

April 11<sup>th</sup>, 2022

The Honourable Chrystia Freeland, M.P., P.C.  
Deputy Prime Minister and Minister of Finance  
90 Elgin Street, Room 16-027  
Ottawa ON K1A 0G5

**Submission by the Aerospace Industries Association of Canada on Legislative Proposals Relating to the Select Luxury Items Tax Act**

**INTRODUCTION**

The Aerospace Industries Association of Canada (AIAC), representing 95% of aerospace activity in Canada, is pleased to submit our comments on **Legislative Proposals Relating to the Select Luxury Items Tax Act**

The legislation as currently drafted will not achieve the desired purpose of taxing the wealthiest but will instead have a dramatic, negative impact on Canadian manufacturing and on Canadian jobs.

Aerospace has been one of the hardest-hit industries through the pandemic, as acknowledged in Budget 2021. Government research by Innovation, Science and Economic Development (ISED), through a partnership with AIAC, revealed that Canadian aerospace lost almost 30,000 jobs in 2020 alone and the sector's contribution to Canada's GDP declined by \$6.2B<sup>1</sup>. However, Canadian expertise in business aircraft including helicopters, turboprops and jets, and the associated supply chains for parts, systems and services helped to buoy against the even steeper declines seen globally. Business aircraft is a strength for Canada, providing a solid foundation for recovery and jobs, and should not be punished in a misdirected effort that will target manufacturers and workers.

As designed, the tax will have a devastating impact on manufacturers, operators, distributors and suppliers, with estimates of close to \$1 billion in lost revenue and losses of over 1,000 direct value-added Canadian jobs, for airplane and the helicopter industry. Some manufacturers project as much as a 50% reduction in demand for business aircraft as a result of the tax's announcement, with orders already slowing and creating uncertainty for businesses.

We would like to recognize the exemption introduced by the government for business flights following the comments and concerns expressed by the industry, however, the criteria to qualify for the exemption are restrictive and very few companies will qualify. In addition, there are still many outstanding questions that need clarification in order to better understand how this legislation will be applied.

New legislation should not unduly harm the aerospace industry as it continues to recover from the effects of the pandemic. While the Canadian government is trying to open international markets for our industry, it is consequently closing doors here in the domestic market. A similar tax was introduced in 1990 in the United States but was cancelled three years later due to the negative effects it had on American manufacturers<sup>2</sup>.

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<sup>1</sup> Still, Canadian aerospace contributed \$22.3 billion to the Canadian economy in 2020 and supported over 206,000 jobs in every region of the country. Ibid.

<sup>2</sup> <https://www.nytimes.com/1993/10/03/nyregion/luxury-tax-repeal-encourages-sellers.html>

In addition to Canada's aerospace industry, both the International Association of Machinists and Aerospace Workers<sup>3</sup> and Unifor<sup>4</sup>, two major unions representing Canadian workers, are supporting exemptions to the Luxury Tax in order to save aerospace manufacturing jobs.

We would like to submit the following recommendations and amendments to limit the negative impacts of this legislation and protect an industry still working toward recovery, providing jobs and economic activity, and making tremendous strides when it comes to green innovation.

#### **Rebate to net tax — export**

*39 (1) If the sale of a subject item to a purchaser by a vendor is completed at a particular time and the purchaser exports the subject item at a later time, the Minister must pay to the vendor a rebate in respect of the reporting period of the vendor that includes the later time if*

*(a) the following conditions are met:*

*(i) the vendor is a registered vendor in respect of that type of subject item at the particular time,*

*(ii) the purchaser is not, at any time during the period beginning at the particular time and ending at the later time, a registered vendor in respect of that type of subject item,*

*(iii) tax under section 18 in respect of the sale of the subject item becomes payable by the vendor at the particular time and the tax is taken into account in the determination of the net tax for the reporting period of the vendor that includes the particular time,*

*(iv) the subject item is not used in Canada at any time before the later time except to the extent reasonably necessary or incidental to its manufacture, offering for sale, transportation or exportation,*

