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The Honourable Joe Oliver
Minister of Finance
International Tax Consultation
Tax Policy Branch
Department of Finance
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Consultation on Tax Planning by Multinational Enterprises

Dear Minister Oliver,

We are writing in response to the Government's invitation for comments on issues related to international tax planning by multinational enterprises ("MNEs"). We appreciate the opportunity to provide our views and we hope that our input will help inform Canada's participation in international discussions. We provide our consent to post this letter on the Department of Finance website.

Rogers Communications

Rogers is Canada's largest provider of wireless communication services and one of Canada's leading providers of cable television, high-speed internet and telephone services to consumers and businesses. Through Rogers Media, we are engaged in radio and television broadcasting, televised shopping, magazines and trade publications, sports entertainment, and digital media. Rogers is publicly traded on the Toronto Stock Exchange (TSX: RCI.A and RCI.B) and on the New York Stock Exchange (NYSE: RCI). We currently employ more than 28,000 people and, in our most recent fiscal year, recorded $12.7 billion in sales.

Rogers is a Canadian business. **Substantially all of the 28,000 people employed by Rogers are situated in Canada**. Our average annual capital investment in the Canadian broadcasting and telecommunications industry over the last five years has been approximately $2.0 billion. In April, 2014, we paid an additional $3.3 billion to the Government for 700 MHz spectrum, **which will bring our Canadian capital investment in 2014 alone to over $5 billion.** These capital investments will allow Rogers to extend coverage in Canadian cities, towns and rural areas and to deliver a faster mobile broadband and better video experience on mobiles and tablets for our customers.

As a Canadian company, Rogers is committed to working with the federal and provincial governments in their ongoing effort to protect the Canadian tax base, promote tax fairness and ensure the competitiveness of the Canadian tax system.

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In our letter dated June 5, 2014, we provided comments on what actions the Government should take to ensure the effective collection of sales tax on e-commerce sales to residents of Canada by foreign-based vendors. Here, we provide comments on questions raised by the Government in its 2014 federal budget (the "2014 Budget") with respect to the Government's active involvement in the work of the Organization for Economic Co-operation and Development (the "OECD") aimed at addressing "base erosion and profit shifting" ("BEPS"). While this letter specifically addresses two of the five questions in the 2014 Budget, we believe that the combined effect of our two letters is to provide input on all questions.

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We welcome the opportunity to discuss this letter in more detail with Department of Finance officials or officials in your office.

Yours sincerely,

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Response to the Government's Consultation on Tax Planning by MNEs

What considerations should guide the Government in determining the appropriate approach to take in responding to the issues identified – either in general or with respect to particular issues?

We believe this to be the most important question posed by the Government.

In our view, the considerations that should guide the Government in its approach to participating in the work on the OECD's BEPS initiative should be the same considerations or principles that guide the Government in setting Canadian domestic tax policy.

In 2008, the Advisory Panel on Canada's System of International Taxation (the "Advisory Panel") released its final report, which provided the results of its review of Canada's international tax system. The Advisory Panel's review included how the international rules affect both Canadian businesses investing in foreign markets and foreign businesses investing in Canada. The final report set out six guiding principles that should underpin Canada's system of international taxation. In the view of the Advisory Panel, Canadian international tax policy makers should be guided by the following principles:

1. Canada's international tax system for Canadian business investment abroad should be competitive when compared with the tax systems of our major trading partners.

2. Canada's international tax system should seek to treat foreign investors in a way that is similar to domestic investors, while ensuring that Canadian-source income is properly measured and taxed.

3. Canada's international tax system should include appropriate safeguards to protect the Canadian tax base.

4. Canada's international tax rules should be straightforward to understand, comply with, administer and enforce, to the benefit of both taxpayers and the Canada Revenue Agency.

5. Full consultation should precede any significant change to Canada's international tax system.

6. Canada's international tax system should be benchmarked regularly against the tax systems of its major trading partners.

The Government has never expressly endorsed these principles. However, as discussed below, some of these principles have long been features of Canadian international tax policy. Importantly, the Government has enacted a number of the Advisory Panel's recommendations, which the Advisory Panel acknowledged were developed by taking direction from these principles.

