Coalition for culture and media
CONTINUITY - FAIRNESS - SUPPORT

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Written Submission to the House of Commons Standing Committee on Finance

For the Pre-Budget Consultations In Advance of the 2020 Budget

August 1, 2019

List of Recommendations

Recommendation 1

- That the government make legislative changes to require foreign e-commerce companies that do business in Canada to collect the GST/HST on their taxable goods—whether tangible or intangible—and services sold in Canada.

Recommendation 2

- That the government clarify the deductibility provisions in the *Income Tax Act* (sections 19.1 and 19.01) or modify the Canada Revenue Agency's interpretation thereof to remove tax deductions on advertising expenses paid by Canadian companies to foreign media organizations, including Internet media.

Recommendation 3

- That the government replace the antiquated definition of "broadcasting" in the *Income Tax Act* and the *Interpretation Act* by the technologically neutral definition in the *Broadcasting Act* in order to achieve consistency in all federal statutes.

Introduction

E-commerce is an increasingly important part of Canada's economy, and this trend will only continue to grow in the coming years. In fact, the entire global economy is changing, which is what led the Organisation for Economic Co-operation and Development (OECD) to stop using the term "digital economy" and instead use "digitalisation of the economy." According to the OECD, "the rapid spread of digitalisation, coupled with the liberalisation of trade policy, has increased the pace of globalisation and induced an ongoing structural transformation of the economy. As the transformative process is having an impact across the board, it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy."[1]

The federal government must stop regarding the digitalisation of the economy as a marginal phenomenon and start recognizing it as a fundamental shift that impacts Canadian businesses and must absolutely be taken into account in the next budget exercise.

Furthermore, Quebec, Saskatchewan and many countries have started to modernize their tax systems in order to maintain revenues and protect their industries, unlike Canada. The federal government's inaction is beyond comprehension and is benefitting many foreign online goods and services providers, including digital giants like Google, Facebook and Netflix, at the expense of Canadian businesses, their workers and our public services. It is time that the federal government help level the playing field for industries affected by the digitalisation of the economy.

I – CULTURE AND MEDIA AMONG THOSE IMPACTED FIRST

Canada's culture and media sector, which employs over 650,000 people and generates close to 3% of the country's GDP, was one of the first to be impacted by digitalisation and e-commerce. Additionally, it has been among the hardest hit by the increasingly globalized production and distribution of online goods and services since the late 1990s.

The Canadian culture and media sector has become increasingly unstable in recent years due to unfair competition resulting from our policymakers' failure to respond to the emergence of the digital giants. According to research by Ryerson University, over 275 Canadian media outlets closed or merged between 2008 and 2019. Advertising revenue and television subscriptions have been dropping for a number of years, while more and more Canadians are paying for foreign online broadcasting services.

Unlike Canadian companies, foreign e-commerce companies that sell taxable products are not required to collect the goods and services tax or harmonized sales

[1] OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS,* OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, May 2018, p. 191.

tax (GST/HST) on subscriptions sold to and advertisements targeted at Canadian consumers.

We must make our tax system fairer to support our media outlets and preserve our country's healthy democracy, cultural sovereignty and regional economic vitality.

II – RESTORE TAX FAIRNESS

All companies should be paying their fair share of sales taxes (or value-added taxes), whether they are online services or traditional companies that use e-commerce to do business in Canada. This symmetry in tax treatment is vital as the economy becomes increasingly digital.

The OECD recognizes that "one of the broader tax challenges arising from digitalisation is the challenge associated with the collection of VAT on cross-border trade in goods, services and intangibles, particularly where they are acquired by private consumers abroad."[2] In order to overcome these challenges, the OECD is recommending that countries adopt the destination principle, whereby all VATs are collected by both local businesses and foreign vendors and paid to the consumer's country of residence, something the European Union and many other countries have been doing since 2003.

In a report released this spring, the Auditor General of Canada (AG) noted that, of 60 countries surveyed by the OECD, Canada is one of only two that has not yet adapted its tax system to the digital economy. The AG added that the federal government's delay in collecting the GST/HST on goods and services sold through cross-border e-commerce is creating unfair competition for Canadian businesses. This delay is also depriving the country of over $169 million per year, according to public data from 2017.