*(v) the subject item is not registered with the Government of Canada or a province before the later time except if the registration is done solely for a purpose incidental to its manufacture, offering for sale, transportation or exportation,*

*(vi) the purchaser exports the subject item as soon after the sale is completed as is reasonable having regard to the circumstances surrounding the exportation, the sale and, if applicable, the normal business practice of the purchaser and vendor, and*

*(vii) the purchaser provides to the vendor, and the vendor retains, evidence satisfactory to the Minister of the exportation of the subject item by the purchaser; or*

*(b) prescribed conditions are met.*

<sup>3</sup> <https://www.nationalnewswatch.com/2022/02/11/new-liberal-tax-on-manufacturing-and-workers-will-crush-canadas-global-strength-in-business-jets-handing-an-advantage-to-competitor-nations/#.Ykxnp-jMLD4>

<sup>4</sup> <https://www.unifor.org/news/all-news/letter-ministers-freeland-and-champagne-canadas-aerospace-industry-and-taxing-canadas>

For the government to require the vendor to collect the luxury tax and then claim an exemption from the government goes against the basic principles of sales taxes. In addition, it creates a huge cash flow problem for the companies that must advance the money to the government, and will negatively affect their ability to remain competitive in the pricing of the aircraft. The criteria for considering an aircraft for export does not consider the reality of the aviation sector. The perverse effect of the legislation, as written, is an export tax.

Proposal 1: We recommend that aircraft intended for export be excluded from this legislation.

### Qualifying subject aircraft

*(4) For the purposes of this Act, except in prescribed circumstances, a subject aircraft is a qualifying subject aircraft of a person at a particular time that is on a particular day if the person is an owner of the subject aircraft at the particular time and the amount determined by the following formula is greater than or equal to 0.9:*

The 90% threshold for classifying business use is too restrictive. Industry recommends the government use the “primary” use definition to be consistent with tax regulations under the Income Tax Act and the Excise Tax Act. The threshold for “primary” use is usage over 50% for business purpose.

Proposal 2: We recommend that if a threshold is to be established to justify business use of an aircraft, the threshold be lowered to a reasonable level between 50% and 75%.

### Qualifying subject aircraft

*(4) For the purposes of this Act, except in prescribed circumstances, a subject aircraft is a qualifying subject aircraft of a person at a particular time that is on a particular day if the person is an owner of the subject aircraft at the particular time and the amount determined by the following formula is greater than or equal to 0.9:*

*A is*

*(b) in any other case, the total of all amounts, each of which is a duration of time that the subject aircraft was used for a flight that was a qualifying flight and that originated or terminated at a location in Canada during the period that ends on the particular day and begins on the later of*

*B is the total of all amounts, each of which is a duration of time for which it can reasonably be expected that the subject aircraft will be used for a flight*

*(b) that originates or terminates at a location in Canada during the period that begins on the day after the particular day and that ends on the day that is one year after the particular day, and*

*C is*

*(b) in any other case, the total of all amounts, each of which is a duration of time that the subject aircraft was used for a flight that originated or terminated at a location in Canada during the period that ends on the particular day and begins on the later of*

*E is the total of all amounts, each of which is a duration of time for which it can reasonably be expected that the subject aircraft will be used for a flight*

*(a) that originates or terminates at a location in Canada during the period that begins on the day after the particular day and that ends on the day that is one year after the particular day, and*

When business aircraft are flown, there are often several destinations and stops on the agenda to optimize the time of company executives and other members of the personnel. As such, it is fair to consider all flights that the Canadian aircraft is taking, not just those departing or arriving in Canada, towards the business use threshold calculation. The inclusion of all flights would provide a more accurate evaluation of the use of the aircraft.

Proposal 3: We recommend that all flights be considered (take-offs and landings) in the calculation of business use of an aircraft, and not just departures and arrivals in Canada.

