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# **Excise Act, 2001**

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## **Explanatory Notes and Draft Regulations**

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Published by  
The Honourable Martin Cauchon, P.C., M.P.  
Minister of National Revenue  
and  
The Honourable Jim Peterson, P.C., M.P.  
Secretary of State  
(International Financial Institutions)

December 2001

**Canada**



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**Price : \$22.00 (including GST)**

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*Cette publication est également disponible en français.*

Cat No.: F2-129/2001E  
ISBN 0-660-18691-8



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## **Explanatory Notes**

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## PREFACE

The legislation to which these explanatory notes relate implements a modern legislative and administrative framework for the taxation of spirits, wine and tobacco products. The legislation also implements the changes to ships' stores provisions announced by the government on September 27, 2001 and the tobacco tax increases announced on November 1, 2001.

The explanatory notes describe the legislation, clause by clause, for the assistance of Members of Parliament, taxpayers and professional advisers.

These explanatory notes are provided to assist in an understanding of the proposed measures. They are for information purposes only and should not be construed as an official interpretation of the provisions they describe.





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## EXPLANATORY NOTES<sup>1</sup>

### *Interpretation*

#### **Section 2 – Definitions**

##### **“absolute ethyl alcohol”**

“Absolute ethyl alcohol” is pure ethyl alcohol. The quantity by volume of absolute ethyl alcohol that a product contains, expressed as a percentage, constitutes the alcoholic strength of the product for the purposes of the Act.

##### **“accredited representative”**

An “accredited representative” is a person who is a foreign diplomatic agent entitled to the tax exemptions specified in article 34 of the Vienna Convention on Diplomatic Relations (Schedule I to the *Foreign Missions and International Organizations Act*) or a person who is a consular official entitled to the tax exemptions specified in article 49 of the Vienna Convention on Consular Relations (Schedule II to the *Foreign Missions and International Organizations Act*).

##### **“Agency”**

The “Agency” is the Canada Customs and Revenue Agency established by subsection 4(1) of the *Canada Customs and Revenue Agency Act*.

##### **“alcohol”**

“Alcohol” refers to spirits and wine, which are both subject to duty under the Act.

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<sup>1</sup> If a proposed provision in the legislation is based on a provision in an existing tax statute, the existing provision is referenced in parentheses at the end of the relevant explanatory note.

**“alcohol licensee”**

An “alcohol licensee” is a person who holds a spirits licence or a wine licence issued under section 14 of the Act. A spirits licensee is authorized to produce or package spirits and a wine licensee is authorized to produce or package wine.

**“alcohol registrant”**

An “alcohol registrant” is a person who holds an alcohol registration issued under section 17 and is authorized to store or transport bulk alcohol and specially denatured alcohol.

**“analyst”**

A person or class of persons may be designated as an “analyst” for purposes of the Act. An analyst may issue a certificate or report setting out the results of the analyst’s analysis or examination of an item. Under section 303, an analyst’s certificate or report is admissible in evidence in a prosecution for an offence under the Act.

**“approved formulation”**

An “approved formulation” refers to any product made with alcohol by a licensed user in accordance with a formula for which the licensed user has approval from the Minister of National Revenue. It also refers to any imported product made with alcohol that in the opinion of the Minister would be a product made with alcohol in accordance with an approved formula if it were produced in Canada by a licensed user.

**“assessment”**

The Minister of National Revenue may make an “assessment” of duty, interest or other amount payable by any person under the Act. The Minister may also make an assessment of the amount of a refund payable to a person. An assessment for the purposes of the Act includes a reassessment.

**“beer”**

“Beer” has the same meaning as under the *Excise Act*.

**“black stock”**

“Black stock” refers to manufactured tobacco that is stamped but not marked in accordance with a provincial statute to indicate that the manufactured tobacco is for sale in a particular province.

**“bottle-your-own premises”**

“Bottle-your-own premises” refers to premises where spirits or wine are supplied from a marked special container for the purposes of being packaged by a purchaser (see definition of “special container”).

**“bulk”**

“Bulk” in relation to spirits and wine means that the spirits or wine have not been packaged for consumption or have not been packaged in a marked special container (see definition of “packaged”, “marked” and “special container”).

**“cigar”**

The use of the term “cigar” for purposes of the *Excise Act, 2001* is the same as under the current *Excise Act*. Unlike other tobacco products, cigars are subject to both a specific duty imposed under section 42 and an additional duty that includes an *ad valorem* rate imposed under section 43.

**“cigarette”**

The use of the term “cigarette” for the purposes of the *Excise Act, 2001* is the same as under the current *Excise Act*.

**“Commissioner”**

The “Commissioner” is the Commissioner of Customs and Revenue appointed under section 25 of the *Canada Customs and Revenue Agency Act*.

**“container”**

A “container” of tobacco products means any type of container containing tobacco products.

**“customs bonded carrier”**

A “customs bonded carrier” is a person who, in accordance with the *Transportation of Goods Regulations* made under the *Customs Act*, transports, or causes to be transported, goods that have been imported into Canada but have not been released.

**“customs bonded warehouse”**

A “customs bonded warehouse” is a place licensed as a bonded warehouse under the *Customs Tariff*. Duty imposed on goods delivered to a customs bonded warehouse is not payable until the goods are removed from the warehouse.

**“customs bonded warehouse licensee”**

A “customs bonded warehouse licensee” is a person who holds a licence issued under the *Customs Tariff* to operate a customs bonded warehouse.

**“data”**

“Data” means information or concepts, in any form. The term “data” is used in the definition of “records”.

**“denature”**

Spirits are denatured using prescribed denaturants in the prescribed manner. Spirits may be denatured into prescribed grades of denatured alcohol or specially denatured alcohol.

**“denatured alcohol”**

Only prescribed grades of denatured alcohol are “denatured alcohol” under the Act. The duty imposed under Section 122 of this Act or section 21.1 of the *Customs Tariff* on bulk spirits is relieved when spirits are denatured into denatured alcohol.

**“duty”**

Duty includes:

- that imposed under the Act on tobacco products, spirits and wine;
- that levied under section 21.1 or 21.2 of the *Customs Tariff* on imported bulk spirits and imported packaged spirits and wine (see definitions of “bulk” and “packaged”); and
- except in Parts 3 and 4 of the Act, the special duties imposed under sections 53, 54 and 56 in the case of tobacco products and under section 133 in the case of imported spirits for delivery to a licensed user.

**“duty free shop”**

“Duty free shop” has the same meaning as under the *Customs Act*.

**“duty free shop licensee”**

A “duty free shop licensee” is a person licensed under the *Customs Act* to operate a duty free shop. Such licensees must also obtain a licence under section 22 of the *Excise Act, 2001* if they wish to possess and sell imported manufactured tobacco, which is subject to a special duty under section 53.

**“duty-paid market”**

“Duty-paid market” is the market for the sale of spirits, wine and tobacco products in respect of which duty (other than special duty) is payable.

**“duty-paid value”**

“Duty-paid value” is used for the purpose of calculating the *ad valorem* duty on imported cigars. Cigars are subject to an *ad valorem* duty imposed under section 43 in addition to the specific duty imposed on cigars under section 42.

**“excise warehouse”**

An “excise warehouse” means one or more specified premises of an excise warehouse licensee where the licensee may store non-duty-paid packaged alcohol or tobacco products that are not stamped. While packaged alcohol intended both for the duty-paid and duty-free markets may be entered into an excise warehouse, only tobacco products intended for the duty-free market in Canada or exported in accordance with section 50 may be entered into such a warehouse. The duty-free market is the market for the sale of duty-free alcohol and certain tobacco products to accredited representatives, in duty free shops or as ships' stores.

**“excise warehouse licensee”**

An “excise warehouse licensee” is a person who holds an excise licence issued under section 19 and is authorized to possess in the person’s excise warehouse non-duty-paid packaged alcohol or tobacco products that are not stamped .

**“export”**

“Export” means exportation out of Canada.

**“ferment-on-premises facility”**

“Ferment-on-premises facility” means the premises of a ferment-on-premises registrant where individuals may produce and package wine for their personal use. Individuals who produce and package wine for personal use at a ferment-on-premises facility are not required to be licensed (see subsection 62(2)) and the individual’s wine is not subject to duty (see subsection 135(2)).

**“ferment-on-premises registrant”**

A “ferment-on-premises registrant” is an operator of a ferment-on-premises facility who is registered under the Act in order to possess, at the registrant’s facility, bulk wine produced by an individual for the individual’s personal use.

**“fiscal month”**

A “fiscal month” is the period determined under section 159 for purposes of reporting and paying duty.

**“foreign duty free shop”**

A “foreign duty free shop” is a retail store that is located in a foreign country and is authorized under the laws of that country to sell goods free of certain duties and taxes to departing travellers.

**“foreign ships’ stores”**

“Foreign ships’ stores” are tobacco products taken on board a vessel or aircraft while it is outside Canada and that are intended for consumption by, or sale to, the passengers and crew while they are on board the vessel or aircraft.

**“Her Majesty”**

The term “Her Majesty” is used to refer to the Crown in right of Canada as distinct from the Crown in right of the provinces.

**“import”**

“Import” means importation into Canada.

**“intoxicating liquor”**

“Intoxicating liquor” has the same meaning as in the *Importation of Intoxicating Liquors Act*.

**“judge”**

“Judge” refers to a judge of the Federal Court or a superior court where a matter under the Act is to be dealt with.

**“licensed tobacco dealer”**

A “licensed tobacco dealer” is a person who holds a licence issued under section 14 and is authorized to engage in the business of

buying and selling raw leaf tobacco on which duty is not imposed, without taking possession of the tobacco.

**“licensed user”**

A “licensed user” is a person who holds a user’s licence issued under section 14 and is generally a manufacturer who uses alcohol in manufacturing or processing other products. Such persons may use alcohol, without the payment of duty, in a product formulation or process approved by the Minister or in the manufacture of vinegar if a minimum standard of production is achieved.

**“liquor authority”**

“Liquor authority” refers to the governmental organisation in a province that is authorized by the laws of the province to market alcohol products to consumers.

**“manufacture”**

The “manufacture” of a tobacco product includes any step in the processing of raw leaf tobacco into a tobacco product. It includes the packaging of raw leaf tobacco or tobacco products.

**“manufactured tobacco”**

“Manufactured tobacco” refers to all tobacco products except cigars and packaged raw leaf tobacco.

**“mark”**

A special container of spirits or wine that has been marked in the prescribed form and manner is deemed to have been packaged (see sections 77 and 82). A marked special container of spirits or wine may only be used for specific purposes.

**“Minister”**

The administration and enforcement of the Act rest with the Minister of National Revenue.



**“month”**

A “month” may be a calendar month or a similar period overlapping two consecutive calendar months.

**“non-duty-paid”**

This phrase is used to indicate that the duty on packaged alcohol, other than special duty, has not been paid.

**“officer”**

Other than in sections 167, 226 and 296, an “officer” is a person engaged in the administration or enforcement of the Act. It includes a member of the R.C.M.P. and a member of a police force designated under subsection 10(1). In sections 167, 226 and 296, the general meaning of officer applies.

**“packaged”**

Duty becomes payable when alcohol and tobacco products are “packaged”. In the case of tobacco, “packaged” means packaged in a prescribed package. In the case of spirits and wine, “packaged” means packaged in either a container ordinarily sold to consumers that is less than a certain size or a marked special container.

**“partially manufactured tobacco”**

“Partially manufactured tobacco” requires further processing before it is ready to be consumed. It consists of cut filler or cut rag or less fully manufactured tobacco.