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All of the above principles, and in particular principles 1 to 3, are relevant and should guide the Government in determining the appropriate approach to take in responding to the issues identified as part of the BEPS initiative. It is important for the Government to participate in, and make a valuable contribution to, the OECD BEPS project. However, acquiescing to any consensus reached by OECD members should not be at the expense of abandoning any of Canada's guiding principles.

What are the impacts of international tax planning by MNEs on other participants in the Canadian economy?

We will address this question in three parts.

I. Stated Premise Underlying the BEPS Initiative

As noted in the 2014 Budget, the BEPS initiative reflects growing concern that governments are losing substantial corporate tax revenue because of international tax planning that exploits the interaction between domestic and international tax rules to shift profits away from countries where income-producing activities take place. For many, this concern is justified based on highly publicized press reports regarding certain large, well-known MNEs engaging in what may be considered inappropriate "international tax avoidance", allegedly resulting in such MNEs not paying their "fair share" of tax.

Through its participation in the BEPS project, the Government should ensure that this underlying premise is carefully considered and challenged so that any resulting agreement or recommendation does not result in unintended adverse consequences for Canadian companies. In that regard, we note the following:

1. The OECD concludes in chapter 2 of its 2013 publication, *Addressing Base Erosion and Profit Shifting*, that based on (i) data on global corporate tax receipts over time; (ii) an overview of statistics on foreign direct investments; and (iii) analysis of relevant studies regarding the existence and magnitude of BEPS, "it is difficult to reach solid conclusions about how much BEPS actually occurs".[1]

2. The BEPS initiative has a strong focus on "corporate income tax". However, corporations pay other taxes (such as sales, business, payroll, and property taxes) and make other payments to governments (such as fees and contributions) that are used by governments to finance the goods and services provided to all taxpayers. These "other" taxes and payments should be considered when assessing whether corporations pay their "fair

[1] The OECD's 2013 report confirms that cuts in global corporate tax rates have not led to a fall in the corporate tax burden, as measured as a percentage of the GDP ratio. Similarly in Canada, corporate tax revenues have been a constant share of GDP despite rate reductions in the past decade (see Duanjie Chen and Jack Mintz, *2013 Annual Global Tax Competitiveness Ranking: Corporate Tax Policy at a Crossroads*, The School of Public Policy, University of Calgary, Volume 6, Issue 35, November 2013).

share" of tax. In Canada, for example, a recent survey of sixty-three Canadian companies conducted by PricewaterhouseCoopers LLP on behalf of the Canadian Council of Chief Executives revealed that the "Total Tax Contribution" of these companies resulted in an average Total Tax Rate in 2012 of 33.4%; i.e., about a quarter more than their statutory income tax rate.[2]

3. Is it facile to blame BEPS on international tax rules that are "broke"?

   It is important to assess the extent to which broken tax rules are the root of the problem. Particular consideration should be given to whether BEPS is a reflection of:

   a. MNEs seeking to carry on their global businesses in the most tax (i.e., cost) effective manner by taking advantage of international tax rules enacted by governments to *encourage* such behaviour in order to attract investment or ensure competitiveness;

      and/or

   b. limitations in the corporate tax system to deal with modern day economies which, as correctly noted by the OECD, consist of greater economic integration across borders, increased importance of intellectual property and e-commerce as value-drivers and constant developments of information and communication technologies.

II. Impact of International Tax Planning by Canadian MNEs

Background

Generally, controlled foreign corporation ("CFC") rules (in Canada, the *foreign affiliate* and *foreign accrual property income* ("FAPI") regimes) are designed to ensure that a country's outbound system of taxation does not result in an inappropriate erosion of the domestic tax base. This has given rise to longstanding tension between ensuring that a country's outbound system of taxation is "competitive" with that of other countries, while at the same time ensuring that it does not result in an unacceptable erosion of the domestic tax base.

