

**Protecting Canadian Taxpayers in the Digital Age**  
**Submitted to the Department of Finance Canada's**  
**Consultation on Tax Planning by**  
**Multinational Enterprises**

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## About the Canadian Taxpayers Federation

The Canadian Taxpayers Federation (CTF) is a federally incorporated, not-for-profit citizen's group dedicated to lower taxes, less waste and accountable government. The CTF was founded in Saskatchewan in 1990 when the Association of Saskatchewan Taxpayers and the Resolution One Association of Alberta joined forces to create a national taxpayers organization. Today, the CTF has 84,000 supporters nation-wide

The CTF maintains a federal office in Ottawa and regional offices in British Columbia, Alberta, Prairie (SK and MB), Ontario and Atlantic. Regional offices conduct research and advocacy activities specific to their provinces in addition to acting as regional organizers of Canada-wide initiatives.

CTF offices field hundreds of media interviews each month, hold press conferences and issue regular news releases, commentaries, online postings and publications to advocate on behalf of CTF supporters. CTF representatives speak at functions, make presentations to government, meet with politicians, and organize petition drives, events and campaigns to mobilize citizens to affect public policy change. Each week CTF offices send out Let's Talk Taxes commentaries to more than 800 media outlets and personalities across Canada.

Any Canadian taxpayer committed to the CTF's mission is welcome to *join at no cost* and receive issue and *Action Updates*. *Financial supporters* can additionally receive the CTF's flagship publication, *The Taxpayer* magazine published four times a year.

The CTF is independent of any institutional or partisan affiliations. All CTF staff, board and representatives are prohibited from holding a membership in any political party. In 2013 the CTF raised \$3.9 million on the strength of 22,971 donations. Donations to the CTF are not deductible as a charitable contribution.

## Summary

The way Canadians entertain themselves at home and on the road is changing dramatically. Way back in 2012, four per cent of Canadians reported only watching television programming online.<sup>1</sup> In 2013 the Media Technology Monitor report estimated that 21 per cent of Canadian adults have a Netflix subscription.<sup>2</sup>

As more and more Canadians choose to consume television, film, music and gaming content online, the industry is changing, and foreign companies have a huge advantage over their Canadian competitors.

Canadians may have noticed that they don't pay sales tax on their Netflix subscription. A nice tax break for Canadian consumers, but not fair to Netflix's Canadian competitors. Consumers are paying sales tax on digital content from Canadian content providers, delivered via satellite, cable, and via the internet, but not on Netflix and other non-Canadian media services.

This situation arises because non-residents doing business in Canada don't have to charge sales tax if they are not considered to be "carrying on business in Canada".

Since Netflix is a foreign company, and its servers aren't located in Canada, it has no physical presence in Canada it doesn't need to charge HST, GST or PST.<sup>3</sup>

This isn't fair to Canadian businesses. Our tax system shouldn't put Canadian companies at a disadvantage. Think about what would happen if this unfairness extended to the retail sector. What if Canadian Tire had to charge taxes but Wal-Mart didn't? Canadian retailers couldn't compete. We would end up with a foreign-owned retail sector.

What if Canadian McDonald's locations were exempt from charging GST or HST, while Tim Hortons were required to collect the tax?

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<sup>1</sup> CRTC issues annual report on the state of the Canadian communication system.

<http://www.crtc.gc.ca/eng/com100/2013/r130926.htm>

<sup>2</sup> Media Technology Monitor *MTM Says 21% of Canadians Subscribe to Netflix*.

<https://www.mtm-otm.ca/files/Press/MTM%20says%2021%20percent%20Canadian%20Subscribe%20to%20Netflix-The%20Wire%20report%20-%20sept%202014.pdf>

<sup>3</sup> Carrying on business in Canada.

<http://www.cra-arc.gc.ca/E/pub/gl/p-051r2/p-051r2-e.html>

That's exactly what's happening in the television market, and it needs to change.

Some in government have suggested that, in the interest of fairness, all content providers should be forced to collect these taxes.

The Canadian Taxpayer's Federation disagrees.

Canadian consumers already pay enough taxes. In 2010, Canadians paid nearly \$60 billion dollars in federal and provincial sales taxes. The answer isn't to tax Netflix subscription and other foreign digital content, but to eliminate sales tax on all digital content providers. That would be fair for businesses, and consumers.

## Principles

The Canadian Taxpayer's Federation believes that taxes should be fairer, lower and simpler.

