

# Intelligence MEMOS



From: Rosalie Wyonch  
To: Ministers of Finance  
Date: October 24, 2017  
Re: **TO TAX OR NOT TO TAX, THAT'S NOT THE QUESTION**

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Recently, there has been much ado about Netflix: whether it should be regulated or taxed and whether it is destroying Canadian content production or it is a new global platform that will export Canadian content to the world. The federal government recently touted an agreement with the company for a \$500-million investment in Canadian content over five years.

The Quebec legislature swiftly and unanimously voted for a motion to “ensure the Quebec sales tax is imposed on all foreign companies that offer products and services online, notably in the cultural sector, as soon as possible.”

The debate about digital content providers and taxes has become very focused on Netflix and Canadian broadcasting rules.

This focus is too narrow and misses the real issue.

Foreign providers of digital products and services, including e-books, games, streaming services like Spotify and Netflix, and marketplace platform operators have a competitive advantage over Canadian companies because they are not obligated to collect and remit GST/HST.

Just because foreign companies aren't collecting these taxes, doesn't mean the services aren't taxable. Under current tax law, it is the consumer's responsibility to report their imports and pay the appropriate taxes on them. Unsurprisingly, not very many do this. Only 410 returns on “imported taxable supplies” were filed by consumers and small suppliers in 2015, bringing in \$3.2 million in tax revenue. This doesn't come close to a realistic total -- if Netflix alone were to collect and remit GST/HST, Canadian governments would receive about \$50 million annually.

The federal government has been clear, that it will not require foreign-based streaming services like Netflix to collect the GST on their subscriptions sold in Canada. This is unfortunate, because the tax policy implications are much broader than Netflix alone. What is needed is a broader policy in Canada requiring foreign suppliers of online services to collect sales. But the federal government's stubbornness not to make Canadians pay the GST on their Netflix subscription is hindering any progress on the much greater problem of GST collection by foreign digital service companies.

In contrast, Quebec's motion to impose the obligation to collect provincial sales tax to charge and remit the provincial sales tax is actually sound policy. It would level the competitive playing field and is in line with the international consensus on sales tax for the digital economy. The European Union, Norway, Australia, Japan, South Korea, South Africa and other countries have already moved in this field.

The reason that foreign providers of digital services are not obligated to collect sales tax stems from the (lack of a) definition for “carrying on business” in The Excise Tax Act. If a business is “carrying on,” it must register for, collect and remit GST/HST. The tax advantage that foreign companies enjoy could be fixed by making the obligation to register for GST/HST purposes based on the location of consumers.

I applaud Quebec for attempting to address the broader issue of cross-border trade of intangible goods and services. Many countries are already employing policies that balance coverage of the digital economy and the reporting requirements they impose on foreign businesses.

Canada should learn from these policies and implement changes to work with our existing regulations. Delaying policy changes only prolongs the disadvantages that Canadian businesses face within their own borders and leaves tax revenue on the table.

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