

Recommendation of SkiptheDishes for the Digital Services Tax Act (Bill C-59)

House of Commons Standing Committee on Finance
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Dear Chairs and Esteemed Members of the House of Commons Standing Committee on Finance:

SkipTheDishes Restaurant Services Inc. ("**SkipTheDishes**") believes that the Digital Services Tax Act (part 2 of Bill C-59) ("**DSTA**") that will be enacted with retroactive effect to 1 January 2022, does not meet its stated objectives as it distorts the market and would create double taxation by subjecting companies to the DST that are already paying Canadian corporate income taxes ("**CIT**") in Canada with respect to the same income.

The submission below provides a further explanation to our recommendation for minor changes to the DSTA with significant benefits for all stakeholders, including SkipTheDishes, and no adverse consequences for Canada.

Company profile: SkipTheDishes

Just Eat Takeaway.com N.V. ("**JET**") has local presence in jurisdictions where it has operations in the form of a local entity or a permanent establishment. In Canada, JET operates through a taxable Canadian corporation, SkipTheDishes.

SkipTheDishes, founded in the prairies and headquartered in Winnipeg, provides work for approximately 2,500 employees in Canada, and tens of thousands of couriers who work via our platform, or the approx. 50,000 restaurant partners that rely on our network. SkipTheDishes connects over 5 million customers with the approx. 50,000 restaurants, while processing 10's of million orders.

For the relevant years to which the DSTA applies, JET generated a consolidated global revenue of more than €750 million, of which more than \$20 million (CAD) was generated through its operations in Canada.

SkipTheDishes is subject to CIT with respect to all revenue earned and generated in Canada. Whilst being in-scope for the Canadian DST, JET would be out-of-scope for Pillar One by falling below the €20 billion consolidated revenue threshold.

In addition, SkipTheDishes also collects and remits Goods and Services Tax ("**GST**"), Harmonized Sales Tax ("**HST**") and Provincial Sales Tax ("**PST**") on food ordering and delivery services to users located in Canada.

How the DSTA fails to meet its objective and purpose

One of the objectives of DSTs is to require profits earned by businesses to be taxed in the jurisdiction where economic activities occur and where value is generated, and that companies pay their fair share of taxation. As mentioned above, JET has a local presence in the jurisdictions where it runs its operations, including Canada. As a consequence, SkiptheDishes is subject to Canadian CIT.

It is therefore in conflict with the DST objective and purpose to subject SkipTheDishes to double taxation, by imposing both Canadian DST and Canadian CIT with respect to the same income.

Unless carefully designed, there are two ways in which the practical design and effect of DSTs may be at odds with their stated objective of creating a level playing field. Firstly, DSTs may lead to double taxation for digital companies, whereas non-digital companies would be subject to single taxation. This is caused by a simultaneous imposition of a CIT and a DST on the same income, which may occur both within one single jurisdiction and between two or more different jurisdictions.

Secondly, a DST is levied on the basis of gross income, whereas a (domestic and/or non-digital) business, subject to CIT only, is taxed on net income. This may lead to taxation of companies subject to a DST even where there are no or limited profits.

Adverse consequences of the DSTA for SkipTheDishes

The current Canadian DST results in double taxation and over-taxation for SkipTheDishes. A Canadian DST on top of the Canadian CIT will place SkipTheDishes in a distinct disadvantageous position in relation to other Canadian taxpayers. If and when a Canadian DST will be imposed, income from certain digital services derived by SkipTheDishes will be subject to both a Canadian CIT on profits at a rate of 28% and a Canadian DST on revenue against a rate of 3%. This combination leads to considerable double taxation which other Canadian taxpayers, not subject to a Canadian CIT or a Canadian DST, do not face.

Whilst SkipTheDishes will be able to deduct the Canadian DST from its Canadian CIT base, this will only partially reduce the problem of double taxation.

Recommendation to amend the definition of taxpayers in the DSTA

There should be no doubt about the fact that we are in favor of a Canadian DST, but only if applicable to companies providing digital services that are not otherwise taxed in Canada. The aim of a DST is to create a level playing field for all companies operating in Canada. Based on said principle, a DST should not apply to companies that operate in Canada and already pay a fair share of tax in Canada. A solution that is beneficial to all stakeholders, including the Canadian Government, is to make a change in the definition of taxpayer if a certain threshold of minimum taxation in Canada is met.

We would recommend adding the following language (in bold and underlined below) to the current definition of taxpayer in the DSTA:

taxpayer means an entity, whether or not the entity is liable to pay tax under this Act, but does not include (i) a corporation, commission or association all of the shares, or the capital, of which is held, directly or indirectly, by one or more persons each of whom is His Majesty in right of Canada or of a province (contributable) **or (ii) an entity subject to Canadian income tax at a minimum effective tax rate of [15%] with respect to its Canadian digital services revenue.**

Since the DST is the precursor of Pillar One, and Pillar One and Pillar Two are part of the same OECD global package to transform the current tax systems, we suggest using the level of minimum taxation in Pillar Two as a reference point to determine the threshold for an exemption under the DST.