The OECD BEPS initiative proposes to introduce a new tension in the design of a country's CFC rules because of the belief that many countries' current CFC rules, or the lack thereof, facilitate the erosion of the tax base of *other* countries directly or indirectly through low tax jurisdictions. The BEPS initiative appears to suggest tightening of CFC rules to reduce the advantages or opportunities they present for MNEs to engage in BEPS – certainly, the focus is not on how to

[2] The report can be found at www.pwc.com/ca/en/tax. Rogers participated in the survey. Our 2012 Total Tax Rate was slightly less than the average of the other sixty-two companies surveyed (in 2013, our Total Tax Rate was higher than the 2012 average).

maintain the competitiveness of CFC rules because the competitiveness feature of current CFC regimes is seen as one of the root causes of BEPS.[3]

Implications for Canadian MNEs

The view that competitiveness of CFC regimes is a cause of BEPS presents a particular challenge to the Government. **Looking back on the principles upon which our foreign affiliate and FAPI regimes and policy have been based over the last 40 years, competitiveness is foundational.** In fact, competitiveness has been a key feature of our tax system for many more years than it has been a feature of many other countries' international tax systems. This has occurred for very good reasons given that Canada is a relatively small country economically, but with an open economy – facts that are not going to change.

Furthermore, it is a key feature of our foreign affiliate and FAPI regimes that the taxation of foreign business income in the source country is not relevant to the Canadian tax treatment of that income. As a policy matter, the reduction by Canadian companies of foreign taxes on foreign business income has not been of particular concern to the Canadian government.[4] In fact, Canadian tax rules have been introduced to give Canadian MNEs the flexibility to structure their foreign operations, directly or indirectly, through low-tax jurisdictions in order to reduce foreign taxes and enhance competitiveness.[5]

Canadians have debated the features of Canada's foreign affiliate and FAPI regimes over the last forty years. While certain modifications have been made, the essential features have remained intact.

In 1997, the *Report of the Technical Committee on Business Taxation* concluded that Canada's foreign affiliate system is "fundamentally sound and should be maintained". In 2008, the Advisory Panel stated "that the Canadian international tax system is a good one that has served Canada well" and in Chapter 3 of its final report notes the very positive benefits to the Canadian economy generated by outbound investment by Canadian MNEs, benefits that all Canadians and Canadian companies, such as Rogers, share.

The Canadian foreign affiliate and FAPI regimes are not perfect – the Advisory Panel made recommendations, consistent with its first and third guiding principles, to enhance the competitiveness of the regimes and to help protect the Canadian tax base. **While the regimes do**

[3] The OECD states that another root cause of BEPS is the role of low tax jurisdictions through which many MNEs plan the financing and structure of their international operations.
[4] The same does not apply to foreign "passive" income, which is generally taxable in Canada.
[5] Two recent examples are (i) the extension of our exemption system to countries with which Canada has entered into a Tax Information Exchange Agreement, which are typically countries that have a zero or a low rate of corporate tax; and (ii) the repeal of section 18.2 of the *Income Tax Act* (Canada) (the "Tax Act"), which, in addition to restricting interest deductibility in Canada, would have had the effect of restricting the application of paragraph 95(2)(a) of the Tax Act.

require ongoing review, any change should be made in accordance with Canada's guiding tax principles.

Accordingly, we recommend that the Government strongly resist any attempt by the OECD to make the Canadian foreign affiliate and FAPI regimes less competitive. In the absence of other compensating changes to Canada's tax rules (some of which are discussed below), this could have a very negative financial impact in the short to medium term on Canadian MNEs that have structured their foreign operations on the basis of the existing rules. In addition, the long term effect of such changes could impact Canada's ability to continue to generate the high number of Canadian MNEs that have been created in the past. These impacts would have a negative effect on the Canadian economy and on all Canadians.

We respect the intention of the OECD to help countries protect their domestic tax base. However, Canada could lead by example in this respect by referring to actions it has already taken to protect the Canadian tax base, such as those identified in the next part of this letter.