**Fairer** – Taxes need to be fair. Taxes shouldn't put Canadian businesses at a competitive disadvantage.

**Simpler** - Taxes collection should be efficient and simple. There is no need for complexity in the tax code.

**Lower** - Canadians pay far too much taxes. It's time for Canadians to get some tax relief.

## **Concerns and Recommendations**

### **Fairer Taxes**

Recommendation:

- Level the playing field by eliminating the tax for all digital content, whether provided by Canadian or foreign companies.

Canadian content providers have a hard enough time competing with their American rivals. The top-watched television series in Canada are all American, except for two: the Amazing Race and Hockey Night in Canada.<sup>4</sup> Canadians choose

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<sup>4</sup> TV Top 10: What Canadians Watched in 2013.

<http://www.newswire.ca/en/story/1282887/tv-top-10-what-canadians-watched-in-2013>

to watch American television shows, and often do so through an American service provider such as Netflix.

What Canadians choose to watch isn't determined by government tax policy but it might change *how* they watch it and Canadian television businesses have enough challenges without the government putting them at a tax disadvantage.

The source of the unfairness is whether a business is considered to be "carrying on business in Canada" or not. This is important because if a company isn't "carrying on business in Canada" it doesn't need to charge GST or HST. That is a huge competitive advantage. Depending on the province, that's a 5 to 15 per cent reduction in the after-tax price.

Netflix costs \$8.99 for new Canadian costumers. If a Canadian company offered an identical service at the same price it would cost up to \$10.34 after taxes. If you rent a new release movie from iTunes it's tax free, but if you rent it from your cable or satellite provider it's taxed. If the rental cost \$6.99 that's all you pay on iTunes but it could cost you \$8.03 from your cable or satellite provider.

Determining if a non-resident business is considered to be "carrying on business in Canada" involves considering 12 factors and making a judgment based on the varying importance of those factors. The CRA provides an example on "Digitized Products" that closely resembles Netflix's situation, and concludes that the "factors are insufficient to support a conclusion that the non-resident supplier is carrying on business in Canada".<sup>5</sup> Yet, 21 per cent of Canadian households watch Netflix.

For a strong Canadian economy we need to create a fair tax environment for Canadian businesses, an environment where Canadian companies can compete with their foreign rivals. The global reach of online content providers means that non-resident businesses will increasingly compete for Canadian consumers' dollars.

This is a good thing; more competition means lower prices for consumers and more options. However, Canadian companies need to be on an equal footing with their foreign rivals.

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<sup>5</sup> Carrying on business in Canada, Example 14.

[http://www.cra-arc.gc.ca/E/pub/gl/p-051r2/p-051r2-e.html#P335\\_33511](http://www.cra-arc.gc.ca/E/pub/gl/p-051r2/p-051r2-e.html#P335_33511)

## **Simpler Taxes**

Recommendations:

- Don't try to impose taxes that can be easily avoided by consumers
- Don't create unnecessary complexity in the tax code, lower taxes instead

Forcing non-resident content providers to charge sales tax would be difficult, if not impossible. Digital downloads are notoriously difficult to monitor and new companies are popping up all over the world, every day. The government could require non-resident businesses providing digital download services to register for GST/HST purposes – but how could it possibly monitor what these offshore businesses are providing to Canadians?

Is the CRA going to monitor what digital downloads Canadians make?

Canadians won't stand for that.

Tech savvy consumers already use proxy servers and VPNs to access services like Hulu and Amazon Instant Video that aren't meant to be available in Canada. They also sometimes trick companies into believing they are from lower tax jurisdictions.

Large, established companies like Netflix and iTunes, if forced, might comply and charge sales tax, but smaller, less scrupulous competitors might not bother.

The government of Canada can spend millions trying to tax digital downloads from a plethora of foreign providers. It simply isn't worth it. There is a much simpler solution that lowers taxes for Canadians.

## **Lower Taxes**

Recommendation:

- Eliminate taxes on all digital content

Our 84,000 supporters are interested in lower taxes. Not more taxes. All Canadians deserve to keep more of their hard-earned paycheques.

Increasing taxes isn't the solution. If foreign providers are forced to charge GST, HST, or PST, it's Canadian consumers that will be paying, not foreign companies.

Canadians pay enough taxes.

Taxes should be collected efficiently and fairly. Where that isn't possible, they should be eliminated. In this case, lowering taxes levels the playing field for Canadian content providers and puts dollars back in Canadians pockets. That's something everyone can support.

### Conclusion

To expand taxation when the federal budget is nearly balanced is not sound fiscal management; it's cheating on the promises that this government has made to Canadians. Lower, simpler taxes will foster entrepreneurship and growth and ultimately grow the tax base that government uses to provide services to Canadians.

We have outlined how to get there when it comes to digital download taxation. We urge the Harper government to heed our advice.