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Standing Senate Committee on Banking, Trade and Commerce
The Senate of Canada
Ottawa, Ontario K1A 0A4

BY EMAIL: banc@sen.parl.gc.ca

Hon. Members,

On behalf of the Electronic Transactions Association ("ETA"), I would like to thank you for the opportunity to participate in the Committee's study of Division 8 of Part 4 in Bill C-30, the Budget Implementation Act, on May 12, 2021. The following document serves as ETA's written response to the Committee.

Retail Payments Activities Act

First and foremost, ETA would like to re-emphasize the importance of the *Retail Payments Activities Act* ("RPAA"), which is included in Bill C-30. As Canada's FinTech ecosystem continues to grow, it is important to have a regulatory framework that captures non-traditional payment service providers to encourage greater access, participation and investment in Canada.

ETA and its members believe greater access for non-traditional payment service providers using objective, risk-based criteria will serve as a platform for innovation in the Canadian payments ecosystem. Experiences elsewhere in the world have found that easing barriers to entry into payment systems balanced with the appropriate controls to maintain safety and soundness, leads to increased competition and innovation in the provision of payments services; this ultimately benefits both consumers and businesses.

The implementation of the RPAA is an important first step toward modernizing Canada's payments system. Looking ahead, important changes to Canada's payments system, including amendments to the *Canadian Payments Act* ("CPA") are needed to broaden the membership of Payments Canada to allow access to new system participants. This entails creating new rules to facilitate risk-based access to the Real Time Rail ("RTR"), as well as the proposed access to the exchange networks for electronic payments streams. Currently only Payments Canada members can participate in the payments system, excluding many new and innovative firms' direct access.

ETA encourages the government to continue to build on the foundation that will be established with the RPAA by modernizing the CPA to create an associate member class within Payments Canada during the next budgetary process. Such a change would facilitate access to the RTR that Payments Canada is on track to complete by 2022. In combination, these measures would provide ETA members with the opportunity to deliver innovative, cost-effective products and services to consumers and merchants.

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In formulating the access rules to the RTR, ETA believes the Department of Finance should tailor the approach so that it is appropriate for the FinTech industry's participation. In that regard, the access rules should provide equal opportunity and ensure that the FinTech industry is provided with a level playing field so that it can effectively compete in the Canadian market and have a positive regulatory framework for innovation. Where the regulatory requirements are too onerous and are not developed in accordance with sound risk management practices, it will be more difficult for the FinTech industry to participate, and competition and innovation will be reduced.

Given this, ETA supports leveraging the RPAA as a precondition for associate members to access the RTR and the exchange networks for electronic payment streams. ETA and its members recognize that while the goal of fostering competition and innovation is important, it needs to be balanced against mitigating material risks in the payment system. The RPAA regime and its prudential regulatory controls should generally avoid duplicative sets of regulation and redundant requirements to address similar risks and appropriately ease barriers of entry into the Payments Systems.

ETA also encourages broad participation in Payments Canada's governance structure to ensure that future decision-making continues to foster competition and innovation while also balancing this against the need to safeguard against risk in Canada's payments systems. To support a competitive marketplace, it is important that decisions regarding the payments system consider the costs of participation that may be imposed on FinTechs so that all participants are on a level playing field. Any proposed governance structure should be modeled such that this objective is adequately monitored by Payments Canada's governance and advisory bodies.

These measures would provide greater access for non-traditional payment service providers using objective, risk-based criteria and will serve as a platform for innovation in the Canadian payments ecosystem. At the same time, regulation of associate members under the RPAA, alongside oversight by the Bank of Canada and Payments Canada through its compliance and enforcement standards, will ensure that the safety and soundness of the payments systems are preserved.

<u>Digital Services Tax</u>

Budget 2021 proposes to implement a new Digital Services Tax ("DST") by January 1, 2022. The creation of the DST has been under discussion internationally for a number of years. It has been proposed as a way of ensuring digitally-intensive or consumer-facing companies pay taxes in jurisdictions where they conduct business – even if they don't have a physical presence in that jurisdiction. Based on our preliminary review, however, the proposal put forward in the Budget appears to go much wider than that and will see the DST imposed on a significant number of Canadian-based digitally intensive companies – like FinTechs – that already pay taxes in this country.

Finance Canada is currently undertaking a consultation on the DST, as part of the preparation for implementation in January 2022. ETA thought it important to flag the DST, in particular the proposed provision covering revenues from data gathered from users, as a significant concern for a number of our members – and for the emerging FinTech industry in Canada. It will be very important that Finance Canada understands and considers the broad use cases that will be captured, perhaps unintentionally. A few examples include: (a) the use of data generally by entities that is necessary to the function of a revenue generating service and/or to improve services and offerings that are not distinctly commercialized or tracked but made available as improved services for which income tax is already paid; (b) data services for which income tax is already paid; (c) data from loyalty programs; and (d) data from payment and payment system services.

Despite being designed as an interim measure, given the global nature of the problem the DST attempts to address ETA also encourages the Government of Canada to continue pursuing multilateral efforts through the OECD to achieve a global solution to such a complex public policy issue. ETA believes that unilateral responses to complex tax issues like the implementation of the DST could stifle innovation and make it more challenging for new products and services to launch and operate in Canada.

Because the DST would be a unilateral measure, ETA recommends that its scope be limited to only capture highly digitalized business models that involve the active participation of users on an internet platform (such as online marketplaces, social media, and online advertising). To be more specific, we urges Finance Canada to exclude the sale of user data gathered from users of an online interface or to limit its application, in order to ensure that data gathered by traditional businesses like manufacturers, payment processors and card networks, and financial institutions are not in scope. This could be achieved by carefully crafting the definition of an 'online interface'. For context, many (proposed) DSTs in other jurisdictions specifically exclude these traditional business activities from the scope of their proposed regimes.

With respect to communication, payment, and payment system services, we would cite the proposal of the EU Commission as an example of this exemption which states that that, *"the value creation for such other services, which can be generally defined as communication or payment services, lies with the development and sale of support software which enables that interaction to take place, and it is less attached to the users' involvement. Therefore, communication or payment services remain outside the scope of the tax…"*. ETA suggests Canada apply a similar exclusion to clarify the role of these services.

ETA also submits that a proposed DST should treat all companies equally and avoid double taxation: meaning that the DST should be fully creditable against any tax, excluding customs duties, excise duties and GST, paid in Canada.

With respect to the eligible revenue thresholds proposed for the DST ETA submits that the suggested threshold of $20 million is too low, and that consideration should be given to a much higher threshold. Regarding eligible revenue, the DST should not apply to B2B revenue collected from Canadian businesses because in the case of business-to-business activities, the business customer pays income tax on its business profits in the market jurisdiction.

Finally, given the complexity of implementation, ETA would also suggest that the January 1, 2022 timeline to create a new tax regime this multifaceted, that for instance requires detailed sourcing and tracing of yet defined revenue streams, is overly ambitious and will be challenging for obligated parties to manage from an administrative perspective.

ETA thanks you for the opportunity to submit these comments and looks forward to providing whatever additional information we can provide to inform the Committee's review of Bill C-30.

Respectfully submitted,

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About ETA

The Electronic Transactions Association (ETA) is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. Its membership spans the breadth of the payments industry to include independent sales organizations, payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, equipment suppliers, and online small business lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives. ETA advocates for the payments industry in Canada to help drive innovation in the global market for payments technology services.