III. Impact of International Tax Planning by Foreign MNEs

The Government encourages foreign investment in Canada because of the economic benefits to Canadians of such investment. The Advisory Panel noted that inbound direct investment does not displace domestic economic activity and in fact, "it adds to the stock of capital invested into Canada, resulting in faster growth, greater employment, higher living standards and additional tax revenues for governments in Canada".

From a Canadian tax perspective, the Government has tried to ensure that foreign MNEs are not able to structure and finance their investments in Canada in a manner that, all other things being equal, enables them to gain a competitive tax advantage over domestic Canadian companies. To that end, the Government has enacted changes to our tax rules, including certain changes proposed by the Advisory Panel, to "level the playing field". These include:

1. recent foreign affiliate dumping rules;
2. tightening of our thin capitalization rules;
3. recent consultation on treaty shopping;
4. changes to the Canada-United States Treaty to mitigate the use of hybrid financing and holding structures that gave United States companies certain tax advantages; and
5. reduction in Canadian corporate tax rates.

For the reasons articulated above in respect of Canada's foreign affiliate and FAPI regimes, we are skeptical that many (if any) foreign countries will implement changes to reduce the competitiveness of their CFC regimes. To the contrary, we expect countries will seek to enhance the competitiveness of their systems (the United Kingdom, for one, is very much out in front of the pack in this regard).

The Government will have to continue to monitor foreign companies with investments in Canada for international tax planning that has a significant negative impact on the Canadian tax base.

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The reality is that the Government is unlikely to be able to enact tax measures that will entirely eliminate this problem, resulting in a disadvantage to Canadian companies unless further action is taken. But the Government should consider enacting certain measures that would assist Canadian corporations including the following:

1. Lower corporate tax rates – While Canada has a top marginal effective tax rate ("METR") ranking globally, this is more a reflection of preferential tax treatment for manufacturing & processing activities than to the general corporate tax rate. Service and construction industries, including telecommunications, have a much higher METR because they do not benefit as much from tax preferences.[6]

2. Enhanced capital cost allowance ("CCA") regime – The Government should ensure the CCA regime reflects economic reality and the economic life of assets. Accelerated CCA could be extended to other industries, such as the telecommunications industry, which require a high degree of capital investment that is costly and where the payback periods can be long. Moreover, the technology investment cycle is shortening and this puts more pressure on companies, such as Rogers, to realize sufficient returns to enable investment in new technology. Additionally, as recommended by the Canadian Certified General Accountants in 2013, the "half-year" and "available for use" rules are not particularly useful and add unnecessary complexity to the tax system.

3. Implementation of a patent box regime – Productivity improvements are critical in order for Canadians to maintain their standard of living, raise income levels and increase the tax base. A patent or innovation box regime, similar to that enacted in other countries such as the United Kingdom, could provide a better system to ensure greater innovation and commercialization.[7] Such a regime could also help, as the Advisory Panel suggested, encourage Canadian MNEs (as well as Canadian domestic companies entering into international markets) to carry out more functions such as holding foreign investments and financing, licensing foreign operations from Canada rather than from foreign countries (in particular, from low-tax jurisdictions).

4. Implementation of a corporate group loss transfer system – Such a system would enhance the efficiency, fairness and neutrality of Canada's corporate tax system. The resulting tax certainty would further enhance the competitiveness of Canada's corporate tax system, which, in turn, would lead to increased investment, economic activity and employment. Such a system would also lead to greater monitoring of transfers of losses and other tax attributes within a corporate group and the impact of such transfers on provincial income tax bases.

5. Lower personal tax rates – High personal tax rates negatively influence where MNEs choose to locate their employees, which further incents companies to shift functions to

[6] Supra, footnote 1.

[7] See Nick Pantaleo, Finn Poschmann, and Scott Wilkie, *Improving the Tax Treatment of Intellectual Property Income in Canada*, Toronto: C.D. Howe Institute, Commentary 379, April, 2013.

low-tax jurisdictions. High personal tax rates also have a negative impact on investment and savings by Canadians – savings they will need in the future to offset the impact of reduced government spending. This, in turn, results in a disincentive to work and to upgrade job skills. Combined, these factors negatively impact productivity and growth.