The Pillar Two rules prescribe an effective tax rate of at least 15% in the jurisdiction a company operates in, and that would therefore be the suggested rate of CIT that must be paid in Canada to be exempt under the Canadian DST. In our example below, we work with an effective rate of 20%. We would like to provide further explanation to our solution on the following two topics:

1. The link between DST and CIT – the purpose of the DST is to tax companies that provide digital services that can otherwise not be taxed in Canada under the existing CIT system. Reference to effectively 15% CIT as a minimum threshold to be exempt

under DST is based on the Pillar Two global minimum tax rules. Only making a reference to a minimum level of taxation should not impact the qualification of the DST (*i.e.*, the DST should therefore not be (re)qualified as a direct tax). The solution we propose is explicitly not a formal or informal tax credit; and

2. Discrimination towards foreign companies (formal or in fact) – we do not suggest a formal or in fact exemption for Canadian companies from DST to avoid it being perceived as a discriminatory measure aimed at taxing foreign taxpayers. The exemption should apply to all companies that pay a minimum level of taxation in Canada in relation to the in-scope revenue generated with digital services in Canada. This is a non-discriminatory measure whereby taxpayers are not *prima facie* excluded based on residency but are excluded from DST if they reach the internationally accepted minimum level of taxation in Canada. This solution should not result in any difficulties with foreign countries, because all companies that operate in Canada – domestic with a subsidiary or foreign with a permanent establishment – may benefit from this exemption if an appropriate and internationally accepted level of CIT is paid in Canada.

We note that Canada is in a unique position compared to other countries that have already implemented a DST, because Pillar Two is now widely adopted by numerous jurisdictions. This is an opportunity to collect additional tax from digital companies that do not pay their fair share in Canada. At the same time, companies that operate an actual business in Canada and pay taxation in accordance with internationally accepted minimum standards will not be impacted.

Examples (assuming a threshold of 20%)¹

- **Scenario 1** - Company 1 is a Canada resident company that generates in-scope revenue for DST. The in-scope revenue is part of the CIT base in Canada. Company 1 is taxed at a minimum effective CIT rate of 20%. Company 1 should be excluded from Canadian DST.
- **Scenario 2** - Company 2 is a foreign resident company with a permanent establishment in Canada that generates in-scope revenue for DST. The in-scope revenue is part of the CIT base in Canada. Company 2 is taxed at a minimum effective CIT rate of 20%. Company 2 should be excluded from Canadian DST.
- **Scenario 3** - Company 3 is a foreign resident company with a permanent establishment in Canada that generates in-scope revenue for DST. The in-scope revenue is not part of the CIT base in Canada. Company 3 is taxed at a minimum effective CIT rate of 20%. Company 3 should **not** be excluded from Canadian DST.
- **Scenario 4** - Company 4 is a foreign resident company with a permanent establishment in Canada that generates in-scope revenue for DST. The in-scope revenue is part of the CIT base. Company 4 is not taxed at a minimum effective CIT rate of 20%. Company 4 should **not** be excluded from Canadian DST.

Signed,

Anoeska Narain, VP Tax
Paul Burns, CEO of SkipTheDishes

¹ Please see Annex 1 for a numerical example of these four scenarios

ANNEX I – NUMERICAL EXAMPLE

| Scenario 1 | [conclusion: exemption applies / no DST] | | Resident company Canada | |
|------------|--|-----------------|-------------------------|-------|
| | Revenue in scope for DST | | 100 | |
| | Other revenue | | 900 | |
| | Total revenue | | 1000 | |
| | Profit before tax allocable to Canadian tax base | | 100 | |
| | Canadian CIT | | 20 | |
| | Effective tax rate | | 20% | > 15% |
| | DST revenue included in the Canadian CIT base? | | | yes |
| | | | | |
| Scenario 2 | [conclusion: exemption applies / no DST] | Foreign company | PE in Canada | |
| | Revenue in scope for DST | 0 | 100 | |
| | Other revenue | 0 | 900 | |
| | Total revenue | 0 | 1000 | |
| | Profit before tax allocable to Canadian tax base | | 100 | |
| | Canadian CIT | 0 | 20 | |
| | Effective tax rate | | 20% | >15% |
| | DST revenue included in the Canadian CIT base? | | | yes |
| | | | | |
| Scenario 3 | [conclusion: exemption does not apply / DST] | Foreign company | PE in Canada | |
| | Revenue in scope for DST | 100 | 0 | |
| | Other revenue | 700 | 200 | |
| | Total revenue | 800 | 200 | |
| | Profit before tax allocable to Canadian tax base | | 100 | |
| | Canadian CIT | | 20 | |
| | Effective tax rate | | 20% | >15% |
| | DST revenue included in the Canadian CIT base? | | | no |
| | | | | |
| Scenario 4 | [conclusion: exemption does not apply / DST] | Foreign company | PE in Canada | |
| | Revenue in scope for DST | 800 | 100 | |
| | Other revenue | | 100 | |
| | Total revenue | 800 | 200 | |
| | Profit before tax allocable to Canadian tax base | | 200 | |
| | Canadian CIT | | 40 | |
| | RDEC or other subsidy or credit | | 20 | |
| | Effective tax rate | | 10% | <15% |
| | DST revenue included in the Canadian CIT base? | | | yes |