



February 22, 2022

DST Act Consultation
Tax Policy Branch
Department of Finance Canada
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RE: Comments Concerning Canada's DST Act Consultation

Thank you for the opportunity to submit comments on Canada's draft Digital Services Tax Act ("the Act") as Canada considers how to implement the Digital Services Tax ("DST") announced in the 2020 Fall Economic Statement and Budget 2021.

The National Foreign Trade Council ("NFTC"), organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the Organization for Economic Cooperation and Development ("OECD") and the Inclusive Framework in establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations. A list of the companies comprising the NFTC's Board of Directors is attached as an Appendix.

Canada's Proposal Undermines OECD Negotiations

According to the Backgrounder provided with the Act, Canada proposes to adopt a three percent DST on gross revenues that would take effect on January 1, 2024, if Pillar 1 of the OECD negotiations has not been implemented globally by that time. However, the tax would be retroactive to January 1, 2022.

The timing of Canada's release of the DST legislation is surprising in light of the October Inclusive Framework agreement reached by 137 countries, including Canada, in which countries "commit[ted] not to introduce such measures in the future." Despite this agreement, Minister Freeland announced her continued desire for Canada to implement a DST and now there is a legislative proposal under consideration. Moving forward with DST legislation now – even if the effective date is deferred - threatens the October agreement, which provided a much-needed standstill to DST creation globally. If Canada continues to move forward with DST adoption now, that could undermine the carefully balanced political agreement under the Inclusive Framework and reignite concerns of a global tax-and-trade war. At a minimum, Canada's actions call into question its commitment to the OECD Inclusive Framework process and violate the spirit – if not the letter – of that agreement.

Canada's DST Proposal Contravenes USMCA Commitments

In addition, adopting a DST prior to the conclusion of the OECD's work could implicate Canada's obligations under the U.S.-Mexico-Canada ("USMCA") free trade agreement and introduces an unnecessary conflict into the U.S.-Canadian relationship. The USMCA digital trade chapter explicitly recognized that digital trade promotes economic growth and that digital trade frameworks should promote confidence in digital trade and avoid unnecessary barriers to its use and development. Canada's DST runs counter to these objectives as it is "unusually burdensome" and would disproportionately subject U.S. innovative companies to this tax, which also implicates Canada's USMCA national treatment commitments on investment and cross-border services. On December 15, USTR issued an official statement expressing concerns about the DST proposal. Additionally, Senators Wyden and Crapo wrote to USTR in January calling it "targeted, discriminatory taxation" that needed to be addressed as part of USMCA enforcement.

Unilateral DST Measures Pose a Growing Threat to Multilateral Solutions

Canada's decision to proceed unilaterally with implementing a DST while OECD negotiations are ongoing follows that of several other countries including France, the United Kingdom, India, and Argentina. Advancing unilateral DSTs undermines the OECD effort to achieve multilateral consensus to make changes to the global tax framework that is necessary to ensure that jurisdictions apply taxes in a non-discriminatory manner. By adding to the list of countries who have enacted unilateral DSTs, Canada is giving cover to other countries to advance their interests in proposing, implementing, and collecting discriminatory services taxes, further fraying the global international tax framework and prospects for multilateral agreement.

Countries should recognize that the solution to the tax challenges of the digitization of the economy is to develop nondiscriminatory tax regimes that are administered in line with existing OECD guidelines.

It is critical for all jurisdictions participating in the Inclusive Framework to agree to be bound by, and to implement, a new consensus, and to repeal any unilateral measures currently in place upon political agreement at the OECD, as well as to agree to refrain from adopting additional unilateral taxes. Rather than pursue a unilateral DST now, Canada should withdraw this proposal and work instead to help build and implement a global consensus for a modern, fair, and global approach to address tax challenges arising from the digitalization of the economy. Targeted, discriminatory taxes against U.S. firms are not an appropriate solution.

About NFTC

NFTC is the leading business association dedicated solely to promoting the interests of U.S. companies in international commerce. The Council advances global commerce through the promotion of international trade and tax policies that contribute to economic growth and job creation. We seek to strengthen the rules, norms and key institutions that enable access to the global economy.

NFTC's membership spans the breadth of the national economy. It includes sectors such as energy products, capital goods, transportation, consumer goods, technology, healthcare

products, services, e-commerce, and retailing. Our companies account for more than \$3 trillion in total sales worldwide, employ over five million Americans and produce a large share of our nation's total exports. NFTC members play an important role in ensuring a healthy national economy and promoting U.S. global leadership.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Jake Colvin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jake Colvin
President

Attachment

List of NFTC's Board of Director Companies

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| ABB Incorporated | KPMG, LLP |
| Amazon | Mars Incorporated |
| American International Group | Mastercard International |
| Amgen | McCormick & Company, Inc. |
| Anheuser-Busch | Microsoft Corporation |
| Applied Materials | Mondelēz International, Inc. |
| BP America Inc. | National Foreign Trade Council |
| Caterpillar Incorporated | Oracle Corporation |
| Chevron | Pernod Ricard USA |
| Cisco Systems, Inc. | Pfizer International Incorporated |
| Corning Incorporated | Pitney Bowes |
| Dentons US LLP | PricewaterhouseCoopers LLP |
| DHL Express (USA) Inc. | Procter & Gamble Company |
| eBay Inc. | Qualcomm Incorporated |
| Ernst & Young LLP | Raytheon Technologies |
| ExxonMobil Corporation | Samsung Electronics America |
| Facebook | Schneider Electric USA |
| FedEx Express | Siemens Corporation |
| Fluor Corporation | Siemens Energy, Inc. |
| Ford Motor Company | Stellantis NV |
| General Electric Company | TE Connectivity |
| Gilead Sciences, Inc. | Texas Instruments |
| Google Inc. | The Coca-Cola Company |
| Halliburton Company | TotalEnergies USA |
| Hanesbrands Inc. | Toyota Motor Sales, USA, Incorporated |
| Hewlett Packard Enterprise Company | UPS |
| HP Inc. | Visa Inc. |
| IBM Corporation | Walmart Inc. |
| Johnson Controls | |