**“peace officer”**

“Peace officer” has the same meaning as under the *Criminal Code*.

**“person”**

The term “person” is used to refer to governments, individuals and all forms of organizations.

**“personal use”**

“Personal use” refers to personal consumption by an individual or by others at the expense of the individual. Individuals are authorized under the Act to produce wine and, in certain circumstances, tobacco products without a licence and payment of duty, provided the wine and tobacco products are for “personal use” (see subsection 25(3), and 45(1) in the case of tobacco and subsections 62(2) and 135(2) in the case of wine).

**“prescribed”**

“Prescribed” means authorized by the Minister of National Revenue when referring to a form or the manner of filing a form and, when referring to the information to be given on or with a form, specified by the Minister. In any other case, it means prescribed by regulation or determined in accordance with rules prescribed by regulation.

**“produce”**

To “produce” spirits means to make spirits by any means or to recover them. To “produce” wine means to make wine by fermentation.

**“raw leaf tobacco”**

“Raw leaf tobacco” has the same meaning as under the current *Excise Act*.

**“record”**

“Record” is broadly defined to include any material on which data are recorded or marked. Licensees, registrants, persons required to file returns, persons applying for a refund, tobacco growers, provincial tobacco marketing boards and persons transporting non-duty-paid packaged alcohol or unstamped tobacco products are required to keep records concerning their operations under the Act.

**“registered user”**

The Minister of National Revenue may issue a user’s registration under section 16 to a research laboratory, university or other

post-secondary educational institution, health care facility or health institution permitting it to use non-duty-paid packaged spirits for specific purposes.

**“responsible”**

The person who is “responsible” for bulk alcohol is determined in accordance with sections 104 to 121.

In general, duty on spirits and wine becomes payable at the time of packaging and is payable by the person responsible for the alcohol immediately before it was packaged (see sections 124 and 135).

**“sale price”**

In its application to cigars, “sale price” is used to apply an *ad valorem* duty under section 43 on the basis of the sale price charged by the manufacturer. This *ad valorem* duty is in addition to the duty imposed under section 42 on all tobacco products.

**“SDA registrant”**

Under the Act, a person must be an “SDA registrant”, holding a specially denatured alcohol registration issued under section 18, to use specially denatured alcohol (see section 96).

**“special container”**

A “special container” is a container of bulk spirits greater than 100 litres but not more than 1,500 litres or a container of bulk wine greater than 100 litres. When a special container is marked (see definition of “mark”), the spirits or wine it contains are deemed to be packaged (see sections 77 and 82).

**“special duty”**

In addition to regular duty, four special duties are imposed under the Act. In the case of tobacco, a “special duty” applies to imported manufactured tobacco delivered to a duty free shop (see section 53), to traveller's tobacco (see section 54) and to exported tobacco products (see section 56). In the case of spirits, a “special duty” is

imposed on imported spirits for delivery to a licensed user (see section 133).

**“special excise warehouse”**

A “special excise warehouse” means the specified premises of a special excise warehouse licensee used to store unstamped tobacco products for sale to accredited representatives.

**“special excise warehouse licensee”**

A person holding a licence issued under section 20 to operate a special excise warehouse is a “special excise warehouse licensee”.

**“specially denatured alcohol”**

“Specially denatured alcohol” is spirits that have been denatured (see definition of “denature”) into a prescribed grade of specially denatured alcohol. An SDA registrant is authorized to use specially denatured alcohol.

**“specified premises”**

The Minister of National Revenue may specify one or more premises where a licensed user is authorized to conduct the user’s activities under the user's licence.

**“spirits”**

“Spirits” means any substance that contains more than 0.5% absolute ethyl alcohol by volume, other than:

- wine;
- beer;
- vinegar;
- denatured alcohol or specially denatured alcohol,
- an approved formulation; or
- products that are not potable and that contain or are made from the products listed above, other than wine.

**“spirits licensee”**

A “spirits licensee” is a person who holds a spirits licence, issued under section 14, authorising the person to produce or package spirits.

**“stamped”**

When referring to a tobacco product, “stamped” means that prescribed information in a prescribed format has been affixed to, impressed on or otherwise applied to the tobacco product or its container to indicate that duty, other than special duty, has been paid.

**“sufferance warehouse”**

A “sufferance warehouse” is a warehouse established for the temporary storage of goods under the *Customs Act*.

**“sufferance warehouse licensee”**

A person is required to hold a licence issued under the *Customs Act* to operate a sufferance warehouse.

**“take for use”**

Alcohol that is “taken for use” means alcohol taken for consumption, analysis, destruction or for any purpose that results in a product other than alcohol. Generally speaking, duty is payable when alcohol is taken for use. Duty is not payable, however, on alcohol used in an approved formulation (section 144), for analysis or destruction in an approved manner (section 145) or for the production of vinegar, if a minimum standard is achieved (subsection 146).

**“Tax Court”**

“Tax Court” means the Tax Court of Canada. A taxpayer may, under certain conditions, appeal an assessment or reassessment to the Tax Court (see section 198).

**“tobacco dealer”**

A “tobacco dealer” is defined as a person other than a tobacco licensee who engages in buying and selling raw leaf tobacco on which duty is not imposed, without taking possession of the tobacco. A “tobacco dealer” must be licensed in order to engage in the business of buying and selling raw leaf tobacco.

**“tobacco licensee”**

A “tobacco licensee” is a person licensed under section 14 to manufacture tobacco products.

**“tobacco marking”**

A “tobacco marking” is prescribed information required by the Act to be borne by containers of tobacco products that are not stamped. Tobacco markings are placed on containers of tobacco products that are not subject to duty, other than special duty, and are intended for sale in the duty-free market in Canada or export. For instance, cigars or imported manufactured tobacco for sale in a duty free shop are required to have tobacco markings on their containers.

**“tobacco product”**

“Tobacco product” refers to all products manufactured from raw leaf tobacco or manufactured tobacco, including cigarettes, cigars, tobacco sticks, fine cut and pipe tobacco, as well as packaged raw leaf tobacco.

**“tobacco stick”**

“Tobacco stick” has the same meaning as under the current *Excise Act*.

**“wine”**

“Wine” is defined as a beverage with an alcoholic strength exceeding 0.5% that is produced from the alcoholic fermentation of:

- an agricultural product;
- a non-agricultural plant or plant product; or
- a product at least partially derived from one of the foregoing.

With the exception of sake, however, it does not include any alcoholic beverage produced from grain or a product derived from grain. Its production may not involve distillation other than distillation to reduce its alcoholic strength. Wine may, however, be fortified by the addition of spirits to an alcoholic strength not exceeding 22.9%.

#### **“wine licensee”**

A “wine licensee” is a person who holds a wine licence issued under section 14 authorising the person to produce or package wine.

### **Section 3 – References to other enactments**

This section sets out rules for interpretation should the Act refer to legislative enactments of a province or territory that are subsequently repealed. In such a case, the reference to the repealed provisions must be read as a reference to any relevant provisions replacing them. In the absence of such relevant replacement provisions, the repealed enactment is to be read as if it had not been repealed, to the extent necessary to give effect to the reference.

### **Section 4 – Meaning of “administration or enforcement of this Act”**

The purpose of this section is to ensure that the phrase “administration and enforcement of this Act”, wherever it is used in the Act, is read as including the collection of any amount payable under the Act.

### **Section 5 – Constructive possession**

In certain specified situations, possession of an item by one person is deemed to be possession by other persons, where there is knowledge of and consent to the person’s possession. Furthermore, in some situations possession is given an extended meaning to include possession by another person or having in a place for one’s own use or benefit or the use or benefit of another person.

**Section 6 – Arm’s length**

Related persons are considered not to be dealing at arm’s length with each other. It is a question of fact whether at a particular time unrelated persons are dealing at arm’s length. (Subsection 2(2.1), *Excise Tax Act*)

**PART 1**

**APPLICATION AND ADMINISTRATIVE MATTERS**

*Application to Her Majesty*

**Section 7 – Act binding on Her Majesty**

The Act applies to the federal government and to the provincial governments.

*Administration and Officers*

**Section 8 – Minister’s duty**

The Minister of National Revenue has responsibility for the administration and enforcement of the Act and the Commissioner may exercise all the powers and perform all the duties of the Minister.

**Section 9 – Officers and employees**

This section provides for the appointment or employment of persons necessary to administer and enforce the Act. The Minister of National Revenue may authorize a designated officer, agent or class of officers or agents to exercise the powers and duties of the Minister.

**Section 10 – Designation of police forces**

Section 10 authorizes the Minister of National Revenue and the Solicitor General of Canada to designate any police force in Canada for the purposes of enforcing any provision of the Act. (Section 66, *Excise Act*)



**Section 11 – Designation of analysts**

The Minister of National Revenue is authorized to designate a person or class of persons as an analyst (see definition of “analyst”). A certificate or report made by an analyst is admissible in evidence under section 303.

**Section 12 – Administration of oaths**

If designated by the Minister of National Revenue, any person employed in connection with the administration or enforcement of the Act may administer oaths and receive affidavits, declarations and affirmations related to the administration or enforcement of the Act or the regulations.

***Inquiries*****Section 13 – Authorization of inquiry**

This section establishes a procedure for holding inquiries into matters concerning the administration or enforcement of the Act. The Minister of National Revenue may authorize a person to make an inquiry and where a person is so authorized the Minister shall seek, by application to the Tax Court, the appointment of a hearing officer. The hearing officer has the powers conferred on a commissioner under sections 4, 5 and 11 of the *Inquiries Act*. The section also specifies the rights of persons giving evidence at an inquiry and of persons being investigated. (Section 276, *Excise Tax Act*)

**PART 2****LICENCES AND REGISTRATIONS**

The new excise duty framework distinguishes between licensees, who are taxpayers, and registrants, who are not taxpayers but who are required for revenue protection purposes to comply with the record-keeping requirements of the Act.

## *Licences*

### **Section 14 – Issuance**

Subject to the regulations prescribing requirements to be met by licensees, including minimum age, good character and financial viability, the Minister of National Revenue may issue the following five classes of licences:

- a spirits licence authorizing the licence holder to produce or package spirits;
- a wine licence authorizing the licence holder to produce or package wine;
- a user's licence authorizing the licence holder to use bulk alcohol or non-duty-paid packaged alcohol;
- a tobacco licence authorizing the licence holder to manufacture tobacco products; and
- a tobacco dealer's licence authorizing the licence holder to carry on the business of a tobacco dealer (see definition of "tobacco dealer").

Neither the marking of special containers of spirits or wine, which is deemed to be packaging under sections 77 and 82, nor the deemed production of spirits under section 131, entitle a person to a spirits or wine licence.

## *Registrations*

### **Section 15 – Ferment-on-premises registration**

The Minister of National Revenue may issue a ferment-on-premises registration to an applicant who meets the requirements set out in the regulations. A ferment-on-premises registration authorizes a ferment-on-premises registrant to operate a ferment-on-premises facility where individuals may produce and package wine for their personal use. A ferment-on-premises registrant is permitted to possess, at the registrant's facility, bulk wine produced by individuals. Individuals who produce and package wine at these facilities do not have to be licensed and are not required to pay duty on the wine.

**Section 16 – User’s registration**

Subject to the regulations, the Minister of National Revenue may issue a user's registration to an applicant. A user's registration entitles a registered user to use non-duty-paid packaged spirits for specific purposes. Registered users include scientific and research laboratories, universities and other post-secondary educational institutions, health care facilities and health institutions.

**Section 17 – Alcohol registration**

The Act regulates the possession of bulk alcohol and specially denatured alcohol. An alcohol registration authorizes an alcohol registrant to store or transport bulk alcohol and specially denatured alcohol.