### **Meaning of business**

*10 (1) For the purposes of this section, a business includes a profession, calling, trade, manufacture or undertaking of any kind whatever and any activity engaged in on a regular or continuous basis that involves the provision of property by way of lease, licence or similar arrangement, but does not include an office or employment.*

### **Qualifying subject aircraft**

*(4) For the purposes of this Act, except in prescribed circumstances, a subject aircraft is a qualifying subject aircraft of a person at a particular time that is on a particular day if the person is an owner of the subject aircraft at the particular time and the amount determined by the following formula is greater than or equal to 0.9: The “particular day” test to evaluate the use of an aircraft does not take into account the true use of the aircraft. Aircraft usage varies from day to day and restricting usage to only one particular day does not make sense. An annual assessment of all the flights would give a better overview of the actual usage.*

Proposal 4: We recommend that evaluation be done on an annual basis.

## Meaning of business

*10 (1) For the purposes of this section, a business includes a profession, calling, trade, manufacture or undertaking of any kind whatever and any activity engaged in on a regular or continuous basis that involves the provision of property by way of lease, licence or similar arrangement, but does not include an office or employment.*

### Qualifying flight

*(3) For the purposes of this section, except if prescribed circumstances exist, a subject aircraft is used for a flight that is a qualifying flight if*

*(d) the flight is conducted in the course of a business of an owner of the subject aircraft (other than a business without a reasonable expectation of profit) and otherwise than for the leisure, recreation, sport or other enjoyment of*

*(i) an owner of the subject aircraft,*

*(ii) a guest of an owner of the subject aircraft on the subject aircraft, or*

*(iii) another person that has the right to use the subject aircraft under a lease, licence or similar arrangement or a guest of the other person on the subject aircraft; or*

It would be reductive to limit business aircraft to the owners of the aircraft. The use of the aircraft often has many uses other than executive use. Marketing teams as well as technical teams are called upon to use the aircraft on a regular basis. This is why it is important to take into account the use of the aircraft for all the employees of a company and not only the executive.

Proposal 5: We recommend an addition of “flights conducted in the course of a business of any and all persons related to the owner of the aircraft” to 10(3)(d).

## When improvement completed — regulations

*(4) For the purposes of this Act, if prescribed conditions are met in respect of an improvement in respect of a subject item, the improvement is completed at the prescribed time.*

### Price threshold

*9 For the purposes of this Act, the price threshold in respect of a subject item is*

*(a) in the case of a subject vehicle, \$100,000;*

*(b) in the case of a subject aircraft, \$100,000; or*

*(c) in the case of a subject vessel, \$250,000.*

The methodology for the purchase price threshold that triggers the legislation is not well explained or understood. This incongruity with the thresholds for luxury vehicles and vessels imply similarities in the luxury automobile and luxury aircraft markets that are difficult to justify. Considering again the 1991 US Legislation, the threshold for business aircraft was \$250,000<sup>5</sup> at the time of enactment, which would be higher still today with inflation.

Proposal 6: We recommend that the threshold for non-exempted aircrafts be raised adequately to reflect the real market value.

### Penalty — false statement

*110 Despite many other provision of this Act, if a vendor sells a subject item to a purchaser, if an exemption certificate applies in respect of the sale in accordance with section 36, if a declaration referred to in subparagraph 36(1)(b)(ii) is included in the exemption certificate and if that declaration is false, the following rules apply:*

*(b) if the vendor knows, or ought to have known, that the declaration is false, the purchaser and the vendor are jointly and severally, or solidarily, liable for the payment of the penalty under paragraph (a) and any related interest.*

We do not believe that it would be reasonable and legally viable to hold the seller liable for the use of an aircraft by a buyer. While some manufacturers may have a history of purchases with certain customers, this is not the case in all situations. It is up to the customer to justify the use of the aircraft to the government, not the seller.

Proposal 7: We recommend that section (b) of the bill be removed so that the seller (manufacturer) cannot be held liable for a customer's use of the aircraft.

