relating to a jurisdiction other than BC. The payment of PST on the purchase of legal services in BC for matters outside the jurisdiction can create double taxation if the jurisdiction to which the services relate also imposes sales tax on the legal services.

For example, if a business with operations in BC and Saskatchewan acquires legal services relating to Saskatchewan from a BC-based service provider, the service will be subject to tax in both BC and Saskatchewan. In contrast, an exemption is available in Saskatchewan for legal services provided in Saskatchewan relating to BC, resulting in tax applying only once to the service.

TEI recommends the Ministry add a new provision to the PSTA or the Regulation to exempt PST on BC-based businesses obtaining legal services provided in BC relating to a jurisdiction other than BC.

Exemption for Pollution Prevention and Control

Section 99 of the Regulation exempts machinery and equipment used substantially and directly in the prevention, measurement, treatment, or reduction of pollution. In the 2020 BC Budget, it was announced the Regulation would be amended to eliminate restrictions on the location of where this equipment is located.

TEI is pleased the restrictions are being eliminated because often pollution prevention, measurement, treatment, or reduction equipment is not located at or near the site where the manufacturing, processing, mining, or refinery activities occur.

Despite the announcement in the 2020 BC Budget, this exemption is still only available if the pollutants are attributable to manufacturing TPP or the extraction or processing of petroleum, natural gas, or minerals. The exemption is further limited to taxpayers that are manufacturers, oil or gas producers, or mine operators. There is no PST exemption for similar machinery and equipment acquired for use in other industries, such as transport, warehousing, retail, construction, or farming, even though they operate under similar codes and rules intended to protect the environment. Also, no PST exemption is available for consumables used to clean up pollutants after a spill has occurred.

TEI recommends the Ministry further amend the PST exemption for pollution prevention and control equipment to make it available to all taxpayers acquiring these items for business use. TEI also recommends the Ministry expand the PST exemption to include consumables used to clean-up after an environmental spill has occurred.

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TEI welcomes the opportunity to meet with Ministry staff to discuss these comments and other issues relating to the administration of the PSTA, MFTA, and CTA to ensure the system operates in a practical, effective, and efficient manner to benefit the Ministry and taxpayers.

TEI's comments were prepared under the aegis of TEI's Canadian Commodity Tax Committee, whose chair is Chantal Groulx, and whose legal staff liaison is Pilar Mata. If you have questions about our recommendations, please call Ms. Groulx at (514) 399-7877 or email her at chantal.groulx@cn.ca.

Respectfully submitted,

Tax Executives Institute



Katrina Welch
International President