**Section 18 – SDA registration**

Subject to the regulations, the Minister of National Revenue may issue an SDA registration to an applicant. An SDA registration authorizes a person to possess and use SDA for non-beverage purposes. The Minister may impose restrictions on the use of particular grades of SDA.

***Excise Warehouses***

An excise warehouse licence entitles the licence holder to possess in the licence holder's excise warehouse non-duty-paid packaged alcohol and tobacco products that are not stamped. Packaged spirits and wine may be stored in an excise warehouse whether the spirits or wine are intended for the duty-paid market, duty-free sale or for export. In the case of tobacco, however, only unstamped tobacco products intended for the duty-free market (i.e., tobacco products for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores) or for export in accordance with section 50 may be stored in an excise warehouse.

**Section 19 – Issuance of licence**

Subject to the regulations, the Minister of National Revenue may issue an excise warehouse licence to any person who is not a retailer

of alcohol, as well as to alcohol licensees, liquor authorities and persons who supply ships' stores even though they may be retailers of alcohol.

### *Special Excise Warehouses*

#### **Section 20 – Issuance of licence**

Subject to the regulations, the Minister of National Revenue may issue a special excise warehouse licence to a person authorized by a tobacco licensee to be the sole distributor of the licensee's tobacco products to accredited representatives. The licence authorizes the licence holder to store duty-free tobacco products intended for sale to accredited representatives in the licensee's special excise warehouse. A person may operate only one premises as a special excise warehouse.

#### **Section 21– Return of tobacco products**

Where a tobacco licensee ceases to authorize a special excise warehouse licensee to be the distributor of the tobacco licensee's, products to accredited representatives, the special excise warehouse licensee is required to immediately return the products to the licensee, who is required to immediately notify the Minister of National Revenue that the special excise warehouse licensee is no longer authorized to sell the licensee's products. If the holder of a special excise warehouse licence is no longer authorized by any tobacco licensee to distribute tobacco products to accredited representatives, the Minister shall cancel the licence.

### *Duty Free Shops*

#### **Section 22 – Issuance of licence**

Subject to the regulations, the Minister of National Revenue may issue a licence to a duty free shop operator who is already licensed as such under the *Customs Act*, if the operator wishes to possess and sell imported manufactured tobacco that is subject to the special duty under section 53. The licence under this Act is required because the

special duty is payable by duty free shop operators who take delivery of imported manufactured tobacco for sale in their duty free shops.

### *General*

#### **Section 23 – Refusal to issue licence or registration**

The Minister of National Revenue may refuse to issue a licence or registration for any reason the Minister considers sufficient in the public interest. The Minister may, subject to the regulations, amend, suspend, renew, cancel, or reinstate a licence or registration. When the Minister issues a licence or registration, or at any later time, the Minister may specify the activities that may be carried on under the licence or registration, the premises where those activities may be carried on and any other conditions. In the case of a spirits licence or a tobacco licence, the Minister shall require security in a form satisfactory to the Minister and in an amount laid down by regulation.

#### **Section 24 – Compliance with Act**

A licensee or registrant is required to carry on activities under the licence or registration in compliance with the Act and the regulations.

## **PART 3**

### **TOBACCO**

#### *Regulation of Tobacco*

The Act places restrictions on the possession and use of raw leaf tobacco and tobacco products that are not stamped. Subject to limited exceptions, only tobacco growers and tobacco licensees may have raw leaf tobacco in their possession. Tobacco products that are not stamped are required to be marked in the prescribed manner and entered into an excise warehouse or, in the case of imported tobacco products, an excise warehouse or customs bonded warehouse, for subsequent removal for delivery to the duty-free market in Canada (i.e., tobacco products for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores) or for export in accordance with section 50.

**Section 25 – Manufacturing tobacco product without a licence prohibited**

Subsection 25(1) prohibits a person other than a tobacco licensee from manufacturing tobacco products. Under subsection 25(2), a person who provides equipment to another person to manufacture that other person's own tobacco products in the person's place of business is deemed to be the manufacturer of the tobacco products and the other person is not.

Subsection 25(3) contains an exception to subsection 25(1) whereby an individual may manufacture tobacco products:

- for the individual's personal use from duty-paid raw leaf or manufactured tobacco; or
- from raw leaf tobacco grown at the individual's residence for the individual's personal use or that of resident family members. The quantity manufactured for each qualifying person each year must not exceed 15 kg.

Under subsection 45(1), duty is relieved on tobacco products manufactured and disposed of by individuals in accordance with subsection 25(3).

**Section 26 – Tobacco dealer**

This section prohibits a person from carrying on the activities of a tobacco dealer except in accordance with a tobacco dealer's licence. The activities of a tobacco dealer, who is a person other than a tobacco licensee, include the buying and selling of raw leaf tobacco on which duty is not imposed, without taking possession of the tobacco.

**Section 27 – Unlawful packaging or stamping**

A person is prohibited from packaging or stamping tobacco products or raw leaf tobacco unless the person is a tobacco licensee or the owner or importer of tobacco products or raw leaf tobacco that are placed in a sufferance warehouse for the purpose of being stamped. (Subsection 233(1), *Excise Act*)

**Section 28 – Unlawful removal**

Subsection 28(1) prohibits anyone from removing tobacco products or raw leaf tobacco from the premises of a tobacco licensee unless they are packaged. Furthermore, if tobacco products are intended for the duty-paid market, they must be stamped and if they are not intended for the duty-paid market they must bear tobacco markings as required under the Act.

However, subsection 28(2) provides two exemptions from the prohibitions in subsection 28(1). Licensed tobacco manufacturers may remove raw leaf tobacco or partially manufactured tobacco from their premises for delivery to another licensed manufacturer or for export. They may also remove raw leaf tobacco for return to a grower. In addition, under section 40, tobacco licensees may remove raw leaf tobacco or waste tobacco from their own premises in a manner authorized by the Minister of National Revenue.  
(Subsection 235(1), *Excise Act*)

**Section 29 – Prohibition – certain tobacco products for sale, etc.**

This section prohibits any person from purchasing or otherwise receiving for sale tobacco products:

- from manufacturers who they know, or ought to know, are not tobacco licensees;
  - that are not packaged and stamped as required by the Act; or
  - that they know, or ought to know, are fraudulently stamped.
- (Sections 237, 237.1 and 238, *Excise Act*)

**Section 30 – Selling etc., unstamped raw leaf tobacco**

Any person other than a tobacco licensee is prohibited from possessing, offering to sell, selling or purchasing raw leaf tobacco that is not packaged and stamped. The exceptions to the prohibitions include:

- its possession in a customs bonded warehouse, or sufferance warehouse, by the warehouse licensee;
- its possession by a body established under provincial law to market raw leaf tobacco in that province; and
- its sale, offer for sale or purchase by a licensed tobacco dealer.

Limited additional exceptions are provided in section 31 for tobacco growers. (Subsection 225(1), *Excise Act*)

### **Section 31 – Exceptions to sections 26 and 30**

This section exempts tobacco growers from the restrictions imposed under sections 26 and 30 on the possession and sale of raw leaf tobacco to the extent that they are carrying on specified activities related to raw leaf tobacco, including the possession by a tobacco grower of raw leaf tobacco grown by the grower, the curing of raw leaf by a grower and the sale by a grower of a grower's raw leaf tobacco to a tobacco licensee or a licensed tobacco dealer.

(Subsection 225(3), *Excise Act*)

### **Section 32 – Unlawful possession or sale of tobacco products**

This section prohibits the sale, offer for sale or possession of unstamped tobacco products. The limited exceptions to this prohibition are laid down in subsections 32(2) and (3), which specify the circumstances under which a person may possess, sell or offer for sale unstamped tobacco products. The exceptions relate to the possession and sale or export of tobacco products that are relieved of duty, other than special duty, and are subject to detailed regulations.

The following persons may possess unstamped tobacco products in the following circumstances:

- tobacco licensees may possess products manufactured by them at their premises;
- special excise warehouse licensees may possess at their warehouse products they are authorized to distribute;
- excise warehouse licensees may possess cigars and imported manufactured tobacco at their excise warehouse;
- customs bonded warehouse licensees and sufferance warehouse licensees may possess imported tobacco products at their warehouse;
- duty free shop licensees who are also licensed under section 22 may possess imported manufactured tobacco at their duty free shop;
- duty free shop licensees may possess cigars at their duty free shop;
- persons authorized to transport tobacco products, while doing so in accordance with the regulations;



- accredited representatives, other than for commercial purposes;
- persons holding cigars and imported manufactured tobacco as ships' stores; and
- individuals who have imported the products within the prescribed limits and for their personal use, or who have manufactured them from duty-paid tobacco or raw leaf tobacco, in accordance with subsection 25(3).

The following persons may sell the following unstamped tobacco products or offer them for sale, in the following circumstances.

- Tobacco licensees may sell or offer for sale:
  - tobacco products to an accredited representative, a duly authorized special excise warehouse licensee for onward sale to an accredited representative, or for export; and
  - cigars as ships' stores, to an excise warehouse licensee for onward sale as ships' stores, or to a duty free shop for onward sale to travellers departing from Canada.
- Excise warehouse licensees may sell or offer for sale:
  - cigars and imported manufactured tobacco as ships' stores; and
  - imported tobacco products for export, to an accredited representative, or to a duty free shop for onward sale to passengers departing from Canada.
- Special excise warehouse licensees may sell or offer for sale:
  - products they are authorised to distribute to an accredited representative.
- Duty free shop licensees may sell or offer for sale:
  - cigars and, if the licensee holds a licence issued under section 22, imported manufactured tobacco to travellers departing from Canada.
- Customs bonded warehouse licensees may sell or offer for sale:
  - imported tobacco products to an accredited representative, to a duty free shop for onward sale to travellers departing from Canada, as ships' stores or for export.
- Persons may sell or offer for sale:
  - cigars and imported manufactured tobacco as ships' stores.

(Subsection 239.1(2), *Excise Act*)

**Section 33 – No sale or distribution except in original package**

This section prohibits any person from selling, offering to sell or distributing free of charge for advertising purposes manufactured tobacco except in its original package or a cigar in or from its original package. (Subsection 240(5), *Excise Act*)

**Section 34 – Packaging and stamping of tobacco**

This section prohibits a tobacco licensee from entering the tobacco products the licensee manufactures into the duty-paid market, unless the products have been packaged and stamped by the licensee and have prescribed information printed on the packages. The tobacco products are required to be stamped at the time of packaging. (Subsection 235(1), *Excise Act*)

**Section 35 – Packaging and stamping of imported tobacco**

This section requires all imported raw leaf tobacco and tobacco products for the duty-paid market to be packaged in a package displaying prescribed information and stamped before they are released under the *Customs Act*. Tobacco licensees may, however, import unstamped raw leaf tobacco or partially manufactured tobacco for further manufacture and may re-import their own unstamped tobacco products for reworking or destruction. As well, the stamping requirement does not apply to individuals who import tobacco products within prescribed limits for their personal use. (Subsections 201(2) and (3), *Excise Act*)

**Section 36 – Absence of stamping – Notice**

The absence of stamping on a tobacco product, as required by the Act, is notice to everyone that the duty under sections 42 and 43 has not been paid on that product. (Subsection 239.1(1), *Excise Act*)

**Section 37 – Unstamped products to be warehoused**

This section requires that all packaged tobacco products that are not stamped by a tobacco licensee must be immediately entered into the licensee's excise warehouse.