As the AG said, "this finding matters because with e-commerce rapidly growing, sound analyses are needed to ensure that businesses are treated consistently under the GST/HST framework. It is also important that Canada's tax base be preserved to ensure that vital public services are funded."[3]

Furthermore, in its 2018 report on e-commerce, the House of Commons Standing Committee on International Trade recommended that the Government of Canada "apply sales taxes on tangible and intangible products that are sold in Canada by domestic firms and by foreign sellers, including when such sales occur using an e-commerce platform."

Despite everything, the Government of Canada is dragging its feet for reasons unknown, especially given that most Canadians support tax fairness. In fact, an Environics Research survey conducted on behalf of the Professional Institute of the Public Service of Canada (PIPSC) found that nearly 80% of Canadians believe

[2] OECD, p. 102.
[3] In paragraph 3.20 of the report.

that companies like Netflix, Google, Amazon and Uber should be subject to Canadian taxes.

Finance Minister Bill Morneau said he would be in favour of taxing foreign companies that provide online services to Canadians as soon as the OECD countries reach a consensus.

This degree of caution is fully justified for income tax in order to ensure that multinational corporations do not move their profits to countries with lower tax rates, but is unwarranted when it comes to collecting the GST/HST on legally taxable goods and services that are falling through the cracks of our current, barely used self-assessment system ($3.2 million collected in 2015).

Since January 1, 2019, Quebec and Saskatchewan have been leading the way by requiring all foreign companies with e-commerce operations to collect provincial sales tax on intangibles. As a result, Quebec took in an additional $15.5 million for the first three months of the year—double what was projected. As of September 1, 2019, Canadian vendors outside Quebec will also be required to collect the QST on all goods and services sold to Quebecers online.

III – DEDUCTIBILITY OF ONLINE ADVERTISING

Canadian media outlets are also disadvantaged by tax deductions for Canadian companies that advertise on online foreign media platforms.

Starting in the 1960s, successive governments introduced a number of amendments to the *Income Tax Act* (section 19) to eliminate or limit the deductibility of advertising expenses on foreign newspapers, periodicals and broadcasters in order to incentivize advertisers to choose Canadian media. The purpose of these provisions, which are still in effect today, is to protect Canadian media from unfair competition with foreign media, preserve Canadian jobs and voices, and keep Canadian media Canadian.

However, the Canada Revenue Agency (CRA) currently allows full tax deductibility of advertising expenses on foreign internet-delivered media, pursuant to a 1996 interpretation of the *Income Tax Act* that was based on case law prior to then and antiquated definitions of "newspaper" and "broadcasting." Moreover, it did not reflect the technologically neutral approach of the *Broadcasting Act* or the evolution of media in the last 20 years.

Though online advertising revenue was scant in 1996, IAB Canada valued it at more than $7.7 billion in 2018,[4] 80% of which is paid to foreign companies, with two thirds going to American tech giants Google and Facebook.

[4] IAB Canada, *IAB Canada 2017 Actual + 2018 Estimated Canadian Internet Advertising Revenue Survey*, EY, Interactive Advertising Bureau of Canada, December 2018, p. 35, URL: http://iabcanada.com/content/uploads/2019/02/IABCanada_2017-Revenue-Full-Report_Dec1018.pdf

According to a study by the Friends of Canadian Broadcasting, the federal government would make considerable tax revenue if the current tax deduction were to be abolished—or the CRA interpretation modified—and Canadian advertisers continued to buy advertising from foreign online media. Based on 2018 data, up to $6.2 billion in advertising spending would no longer be deductible, and the government would collect an additional $1.6 billion in corporate tax revenue.

The study also estimates that if only 10% of these newly non-deductible advertising expenses were to shift back to traditional and digital Canadian media, the sector would generate an additional $600 million per year in advertising revenue, which is five times greater than the assistance promised in the last budget ($595 million) and does not come at the expense of taxpayers.

Conclusion

Collecting the GST/HST on all goods and services sold online and removing tax deductions for online advertising are vital measures to ensure that all companies doing business in Canada pay their fair share. These initiatives must be included in the 2020 budget, as they are paramount to securing tax funding for Canada's public services and preserving the country's tax and cultural sovereignty.

The Coalition for Culture and Media

The Coalition for Culture and Media is a collective of organizations that are active in the cultural and media sectors and represent hundreds of thousands of people across Canada. In its *Declaration for the sustainability and the vitality of national culture and media in the digital era*, the coalition calls upon governments to restore fiscal and regulatory fairness, to act with continuity, and to implement effective measures to support national culture and media.