### Certificates and registrations not statutory instruments

*157 For greater certainty, any registration or certificate issued under this Act is not a statutory instrument for the purposes of the Statutory Instruments Act.*

*(4) In applying subsection (2), the following rules apply:*

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<sup>5</sup> <https://www.gao.gov/assets/ggd-92-9.pdf>

*(a) if a vendor sells a subject item to a purchaser, within the meaning of section 7 of the Select Luxury Items Tax Act, as enacted by subsection (1), and an agreement between the purchaser and the vendor for the sale of the subject item is entered into before September 2022, sections 18 and 29 of that Act, as enacted by subsection (1), apply in respect of the sale if the sale is completed, within the meaning of that section 7, on or after September 1, 2022 unless the purchaser entered into the agreement in writing before April 20, 2021 in the course of the vendor's business of offering for sale that type of subject item;*

The Luxury Tax was first mentioned in the 2021 Budget but, the specifics of the amended version were not known until March 11, 2022. Given the timelines and the potential for legislative amendments, it would be appropriate to change the effective applicability date.

Proposal 8: We recommend that all contracts signed between April 20<sup>th</sup>, 2021 and the date of the legislation coming into force to be exempted from the tax.

### **Leasing activities**

Additional details regarding the chartering of flights are needed as there is no clarity about exceptions for this type of flight. Several companies that own business aircraft rent the unused hours through a broker to leverage the costs of their aircraft by making these hours available to third parties. This type of charter is not included in the exceptions. An exclusion for charter operations needs to be considered. Industry seeks clarification on leasing activities in order to expressly allow flights conducted with an aircraft leased to a flight operator be considered as qualifying flights.

Proposal 9: We recommend that the government consider leasing activities as qualifying flights.

### **Definitions**

*2 (1) The following definitions apply in this Act.*

*subject aircraft means an aircraft that is*

*but does not include*

*(c) an aircraft that is designed and equipped for military activities,*

*(d) an aircraft that is equipped for the carriage of goods only,*

*(e) an aircraft*

*(i) that is registered with a government before September 2022 otherwise than solely for a purpose incidental to its manufacture, offering for sale or transportation, and*



- (ii) *in respect of which a user of the aircraft has possession before September 2022,*
- (f) *a subject vehicle, or*
- (g) *a prescribed aircraft.*

Some of our members have customers with mission aircraft requirements, the current legislation wording does not cover all types of mission aircraft sold.

Proposal 10: We recommend an exclusion for other aircraft designed and equipped for any special mission operation, other than for general business or personal purposes.

## Conclusion

No other jurisdiction imposes such a tax penalizing their own domestic aerospace industry. As currently proposed, the Luxury Tax will have devastating impacts on manufacturers, operators, distributors, and suppliers, costing over \$1B in lost revenue and over 1,000 direct value-added Canadian jobs, acting as a disincentive for Canadian firms to buy from Canadian aircraft manufacturers and place and register their aircraft in Canada. Such action puts us squarely at odds with our national interests.

Canadian aerospace companies want to remain competitive and provide good jobs here in Canada. The proposed legislation is flawed. Thank you for considering our proposals and we hope our comments will assist the government in the decision ahead. Our industry stands ready and committed to work together to achieve our shared objective of protecting and growing this industry's highly-skilled workforce in every region of Canada, thus contributing to our nation's overall economic recovery and success.

CC:

The Honourable Omar Alghabra, M.P., P.C., Minister of Transport

The Honourable François-Philippe Champagne, M.P., P.C., Minister of Innovation, Science and Economic Development

The Honourable Mary Ng, M.P., P.C., Minister of Small Business, Export Promotion and International Trade of Canada

Michael Sabia, Deputy Minister, Finance Canada

Michael Keenan, Deputy Minister, Transport Canada

Simon Kennedy, Deputy Minister, Innovation, Science, and Economic Development

David Morrison, Deputy Minister, International Trade

John Brodhead, Director of Policy, Office of the Prime Minister