**Section 38 – No warehousing of tobacco without markings**

This section prohibits anyone from entering a container of tobacco products into an excise warehouse unless the container has tobacco markings and other prescribed information printed on it. The section also prohibits anyone from delivering a container of imported tobacco products to a customs bonded warehouse, to an accredited representative or to a duty free shop unless the container has tobacco markings and other prescribed information printed on it. There are, however, limited exemptions from the marking requirements for prescribed brands of tobacco products or prescribed cigarettes of a particular type or formulation. (Section 202, *Excise Act*)

**Section 39 – Non-compliant imports**

Imported tobacco products or raw leaf tobacco intended for the duty-paid market that are not stamped at the time of importation must be placed in a sufferance warehouse for the purpose of stamping. (Section 204, *Excise Act*)

**Section 40 – Removal of raw leaf tobacco or waste tobacco**

Only a tobacco licensee may remove raw leaf or waste tobacco from the licensee's premises. The raw leaf or waste tobacco so removed shall be dealt with in the manner authorized by the Minister of National Revenue. (Sections 208 and 212, *Excise Act*)

**Section 41 – Re-working or destruction of tobacco**

The Minister of National Revenue may authorize the manner in which tobacco products may be re-worked or destroyed by a tobacco licensee. As well, the Minister may authorize a tobacco licensee to import tobacco products that were manufactured by the licensee in Canada, for re-working or destruction. Section 48 provides relief from duty for such importations, if they are stamped manufactured tobacco. (Section 207, *Excise Act*)

***Duty on Tobacco***

Duty is imposed under section 42 on all domestically produced and imported tobacco products and on imported raw leaf tobacco. The

duty is payable at the time of packaging, in the case of domestically produced tobacco products, and under the *Customs Act*, in the case of imported tobacco products and raw leaf tobacco. Section 43 imposes an additional duty on cigars that is identical to the current excise tax on cigars. The duties imposed under sections 42 and 43 are relieved on cigars intended for the duty-free market, on manufactured tobacco intended for sale to accredited representatives, on tobacco products for export, provided the quantitative limits laid down in subsection 50(5) are not exceeded, and on tobacco imported by a tobacco licensee for further processing.

### **Section 42 – Imposition**

This is the general imposition of duty section for all tobacco products and for imported raw leaf tobacco. Section 43 imposes an additional duty on cigars and sections 53, 54 and 56 impose special duties on certain manufactured tobacco for sale by duty free shops, imported by returning Canadian residents or for export.

For tobacco products manufactured in Canada, the general duty is payable by the tobacco licensee who manufactured them at the time the products are packaged. Raw leaf tobacco that is to be sold in the duty-paid market is considered to be a tobacco product at the time it is packaged (see definitions of “tobacco product” and “package”).

For imported raw leaf tobacco and tobacco products, the general duty is payable by the importer, owner or other person liable to pay duty under the *Customs Act*. Partially manufactured tobacco imported by a tobacco licensee for further manufacture is treated as if it were manufactured in Canada by the licensee and, as a result, the duty under section 42 will only be payable at the time the tobacco is packaged. This new provision replaces the current *Manufactured Tobacco Imported for Further Manufacture Remission Order*.

The rates of the general duty are set out in Schedule 1. Except in the case of cigars and raw leaf tobacco, they combine the current excise duty and excise tax rates into a single rate for each category of tobacco product. (Section 200, *Excise Act*; section 21, *Customs Tariff*)

**Section 43 – Additional duty on cigars**

The duty imposed on cigars by this section is a duty that includes an *ad valorem* rate that replaces the current excise tax on cigars. The structure of the additional duty on cigars is identical to that under the current *Excise Tax Act*. In the case of cigars manufactured and sold in Canada, the duty is payable at the time the tobacco licensee who manufactured the cigars delivers them to a purchaser (paragraph 43(a)). In the case of imported cigars, the duty is payable by the importer, owner or other person liable to pay duty under the *Customs Act* (paragraph 43(b)). (Subsection 23(1), *Excise Tax Act*)

**Section 44 – Application of *Customs Act***

This section provides that the duties on imported raw leaf tobacco and tobacco products imposed under sections 42 and 43 must be paid and collected under the *Customs Act* as if they were duties levied under the *Customs Tariff*.

**Section 45 – Duty relieved**

Subsection 45(1) specifies that the duties imposed on tobacco products under sections 42 and 43 are relieved on unstamped tobacco products. Tobacco products that are not required to be stamped include those manufactured by an individual in accordance with subsection 25(3) and those destined for the Canadian duty-free market (i.e., tobacco products for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores) or for export in accordance with section 50.

Unstamped tobacco products imported by individuals for personal use in quantities in excess of the traveller's allowances specified in Chapter 98 of the Schedule to the *Customs Tariff* do not, however, qualify for duty relief. Individuals are permitted to import certain quantities of tobacco products without being required to stamp them. However, where the quantities imported exceed their personal allowances, duty is payable on the excess quantities, despite the fact that they are unstamped. Thus, in the case of cigarettes, an individual may import, for personal use, up to 5 unstamped cartons (1,000 cigarettes) but may import only 1 carton (200) without the payment of regular duty; duty is therefore payable on the remaining 4 cartons (800) of unstamped cigarettes.

**Section 46 – Duty relieved – raw leaf tobacco**

This section provides for relief from the duty imposed by section 42 in the case of raw leaf tobacco that is imported by a tobacco licensee for manufacturing by that licensee.

**Section 47 – Duty relieved – stamped tobacco imported by an individual**

This section provides for relief from the duty imposed by section 42 in the case of stamped Canadian manufactured tobacco that has been exported and is reimported by an individual for the individual's personal use.

**Section 48 – Duty relieved – importation for reworking or destruction**

This section provides for relief from the duty imposed by section 42 on the reimportation in accordance with section 41, for re-working or destruction by a tobacco licensee, of tobacco products that were manufactured by the licensee in Canada.

***Excise Warehouses***

Only tobacco products that are not stamped and have proper tobacco markings may be entered into an excise warehouse. Tobacco products may only be removed from an excise warehouse for delivery to the duty-free market (i.e., tobacco products for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores) or, with certain restrictions, for export. In particular, manufactured tobacco may only be removed for export by the tobacco licensee who manufactured it and only within the quantitative limits specified in subsection 50(5). Moreover, manufactured tobacco may not be removed from an excise warehouse for export to foreign duty free shops or as foreign ships' stores.

**Section 49 – Restriction – entering tobacco**

This section prohibits any person from entering stamped tobacco products into an excise warehouse. The section also prohibits any

person from entering unstamped tobacco products into an excise warehouse except in accordance with the Act and regulations. The section must be read in conjunction with section 50, which strictly limits the circumstances under which tobacco products may be removed from an excise warehouse, and section 38, which requires tobacco products entered into an excise warehouse to bear tobacco markings.

### **Section 50 – Prohibition on removal**

For the purposes of this section, “foreign brand tobacco” is defined as manufactured tobacco in respect of which the special duty on exported tobacco products under section 56 is relieved under section 58. “Canadian manufactured tobacco” is defined as manufactured tobacco this is manufactured in Canada, other than partially manufactured tobacco and foreign brand tobacco.

Tobacco products manufactured in Canada may only be removed from the excise warehouse of the tobacco licensee who manufactured them in accordance with the regulations and for the following purposes.

- Canadian manufactured tobacco, for export by the licensee, within the quantitative limit laid down. The quantitative limit for exports is 1.5% of the total quantity of the category of tobacco product concerned (cigarettes, tobacco sticks, other manufactured tobacco) manufactured by the licensee in the previous calendar year, excluding exports to foreign duty free shops and as foreign ships' stores (such exports being subject to duty under section 42).
- Manufactured tobacco, for delivery by the licensee to an accredited representative or to a duly authorized special excise warehouse for subsequent sale to an accredited representative.
- Cigars, for export or delivery by the licensee:
  - to an accredited representative or to a duly authorized special excise warehouse for sale to an accredited representative;
  - as ships' stores or to another excise warehouse for delivery as ships' stores; or
  - to a duty free shop.

- Partially manufactured tobacco and “foreign brand tobacco”, for export by the licensee other than to a foreign duty free shop or as foreign ships' stores.
- Tobacco products, for reworking or destruction by the licensee in accordance with section 41.

The only other authorized removal of tobacco products manufactured in Canada from an excise warehouse is the removal of Canadian made cigars from an excise warehouse for delivery as ships' stores. (Section 58.1, *Excise Act*)

### **Section 51 – Removal of imported tobacco product**

Imported tobacco products may only be removed from an excise warehouse for delivery, in accordance with the regulations, to another excise warehouse, to accredited representatives, as ships' stores, to a duty free shop or for export. This section is consistent with the current provisions for imported tobacco products in the *Customs Act* and *Customs Tariff*.

### **Section 52 – Restriction – special excise warehouse**

A special excise warehouse licensee may only store duty-free tobacco products in the licensee's warehouse for the purpose of selling them to accredited representatives. (Paragraph 50(1)(c), *Excise Act*)

### ***Special Duties on Tobacco Products***

Special duties are imposed on imported manufactured tobacco delivered to a duty free shop, on manufactured tobacco imported by returning residents and on certain Canadian tobacco products that are exported.

### **Section 53 – Special duty on imported manufactured tobacco delivered to duty free shop**

This section imposes a special duty, at the rates set out in section 1 of Schedule 3, on imported manufactured tobacco that is delivered to a duty free shop. The special duty is payable by the duty free shop



licensee at the time of delivery to the duty free shop. (Section 23.12, *Excise Tax Act*)

#### **Section 54 – Special duty on “traveller's tobacco”**

This section imposes a special duty, at the rates set out in section 2 of Schedule 3, on manufactured tobacco imported by a returning resident of Canada (residents, temporary residents and former residents of Canada, returning members of the Canadian armed forces, government employees and settlers in Canada) for the resident's personal use in quantities that are within the travellers' allowances specified in Chapter 98 of the Schedule to the *Customs Tariff*. The special duty is payable by the returning resident at the time of importation. It does not, however, apply to Canadian manufactured tobacco if it is stamped in accordance with the Act and duty under section 42 has been paid. (Subsections 21(2) and (3), *Customs Tariff*)

#### **Section 55 – Definition of “tobacco product”**

This section narrows the definition of tobacco product for the purpose of the special duty on exported Canadian tobacco products (sections 56 to 58) to exclude cigars and partially manufactured tobacco. (Section 23.1, *Excise Tax Act*)

#### **Section 56 – Imposition**

This section imposes a special duty on exports of tobacco products, as defined in section 55 that are manufactured in Canada. Two rates of duty apply. The first, set out in section 3 of Schedule 3, is imposed on exports made by the tobacco licensee who manufactured the products. This rate only applies to exports within the 1.5% threshold laid down in subsection 50(5). The second rate of duty, set out in section 4 of Schedule 3, is imposed on all other exported tobacco products. The duty is payable by the person who exports the tobacco products at the time the tobacco products are exported.

Tobacco products that are exported by the licensee who manufactured them and are destined for sale in foreign duty free shops or as foreign ships' stores are exempt, as are tobacco products prescribed under section 58. (Section 23.13, *Excise Tax Act*)

**Section 57 – Duty relieved – deliveries to foreign duty free shop and as foreign ships' stores**

This section provides relief from the special duty imposed under section 56 for tobacco products exported by their manufacturer for delivery to a foreign duty free shop or as foreign ships' stores.

**Section 58 – Duty relieved – prescribed tobacco product**

The special duty on exported tobacco products imposed under section 56 is relieved on certain tobacco products that are produced exclusively for export. They include tobacco products of a particular brand if that brand is prescribed in regulations and the products have only ever been sold in Canada in very limited quantities. As well, the special duty is relieved on prescribed cigarettes that are sold abroad and in Canada under the same brand name, where the prescribed cigarettes are of a type or formulation that has never been sold in Canada. (Section 23.3, *Excise Tax Act*)

**PART 4****ALCOHOL*****General***

The production and packaging of spirits may only be undertaken in accordance with a spirits licence and the production and packaging of wine may only be undertaken in accordance with a wine licence. However, certain exceptions apply for wine produced by an individual for personal use. The *Importation of Intoxicating Liquors Act* continues to apply to the importation of alcohol into a province.

**Section 59 – Application of *Importation of Intoxicating Liquors Act***

This section affirms the continuing application of the *Importation of Intoxicating Liquors Act* (IILA) to the importation of alcohol into a province. The IILA is a federal statute that provides support for provincial controls on the distribution of alcohol imported into a province.

**Section 60 – Prohibition – production and packaging of spirits**

Only a spirits licensee may produce or package spirits. There is, however, an exception for spirits taken from a marked special container and packaged by a purchaser at a bottle-your-own premises.

**Section 61 – Prohibition – possession of still**

Only a spirits licensee or a person with a pending application for a spirits licence may possess, with the intention of producing spirits, a still or other equipment suitable for producing spirits.

**Section 62 – Prohibition – production and packaging of wine**

Only a wine licensee may produce or package wine. There are, however, three exceptions to this rule. No licence is required in the case of individuals producing wine for their personal use, individuals packaging that wine for their personal use or a purchaser packaging wine from a marked special container at a bottle-your-own premises.

**Section 63 – Prohibition – sale of wine produced for personal use**

Wine that was produced, or produced and packaged, by an individual for personal use may not be sold or put to another commercial use.

**Section 64 – Wine produced by individual**

The exception to the general licensing requirement for individuals producing or packaging wine for personal use is limited to individuals who actually produce or package the wine themselves. Any person who produces or packages wine on behalf of an individual will be required to be licensed.

**Section 65 – Prohibition – ferment-on-premises facility**

This section prohibits a person from carrying on, at a ferment-on-premises facility, any activity specified in a licence or registration under the Act other than an activity authorized under a ferment-on-premises registration.

**Section 66 – Application – in-transit and transhipped alcohol**

This section concerns imported alcohol and specially denatured alcohol which, in accordance with customs legislation, is shipped by a customs bonded carrier through Canada or stored in Canada in a sufferance or customs bonded warehouse en route to a foreign destination. Such alcohol is not subject to the prohibitions and restrictions set out in sections 67 (prohibition - sale of alcohol), 68 (availability and sampling of imported DA and SDA), 69 (prohibition - ownership of bulk alcohol), 70 (prohibition - possession of bulk alcohol), 71 (prohibition - supply of bulk spirits), 72 (prohibition - supply of bulk wine), 74 (importation of bulk alcohol), 76 (unauthorized export), 80 (marking imported special container of spirits), 85 (marking imported special container of wine), 88 (prohibition - possession of non-duty-paid packaged alcohol), 97 (prohibition - possession of SDA), 98 (prohibition - supply of SDA), 99 (prohibition - sale of SDA), 100 (prohibition - importation of SDA) and 102 (prohibition - exportation of SDA).

**Section 67 – Prohibition – sale of alcohol**

This section prohibits the sale of bulk and packaged alcohol that was not produced, imported or packaged in accordance with the Act and of marked special containers of alcohol that are not marked in accordance with the Act.

**Section 68 – Availability and sampling of imported DA and SDA**

A person who imports a product that is reported under the *Customs Act* to be denatured or specially denatured alcohol must make the product available for sampling and the product is required to be sampled prior to its release under that Act. The sample must be tested to verify that it is denatured alcohol or specially denatured alcohol. The Minister of National Revenue may fix fees not exceeding the costs of sampling and testing and charge these fees to the importer. The sampling requirement may be waived by the Minister on a risk managed basis, taking into account such factors as the importer's compliance record and volume of shipments. Random spot checks will, however, always be an option.

### ***Bulk Alcohol***

As a general rule, duty is not payable on bulk alcohol prior to packaging. As a result, controls are placed on the possession and disposition of bulk alcohol. In addition, the ownership of bulk alcohol is restricted to legally produced or imported alcohol. These restrictions are specified in sections 69 to 76.

#### **Section 69 – Prohibition – ownership of bulk alcohol**

A person may only own bulk alcohol that was produced or imported in accordance with the Act.

#### **Section 70 – Prohibition – possession**

Because duty is generally not payable on wine and spirits prior to packaging, one of the basic features of the new excise system is the existence of strict controls on the possession of bulk alcohol. This section sets out who may possess bulk wine and bulk spirits and the conditions for their possession.

- A spirits licensee or a licensed user may possess bulk spirits produced or imported by a spirits licensee.
- A wine licensee or a licensed user may possess bulk wine produced or imported by a wine licensee.
- A licensed user may possess bulk alcohol imported by the licensed user.
- An alcohol registrant may possess, for the purposes of storage or transportation only, bulk alcohol produced by an alcohol licensee or imported by an alcohol licensee or licensed user.
- A sufferance warehouse licensee may possess at the licensee's sufferance warehouse bulk alcohol imported by a person permitted to do so under the Act.
- A ferment-on-premises registrant may possess bulk wine produced at the registrant's premises by an individual for the individual's personal use.
- An individual may possess less than 500 litres of bulk wine, produced in a residence or a ferment-on-premises facility, by an individual for the individual's personal use.

**Section 71 – Prohibition – supply of spirits**

In keeping with the restrictions on possession of bulk spirits contained in section 70, a person may only supply bulk spirits to a spirits licensee, a licensed user or an alcohol registrant.

**Section 72 – Prohibition – supply of wine**

In keeping with the restrictions on possession of bulk wine contained in section 70, a person may only supply bulk wine to a wine licensee, a licensed user or an alcohol registrant. This restriction does not, however, apply to a person who supplies bulk wine produced by an individual for personal use.

**Section 73 – Restriction – licensed user**

A licensed user may only use or dispose of bulk alcohol as follows:

- use it in an approved formulation, in a process in which the alcohol is destroyed to an approved extent, for analysis, to produce vinegar, to fortify wine (see section 130), or in blending wine and spirits (see section 131);
- return it to the alcohol licensee who supplied it or, where the conditions of paragraphs 105(1)(a) or 114(1)(a) apply, to the licensee who was previously responsible for it;
- export it if it was imported by the licensed user; or
- destroy it in an approved manner.

**Section 74 – Importation – bulk alcohol**

Subject to the exception for unmarked special containers of spirits in section 80, only a spirits licensee or licensed user may import bulk spirits. Similarly, subject to the exception for unmarked special containers of wine in section 85, only a wine licensee or licensed user may import bulk wine.

**Section 75 – Importations involving a provincial authority**

This section recognises that subsection 3(1) of the *Importation of Intoxicating Liquors Act* (IILA) provides for Her Majesty in right of a province or a liquor authority to be the importer of alcohol into the province. However, for purposes of the *Excise Act, 2001*, the person

who would have been the importer in the absence of subsection 3(1) of the IILA is deemed to be the importer of the alcohol. This section applies in respect of bulk alcohol, which, in accordance with section 74, may only be imported by a spirits licensee, a wine licensee or a licensed user.

#### **Section 76 – Unauthorized export**

This section specifies the restrictions imposed on exports of bulk alcohol. Bulk alcohol may only be exported by the alcohol licensee who is responsible for the alcohol, the licensed user who imported it or a person who required to export spirits under section 101.

#### ***Special Containers of Spirits***

The purpose of the provisions on marked special containers of spirits is to permit the delivery of spirits in large containers to registered users and the bottle-your-own premises that exist in certain provinces without breaching the rules on the possession of bulk alcohol. A marked special container of spirits is a container of between 100 litres and 1,500 litres, which is nevertheless regarded as containing packaged rather than bulk spirits. It must be marked as required by regulations for delivery and use either by a registered user or at bottle-your-own premises. A marked special container of spirits for delivery to registered users may be acquired and used on a non-duty-paid basis by registered users, but only for scientific or medicinal purposes. By contrast, a marked special container of spirits for delivery to bottle-your-own premises (where individuals purchase and bottle the spirits) is delivered duty-paid.

#### **Section 77 – Marked container deemed packaged**

A spirits licensee may mark a special container of spirits to indicate that it is to be delivered either to a registered user for use by the user in accordance with the user's registration or to a bottle-your-own premises. The spirits are considered to have been packaged when the container is marked.

**Section 78 – Marking**

Only a spirits licensee may mark a special container of spirits, unless the special container of spirits is marked in a sufferance warehouse accordance with section 80. A special container of spirits is deemed to be packaged at the time the container is marked. The spirits licensee must enter the container into an excise warehouse immediately after marking.

**Section 79 – Importation**

Only an excise warehouse licensee is authorized to import a marked special container of spirits.

**Section 80 – Marking of imported container**

If a special container of spirits that is imported by an excise warehouse licensee is not marked when it is reported under the *Customs Act*, the container must be placed in a sufferance warehouse to be marked. This requirement ensures that a special container of spirits that is imported by an excise warehouse licensee will always be marked when it is released under that Act.

**Section 81 – Imported container to be warehoused**

When a marked special container of spirits has been released under the *Customs Act*, it is required to be placed immediately in the excise warehouse of the importing excise warehouse licensee.

***Special Containers of Wine***

In some provinces individuals may purchase and bottle wine at bottle-your-own premises. The wine that is bottled at these establishments is usually taken from large containers (that is, greater than 100 litres). In order to provide duty-paid wine for this purpose, the concept of a marked special container of wine is introduced. Wine in such a container is treated as packaged wine.



**Section 82 – Marked container deemed packaged**

A wine licensee is authorized to mark a special container of wine, in the form and manner prescribed, to indicate that it is to be delivered to a bottle-your-own premises. The marking of special containers amounts to packaging, other than for licensing purposes.

**Section 83 – Marking**

Only a wine licensee is authorized to mark a special container of wine, unless the special container of wine is marked in a sufferance warehouse accordance with section 85. The wine licensee must enter the container into an excise warehouse immediately after marking.

**Section 84 – Importation**

Only an excise warehouse licensee may import a marked special container of wine.

**Section 85 – Marking of imported container**

If a special container of wine that is imported by an excise warehouse licensee is not marked when it is reported under the *Customs Act*, the container must be placed in a sufferance warehouse to be marked. This requirement ensures that a special container of wine that is imported by an excise warehouse licensee will always be marked when it is released under that Act.

**Section 86 – Imported container to be warehoused**

If an excise warehouse licensee imports a marked special container of wine the licensee must enter it into the licensee's excise warehouse immediately on its release under the *Customs Act*.

***Packaged Alcohol***

Duty is payable on alcohol at the time it is packaged unless it is placed in an excise warehouse immediately after packaging. Only excise warehouse licensees and certain other persons may have non-duty-paid packaged alcohol in their possession and non-duty-paid packaged alcohol may only be used under certain circumstances.

Furthermore, marked special containers of alcohol may only be used at a bottle-your-own premises or, in the case of spirits, by a registered user.

### **Section 87 – Information on container**

Prescribed information must be displayed on containers of alcohol and on any outer packaging, immediately after they have been filled. There is an exception for containers of wine that are entered into an excise warehouse immediately after being filled. In that case, the prescribed information must be displayed on the containers before the wine is removed from the warehouse.

### **Section 88 – Prohibition – possession**

Because duty is payable on wine and spirits at the time of packaging, the general rule is that no person shall possess non-duty-paid packaged alcohol. However, there are exceptions to the rule and subsections 88(2) and (3) set out who may possess non-duty-paid alcohol and the conditions for its possession.

The following persons may possess non-duty-paid packaged alcohol if it is lawfully packaged in Canada or imported by an excise warehouse licensee:

- excise warehouse licensees, in their warehouses;
- licensed users, at their specified premises;
- registered users, for use in accordance with their user's registration;
- duty free shop licensees, in their duty free shops;
- accredited representatives, for their personal or official use;
- persons, as ships' stores in accordance with the *Ships' Stores Regulations*; and
- sufferance warehouse licensees, in their warehouses, if the alcohol is imported.

The following persons may possess non-duty-paid alcohol imported by a person other than an excise warehouse licensee:

- sufferance warehouse licensees, in their warehouses;
- licensed users - if they imported it - in their specified premises;
- and

- accredited representatives if they imported it and for non-commercial use.

The following persons may possess non-duty-paid alcohol imported for use in the duty-free market (i.e., sale to accredited representatives, duty free shops or as ships' stores):

- customs bonded warehouse licensees, in their warehouses;
- duty free shop licensees, in their duty free shops;
- accredited representatives, for their personal or official use; and
- persons, as ships' stores in accordance with the *Ships' Stores Regulations*.

The following persons may possess non-duty-paid alcohol if it is in marked special containers:

- excise warehouse licensees, in their warehouses;
- sufferance warehouse licensees, in their warehouses, if the containers are imported; and
- registered users, for use as authorised, if the alcohol concerned is spirits and the container is appropriately marked.

Furthermore, customs bonded warehouse licensees may possess non-duty-paid alcohol that is imported to supply a duly registered operator of an international air service and individuals may possess non-duty-paid alcohol for their personal use if it was lawfully imported or if it is wine produced and packaged by the individuals for their personal use.

In addition, in the case of imports for the duty-free market, alcohol may be transported in accordance with the *Customs Act* by a customs bonded carrier. Non-duty-paid packaged alcohol may also be transported by persons authorized to do so and in accordance with regulations, if it is packaged in Canada or lawfully imported by an excise warehouse licensee, a licensed user, or an accredited representative, or if it is in marked special containers.

### **Section 89 – Storage**

This section prohibits a ferment-on-premises registrant from storing packaged wine at the registrant's premises.

**Section 90 – Restriction – licensed user**

This section is similar to section 73. A licensed user may only use or dispose of non-duty-paid packaged alcohol by:

- using it in an approved formulation, in a process in which the alcohol is destroyed to an approved extent, to produce vinegar, or for analysis in an approved manner;
- returning it, under prescribed conditions, to the excise warehouse licensee who supplied it;
- exporting it if it was imported by the licensed user; or
- destroying it in an approved manner.

**Section 91 – Restriction – registered user**

A registered user may only use or dispose of non-duty-paid packaged spirits by:

- using them for medicinal or scientific purposes in accordance with the user's registration;
- using them for analysis in an approved manner;
- returning them, under prescribed conditions, to the excise warehouse licensee who supplied them; or
- destroying them in an approved manner.

**Section 92 – Unauthorized removal – spirits**

Spirits may only be removed from marked special containers by the following persons under the following conditions:

- registered users, if the container is marked for delivery to and use by them;
- purchasers of spirits at bottle-your-own premises, if the container is marked for delivery and use at such premises; and
- excise warehouse licensees who have supplied special marked containers to bottle-your-own premises, if the containers are returned to the excise warehouse licensee by the operator of the bottle-your-own facility, for the sole purpose of destroying the spirits in an approved manner.

**Section 93 – Unauthorized removal – wine**

The only persons authorized to remove wine from marked special containers of wine are purchasers of the wine at bottle-your-own premises.

There is, however, an exception to this rule whereby, if the container has been returned by the operator of a bottle-your-own premises to the excise warehouse licensee who supplied it, the licensee may remove the wine for the purpose of destroying it in an approved manner.

***Denatured Alcohol and Specially Denatured Alcohol***

Denatured and specially denatured alcohol are spirits mixed with prescribed denaturants that render the product non-potable and make the recovery of spirits uneconomical in the case of denatured alcohol and less economical in the case of specially denatured alcohol. Because spirits can be recovered from specially denatured alcohol, the Act imposes restrictions on its possession, supply and use.

**Section 94 – Prohibition – denaturing of spirits**

Only a spirits licensee may denature spirits.

**Section 95 – Prohibition – sale as beverage**

Denatured and specially denatured alcohol may not be sold, used or provided for use in or as a beverage.

**Section 96 – Prohibition – use of SDA**

Specially denatured alcohol may be used only by SDA registrants in accordance with their registrations.

**Section 97 – Prohibition – possession of SDA**

Subject to the following exceptions, no person may possess specially denatured alcohol:

- SDA produced by a spirits licensee may be in the possession of a spirits licensee, an alcohol registrant or an SDA registrant;
- SDA imported by a spirits licensee may be in the possession of those same persons and of a sufferance warehouse licensee; or
- SDA imported by an SDA registrant may be in the possession of the SDA registrant, an alcohol registrant or a sufferance warehouse licensee.

#### **Section 98 – Prohibition – supply of SDA**

Specially denatured alcohol may only be supplied to a spirits licensee, an SDA registrant or an alcohol registrant.

#### **Section 99 – Prohibition – sale of SDA**

Specially denatured alcohol may not be sold except where:

- a spirits licensee sells it to another spirits licensee or to an SDA registrant; or
- an SDA registrant returns it or exports it in accordance with paragraph 103(a) or 103(b), respectively.

#### **Section 100 – Prohibition – importing of SDA**

Specially denatured alcohol may only be imported by a spirits licensee or an SDA registrant.

#### **Section 101 – Spirits mistakenly acquired as DA or SDA**

Any person, other than a spirits licensee, a licensed user or an alcohol registrant, who imports or possesses a product the person acquired as denatured alcohol or specially denatured alcohol and who subsequently learns that the product is actually spirits must without delay return the product to the person who supplied it or dispose of or destroy it in the manner specified by the Minister of National Revenue. If the person used the product in the production of another product before learning that it was not denatured alcohol or specially denatured alcohol but actually spirits, the person must dispose of or destroy the other product in the manner specified by the Minister. In addition, the person must pay any penalty imposed under section 254 for which the person is liable under section 244.

However, the person does not have to pay the penalty or dispose of or destroy the other product that has been manufactured with the spirits if:

- the Minister decides that the other product is not spirits;
- the Minister deems the other product to have been produced using denatured alcohol or specially denatured alcohol; and
- the person complies with any conditions imposed by the Minister.

### **Section 102 – Prohibition – exporting of SDA**

In keeping with the restrictions on its possession and use, specially denatured alcohol may be exported only by a spirits licensee or the SDA registrant who imported it.

### **Section 103 – Restriction on disposal**

An SDA registrant is authorized to possess and use specially denatured spirits for non-beverage purposes. This section specifies that an SDA registrant may dispose of specially denatured alcohol only by returning it to the supplying spirits licensee, exporting it if the SDA registrant imported it or destroying it in an approved manner.

### ***Responsibility for Bulk Spirits***

Sections 104 to 112 set out the rules for determining responsibility for bulk spirits. The person who is responsible for bulk spirits is liable for the duty on the spirits.

### **Section 104 – Responsibility**

This section sets out the basic rules for determining the responsible person in respect of bulk spirits. The responsible person at a particular time is:

- the spirits licensee or licensed user who is the owner of the bulk spirits at that time;
- the spirits licensee or licensed user who last owned the spirits, where they are not owned by either a spirits licensee or licensed user; or

- the spirits licensee who imported or produced the spirits or the licensed user who imported the spirits, where they have never been owned by a spirits licensee or licensed user.

### **Section 105 – Return of spirits purchased from unlicensed person**

This section sets out a special rule concerning the transfer of responsibility in certain situations involving the return of bulk spirits. It applies if bulk spirits, purchased by a spirits licensee or licensed user from an unlicensed vendor, are returned within 30 days to the spirits licensee who was responsible for them at the time of the purchase or to the spirits licensee who supplied them, and ownership reverts to the unlicensed vendor. In such a case, responsibility for the bulk spirits shifts back to the spirits licensee who was responsible for the spirits immediately prior to the sale. Responsibility shifts either at the time of receipt of the returned spirits or on the reversion of their ownership to the unlicensed vendor, whichever is the later occurrence.

### **Section 106 – Exception – provincial ownership**

Where a provincial government or a liquor authority that is a spirits licensee or licensed user owns bulk spirits for a purpose unrelated to its licence, responsibility for the bulk spirits is determined in accordance with section 104 as if the bulk spirits were owned by an unlicensed person rather than provincial government or liquor authority.

### **Section 107 – Spirits imported by licensed user**

If a licensed user imports bulk spirits, this section makes the licensed user the responsible person for the bulk spirits.

### **Section 108 – Blended spirits – joint and several or solidary responsibility**

This section applies if spirits result from the blending of bulk spirits with other bulk spirits or with bulk wine. In such a case, every person responsible for any of the bulk spirits, or who is a licensed user responsible for any of the bulk wine, becomes jointly and severally or solidarily responsible for the resulting spirits. Furthermore, the licensed user or wine licensee responsible for the



bulk wine ceases to be responsible for the wine at the time of the blending.

### **Section 109 – Person not responsible**

A person who is responsible for bulk spirits ceases to be responsible for them if they are:

- taken for use and duty on them is paid;
- taken for use in an approved formulation;
- taken for analysis or destroyed in accordance with section 145;
- used to produce vinegar in accordance with subsection 146(1);
- denatured into denatured alcohol or specially denatured alcohol;
- exported; or
- lost, under prescribed circumstances and conditions.

### **Section 110 – Notification of change of ownership**

This section applies when a spirits licensee or licensed user purchases bulk spirits from a person other than a spirits licensee or licensed user. In such a case the purchaser must obtain from the vendor the name and address of the spirits licensee responsible for the bulk spirits immediately before their purchase and must give timely written notice of the purchase to that spirits licensee. This section does not apply to bulk spirits that are purchased outside Canada for importation.

### **Section 111 – Removal of special container**

A spirits licensee who removes an unmarked special container of spirits from the licensee's excise warehouse to return it to the licensee's bulk spirits inventory in accordance with section 156 is responsible for the spirits in the container. However, if the spirits are owned by another spirits licensee or licensed user, the owner is responsible for them.

### **Section 112 – Removal of spirits**

A spirits licensee who removes non-duty-paid packaged spirits from the licensee's excise warehouse to return them to the licensee's bulk spirits inventory in accordance with section 158 is responsible for the

spirits. However, if the spirits are owned by another spirits licensee or licensed user, the owner is responsible for them.

### ***Responsibility for Bulk Wine***

Sections 113 to 121 set out the rules for determining responsibility for bulk wine. The person who is responsible for bulk wine is liable for duty on the wine if the wine is taken for use or packaged.

#### **Section 113 – Responsibility**

This section sets out the basic rules for determining the responsible person in respect of bulk wine. The responsible person at a particular time is:

- the wine licensee or licensed user who owns the wine;
- the wine licensee or licensed user who last owned the wine, where it is not owned by either a wine licensee or licensed user; or
- the wine licensee who imported or produced the wine or the licensed user who imported it, where the wine has never been owned by a wine licensee or licensed user.

#### **Section 114 – Return of wine purchased from unlicensed person**

This section sets out a special rule concerning the transfer of responsibility in certain situations involving the return of bulk wine. It applies if bulk wine, purchased by a wine licensee or licensed user from an unlicensed vendor is returned within 30 days to the wine licensee who was responsible for it at the time of purchase or to the wine licensee who supplied it, and if ownership reverts to the unlicensed vendor. In such a case, responsibility for the bulk wine shifts back to the wine licensee who was responsible for the wine immediately prior to the sale. Responsibility shifts either at the time of receipt of the returned wine or when its ownership reverts to the unlicensed vendor, whichever is the later occurrence.

#### **Section 115 – Exception – provincial ownership**

Where a provincial government or a liquor authority that is a wine licensee or licensed user owns bulk wine for a purpose unrelated to its licence, responsibility for the bulk wine is to be determined in

accordance with section 113 as if the bulk wine was owned by an unlicensed person instead of the provincial government or liquor authority.

#### **Section 116 – Wine imported by licensed user**

If a licensed user imports bulk wine, this section makes the licensed user the responsible person for the wine.

#### **Section 117 – Blended wine – joint and several or solidary responsibility**

This section applies if wine results from the blending of bulk wine with other bulk wine or bulk spirits. In such a case, every person who is responsible for any of the bulk wine or who is a licensed user responsible for any of the bulk spirits becomes jointly and severally or solidarily responsible for the resulting wine. The licensed user or spirits licensee responsible for the bulk spirits before they were blended with wine ceases to be responsible for the spirits at the time of the blending.

#### **Section 118 – Person not responsible**

A person who is responsible for bulk wine ceases to be responsible for the wine if it is:

- taken for use and duty on it is paid;
- taken for use in an approved formulation;
- taken for analysis or destroyed in accordance with section 145;
- used to produce vinegar in accordance with subsection 146(1);
- exported; or
- lost, if the loss is recorded in an authorized manner.

#### **Section 119 – Notification of change of ownership**

This section applies when a wine licensee or licensed user purchases bulk wine from a person other than a wine licensee or licensed user. In such a case the purchaser must obtain from the vendor the name and address of the wine licensee responsible for the bulk wine immediately before its purchase, and must give timely written notice of the purchase to that wine licensee. This section does not apply to bulk wine that is purchased outside Canada for importation.

**Section 120 – Removal of special container**

A wine licensee who removes an unmarked special container of wine from the licensee's excise warehouse to return it to the licensee's bulk wine inventory in accordance with section 156, is responsible for the wine in the container. However, if the wine is owned by another wine licensee or licensed user, the owner is responsible for it.

**Section 121 – Removal of wine**

A wine licensee who removes non-duty-paid packaged wine from the licensee's excise warehouse to return it to the licensee's bulk wine inventory in accordance with section 157 is responsible for the wine. However, if the wine is owned by another wine licensee or licensed user, the owner is responsible for it.

***Imposition and Payment of Duty on Alcohol***

Sections 122 to 139 deal with the imposition and payment of duty on spirits and wine. Duty is imposed on spirits at the time they are produced. Duty on wine is imposed at the time of packaging, except where bulk wine is taken for use, in which case duty is imposed at the time the bulk wine is taken for use. Duty is not imposed on wine produced by an individual for personal use. As a general rule, duty is payable on spirits and wine at the time of packaging unless, immediately after packaging, they are placed in an excise warehouse. If placed in an excise warehouse, duty is payable when the packaged spirits or wine are removed from the excise warehouse for the duty-paid market.

**Section 122 – Imposition – domestic spirits**

This section is the general imposition of duty provision for spirits. It establishes the fundamental principle that duty is imposed on spirits at the time they are produced. In the case of imported spirits, duty, equivalent to the duty imposed under this section or section 123, is imposed under section 21.1 or 21.2 of the *Customs Tariff* at the time of importation. (Sections 21.1 and 21.2 are set out in Part 8 of this Act.)

**Section 123 – Imposition – low alcoholic strength spirits**

This section imposes a lower rate of duty on spirits that contain no more than 7% absolute ethyl alcohol by volume at the time of packaging. The lower rate of duty is equal to the rate set out in subsection 1(7) of Part I of the schedule to the current *Excise Act* for low alcoholic strength mixed beverages.

**Section 124 – Duty payable when packaged**

This section specifies that, subject to sections 126 and 127, the duty on spirits is payable at the time the spirits are packaged. Duty is payable by the person responsible for the bulk spirits immediately before they were packaged. However, duty may be deferred if immediately after packaging the spirits are entered into an excise warehouse, in which case the licensee of the excise warehouse becomes liable for the duty under section 140.

In the case of spirits, “packaged”, as defined in section 2, means packaged in a container of a capacity of not more than 100 litres or less that is ordinarily sold to consumers without the spirits being repackaged or packaged in a marked special container.

**Section 125 – Duty payable when removed from warehouse**

The duty on packaged spirits that were entered into an excise warehouse is payable at the time the packaged spirits are removed from the warehouse for entry into the duty-paid market. The licensee of the excise warehouse is liable to pay the duty.

**Section 126 – Duty payable on bulk spirits taken for use**

This section establishes an exception to the principle that duty on bulk spirits is payable at the time of packaging. If bulk spirits are taken for use before packaging, duty is payable at the time they are taken for use (see the definition of “take for use”). The person responsible for the spirits at the time they are taken for use is liable to pay the duty at that time. However, duty is not payable on bulk spirits taken for the non-dutiable uses set out in sections 144 to 146.

**Section 127 – Duty payable on unaccounted bulk spirits**

Duty is payable on bulk spirits where the person responsible for them cannot account for them as being in the possession of a spirits licensee, a licensed user or an alcohol registrant. The duty is payable by the person responsible for the spirits at the time they cannot be accounted for. However, duty is not payable in circumstances where the person responsible for the bulk spirits is charged with an offence under 218 or is liable to a penalty under section 241.

**Section 128 – Duty payable on packaged spirits taken for use**

Duty is payable on non-duty-paid packaged spirits in the possession of an excise warehouse licensee or a licensed user that are taken for use (see the definition of “take for use”). The duty is payable by the licensee or user at the time the spirits are taken for use. However, duty is not payable on packaged spirits taken for the non-dutiable uses set out in sections 144 to 146.

**Section 129 – Duty payable on unaccounted packaged spirits**

Duty is payable on non-duty-paid packaged spirits if the excise warehouse licensee or licensed user who received them cannot account for them as

- being in the warehouse of the excise warehouse licensee or the specified premises of the licensed user;
- having been removed, used or destroyed in accordance with the Act; or
- having been lost in prescribed circumstances.

The duty is payable by the excise warehouse licensee or licensed user at the time the spirits cannot be accounted for.

**Section 130 – Fortifying wine**

This section authorizes a licensed user who is also a wine licensee to use bulk spirits to fortify wine to an alcoholic strength not exceeding 22.9% by volume. The resulting product is classified as wine and the duty previously imposed on the spirits used in the fortification (under section 122 of this Act or section 21.1 of the *Customs Tariff*) is relieved.

**Section 131 – Blending wine with spirits**

This section authorises a licensed user who is also a spirits licensee to blend bulk wine with spirits so long as the resulting product exceeds an alcoholic strength of 22.9% by volume and is therefore classified as spirits. The duty previously imposed on the spirits used in the blend (under section 122 of this Act or section 21.1 of the *Customs Tariff*) is relieved, and the blended spirits are deemed to have been produced at the time of blending.

**Section 132 – Duty relieved – DA and SDA**

Spirits that are denatured into denatured alcohol or specially denatured alcohol by a spirits licensee are relieved of duty imposed under section 122 of this Act or section 21.1 of the *Customs Tariff*.

**Section 133 – Imposition of special duty**

This section imposes a special duty on imported spirits delivered to or imported by a licensed user. The rate of the special duty is laid down in Schedule 5 and is equivalent to the duty of 12 cents per litre of absolute ethyl alcohol provided for in section 2 of Part I of the schedule to the current *Excise Act*.

If a spirits licensee imports bulk spirits that are delivered to a licensed user, the special duty is payable at the time of the delivery and is payable by:

- the spirits licensee responsible for them at that time;
- the spirits licensee who was last responsible for them if the licensed user is responsible for them at the time of their delivery;  
or
- the spirits licensee who delivered them if no spirits licensee was previously responsible for them.

If packaged spirits are removed from an excise warehouse for delivery to a licensed user, the special duty is payable at the time of their removal from the warehouse and is payable by the licensee of the excise warehouse. If a licensed user imports either bulk or packaged spirits, the special duty is payable by the licensed user in accordance with the *Customs Act*.

**Section 134 – Imposition – bulk wine taken for use**

Duty is imposed on bulk wine taken for use (see the definition of “take for use”) at the rates set out in Schedule 6 and is payable at that time by the person responsible for the wine. However, duty is not payable on bulk wine taken for the non-dutiable uses set out in sections 144 to 146 or on wine produced by individuals for their personal consumption.

**Section 135 – Imposition – wine packaged in Canada**

Duty is imposed on wine at the time it is packaged in Canada at the rates set out in Schedule 6. The duty is payable at the time of packaging by the person who was responsible for the wine immediately before packaging. However, payment of duty is deferred if the wine is entered into an excise warehouse immediately after packaging, in which case the licensee of the excise warehouse becomes liable for the duty on the wine under section 140 and the person required to pay duty under this section ceases to be liable for the duty.

Duty is neither imposed on wine produced and packaged by an individual for the individual's personal use nor on wine produced and packaged by a wine licensee if the sales of wine by the licensee did not exceed \$50,000 in the preceding 12 months.

In the case of imported packaged wine, duty, equivalent to the duty imposed by this section, is imposed under section 21.2 of the *Customs Tariff*. (See Part 8 of this Act.)

**Section 136 – Duty payable on removal from warehouse**

The duty on packaged wine entered into an excise warehouse is payable at the time the wine is removed from the excise warehouse for entry into the duty-paid market. Duty is payable by the excise warehouse licensee.

**Section 137 – Duty payable on packaged wine taken for use**

Duty is payable on non-duty-paid packaged wine in the possession of an excise warehouse licensee or licensed user that is taken for use (see the definition of “take for use”). The duty is payable by the



licensee or user when the wine is taken for use. However, duty is not payable on packaged wine taken for the non-dutiable uses set out in sections 144 to 146.

### **Section 138 – Duty payable on unaccounted packaged wine**

Duty is payable on non-duty-paid packaged wine that has been received by an excise warehouse licensee or licensed user who cannot account for it as being present in the licensee's excise warehouse or the licensed user's specified premises, as having been removed, used or destroyed in accordance with the Act, or as having been lost in prescribed circumstances. The duty is payable by the excise warehouse licensee or licensed user at the time the wine cannot be accounted for.

### **Section 139 – Duty on wine in marked special container relieved**

Duty imposed under subsection 135(1) is relieved on wine contained in a special marked container that is returned by the wine licensee who marked the container to the licensee's bulk wine inventory in accordance with section 156.

The duty imposed under subsection 135(1) on wine packaged in Canada or levied under subsection 21.2(2) of the *Customs Tariff* on imported packaged wine is also relieved on non-duty-paid packaged wine returned by a wine licensee from the licensee's excise warehouse to the licensee's bulk inventory in accordance with section 157.

### ***Liability of Excise Warehouse Licensees and Licensed Users***

Sections 140 to 142 deal with the assignment of liability for duty on non-duty-paid packaged spirits or wine that enter an excise warehouse or the premises of a licensed user.

### **Section 140 – Non-duty-paid packaged alcohol**

The payment of duty on packaged alcohol may be deferred if the alcohol is entered into an excise warehouse immediately after packaging. This section specifies that the licensee of the excise warehouse into which the packaged alcohol is entered becomes liable

for the duty on the alcohol at the time the alcohol is entered into the warehouse.

### **Section 141 – Imported packaged alcohol**

This section provides that where imported packaged alcohol is released under the *Customs Act* without the payment of duty levied under section 21.2 of the *Customs Tariff*, the importing excise warehouse licensee or licensed user to whom the alcohol is released becomes liable for the duty on the alcohol.

### **Section 142 – Transfer between warehouse licensees**

The purpose of this section is to provide for the transfer of liability for duty when non-duty-paid packaged alcohol is transferred from the excise warehouse of one licensee to the excise warehouse of another licensee. The excise warehouse licensee who receives the transferred alcohol becomes liable for the duty on the alcohol at the time the alcohol is entered into the receiving licensee's warehouse and, at the same time, the licensee who transferred the alcohol is no longer liable for duty. Similar rules apply when packaged alcohol is transferred from the excise warehouse of an excise warehouse licensee to a licensed user or from a licensed user to an excise warehouse licensee.

### ***Non-dutiable Uses and Removals of Alcohol***

The authorized non-dutiable uses of bulk and packaged alcohol are specified in sections 143 to 147.

### **Section 143 – Approved formulations**

This section grants the Minister of National Revenue the authority to impose any conditions or restrictions the Minister considers necessary on all aspects of the production, importation, distribution and use of approved formulations.

### **Section 144 – Non-dutiable uses – approved formulations**

This section provides for duty to be relieved on bulk or non-duty-paid packaged alcohol that is used by a licensed user in an approved formulation.

**Section 145 – Duty not payable – bulk and packaged alcohol**

This section specifies circumstances under which duty is not payable on bulk and non-duty-paid packaged alcohol. Duty is not payable:

- if an alcohol licensee or a licensed user takes bulk alcohol, or if an excise warehouse licensee or licensed user takes packaged alcohol, for analysis or destruction in a manner approved by the Minister of National Revenue;
- if a licensed user uses either bulk or packaged alcohol in a process in which the absolute ethyl alcohol is destroyed to an extent approved by the Minister; or
- if the Minister takes either bulk or packaged alcohol for analysis or destruction.

**Section 146 – Duty not payable – vinegar**

Duty is not payable on spirits or wine used by a licensed user to manufacture vinegar provided that each litre of absolute ethyl alcohol used renders 0.5 kg or more of acetic acid.

If less than 0.5 kg of acetic acid is produced from every litre of absolute ethyl alcohol used, the licensed user is deemed to have taken for use a number of litres of spirits or wine that is equivalent to the volume of absolute ethyl alcohol determined by the difference between the number of litres of absolute ethyl alcohol used and twice the number of kilograms of acetic acid produced. The duty on the spirits or wine is payable when the vinegar is produced. In the case of vinegar produced from bulk alcohol, the duty is payable by the person responsible for the bulk alcohol. In the case of vinegar produced from packaged alcohol, the duty is payable by the licensed user who produced the vinegar.

**Section 147 – Duty not payable – packaged alcohol**

This section specifies the circumstances under which duty on packaged alcohol is not payable at the time of removal from an excise warehouse.

Duty is not payable on packaged alcohol – other than a marked special container of alcohol – removed from an excise warehouse for:

- delivery to an accredited representative, duty free shop, a registered user or as ships' stores; or
- export by the licensee of the excise warehouse.

Duty is not payable on a marked special container of spirits removed from an excise warehouse for:

- delivery to a registered user; or
- export by the excise warehouse licensee, if the container was imported.

Duty is not payable on an imported marked special container of wine removed from an excise warehouse for export by the excise warehouse licensee.

### ***Determining Volume of Alcohol***

For the purpose of calculating duty, the volume of alcohol and absolute ethyl alcohol content are required to be determined in a manner specified by the Minister of National Revenue, using approved instruments.

### **Section 148 – Volume of alcohol**

This section provides that the volume of alcohol (i.e., spirits or wine) and its absolute ethyl alcohol content are to be ascertained in a manner specified by the Minister of National Revenue, by using instruments, or classes, types or designs of instruments, approved by the Minister. The Minister is authorized to re-examine approved instruments and revoke an approval.

### ***Excise Warehouses***

Excise warehouses may be used to defer the payment of duty imposed under this Act or new sections 21.1 and 21.2 of the *Customs Tariff*. Duty is payable at the time packaged alcohol is removed from an excise warehouse for the duty-paid market. Under certain circumstances packaged alcohol may be removed from a warehouse without the payment of duty.

**Section 149 – Restriction – entering into warehouse**

Non-duty-paid packaged alcohol may only be entered into an excise warehouse in accordance with the Act and the regulations.

**Section 150 – Import by warehouse licensee or licensed user**

Under sections 124 (spirits) and 135 (wine), duty imposed on alcohol packaged in Canada is not payable if immediately after packaging it is entered into an excise warehouse. This section establishes a similar rule for imported packaged alcohol. Imported packaged alcohol that is released under the *Customs Act* without the payment of duty in accordance with new section 21.2 of the *Customs Tariff* must immediately be entered into the excise warehouse of the excise warehouse licensee or the specified premises of the licensed user who imported the alcohol.

**Section 151 – Restriction on removal**

Packaged alcohol may be entered into an excise warehouse without payment of duty. This section specifies the restrictions on the removal of packaged alcohol from an excise warehouse.

Non-duty-paid packaged alcohol, other than a marked special container of alcohol, may be removed from an excise warehouse for:

- entry into the duty-paid market;
- delivery to another excise warehouse, an accredited representative, a duty free shop, a licensed user, a registered user, or as ships' stores; or
- export.

A non-duty-paid marked special container of wine may be removed from an excise warehouse for:

- delivery to another excise warehouse; or
- entry into the duty-paid market for delivery to a bottle-your-own premises.

A non-duty-paid marked special container of spirits may be removed from an excise warehouse for:

- delivery to another excise warehouse;
- delivery to a registered user, if the container is marked for delivery to and use by a registered user; or
- entry into the duty-paid market for delivery to a bottle-your-own premises, if the container is marked for delivery to and use at a bottle-your-own premises.

An imported marked special container of alcohol may also be removed from an excise warehouse for export.

### **Section 152 – Return of duty-paid alcohol**

This section allows for the return, under prescribed conditions, of duty-paid packaged alcohol to the non-duty-paid inventory of the excise warehouse from which it was removed for entry into the duty-paid market. The licensee of the excise warehouse is entitled to apply for a refund of the duty on the alcohol under section 186.

### **Section 153 – Return of non-duty-paid alcohol**

Non-duty-paid packaged alcohol removed from an excise warehouse in the circumstances described in section 147 may, under prescribed conditions, be returned to the non-duty-paid inventory of an excise warehouse.

### **Section 154 – Supplying packaged alcohol to retail store**

This provision, which is intended to prevent excise warehouse licensees from using one of their premises to supply a single retail store, restricts the total volume of packaged alcohol that may be supplied during a calendar year to a retail store from a particular premises of an excise warehouse licensee to 30% of the total volume of packaged alcohol supplied from the premises to retail stores in the year.

The limitation does not apply if the retail store is a store of an alcohol licensee who supplied the alcohol from the licensee's excise warehouse, provided:

- the store is located where the licensee produces or packages alcohol; and

- at least 90% of the alcohol supplied from the excise warehouse during the calendar year was packaged by the alcohol licensee or on behalf of the alcohol licensee provided that the alcohol licensee was responsible for the alcohol at the time of packaging.

### **Section 155 – Exception for remote stores**

The Minister of National Revenue may authorize an excise warehouse licensee who is a liquor authority or who is not a retailer of alcohol, to exceed the 30% limitation laid down in section 154, if the excise warehouse licensee applies in the prescribed form and manner, and the Minister is satisfied that the delivery of packaged alcohol to the store by railway, truck or water vessel is not possible for five consecutive months in every year.

The Minister may revoke the authorization if

- the licensee requests its revocation in writing;
- the licensee does not comply with a condition of the authorization, or a provision of the Act or the regulations;
- the Minister is no longer satisfied that the conditions for the authorization are met; or
- the Minister considers the authorization is no longer required.

The Minister must notify the licensee in writing of the revocation of an authorization and of its effective date.

### **Section 156 – Removal of special container**

An alcohol licensee who has marked a special container of alcohol may return it to the licensee's bulk alcohol inventory by removing the marking on the container. At the time the marking is removed, the unmarked special container must be removed from the excise warehouse of the alcohol licensee.

### **Section 157 – Removal of packaged wine from excise warehouse**

Non-duty-paid packaged wine may be returned from a wine licensee's excise warehouse to the licensee's bulk wine inventory.

**Section 158 – Removal of packaged spirits from excise warehouse**

Non-duty-paid packaged spirits may be returned from a spirits the licensee's excise warehouse to the licensee's bulk spirits inventory.

**PART 5****GENERAL PROVISIONS CONCERNING DUTY AND  
OTHER AMOUNTS PAYABLE*****Fiscal Month***

As a general rule, the fiscal month of a licensee or other person required to pay duty is the person's fiscal month for GST/HST purposes.

**Section 159 – Determination of fiscal months**

Persons required to file returns under the Act must notify the Minister of National Revenue of their fiscal months. A person's fiscal months for the purposes of this Act are determined as follows:

- if a person's fiscal months have been determined for GST/HST purposes under subsection 243(2) or (4) of the *Excise Tax Act*, those fiscal months are the person's fiscal months for the purposes of this Act;
- if a person's fiscal months have not been so determined, the person may select fiscal months for the purposes of this Act that meet the requirements set out in subsection 243(2) of the *Excise Tax Act*; and
- in every other case, the person's fiscal months are calendar months.

***Returns and Payment of Duty and Other Amounts***

The provisions dealing with returns and the payment of duty are similar to the GST/HST provisions relating to returns and remittances.



**Section 160 – Filing by licensee**

This section requires persons who are licensed under the Act, other than licensed tobacco dealers, to file monthly returns and calculate and remit any duty payable. The return for each of a person's fiscal months must be filed, and the duty, if any, remitted by the end of the first month following the fiscal month.

**Section 161 – Filing by other persons**

This section deals with the filing of returns and the payment of duty by persons who are not licensed under the Act. Persons who are not licensed under the Act but who are liable to pay duty are required to file a return and pay the duty owing by the end of the first month following the fiscal month in which the duty became payable.

**Section 162 – Set-off of refunds**

This section allows certain refunds that are due to a person to be deducted from the duty payable in that person's return. To be deductible, the refunds must be due to the person at the time the person files the return and must be claimed in that return or another return or in a separate application filed with that return. In such a case, the person is deemed to have paid and the Minister of National Revenue is deemed to have refunded an amount equal to the lesser of the amount payable by the person and the amount of the refund. (Subsection 228(6), *Excise Tax Act*)

**Section 163 – Large payments**

Every person required to pay \$50,000 or more in a single payment to the Receiver General is required to remit the amount at a financial institution. (Subsection 278(3), *Excise Tax Act*)

**Section 164 – Authority for separate returns**

If a licensee carries on business by way of separate branches or divisions, the licensee may seek permission from the Minister of National Revenue to file separate returns for the licensee's separate branches or divisions. To qualify, a branch or division must be separate in terms of its location or operations and it must have separate books and records as well as a separate accounting system.

The Minister may revoke an authorization where the licensee fails to comply with the Act or any condition imposed in respect of the authorization, the licensee no longer meets the requirements for authorization or the authorization is no longer required. (Section 239, *Excise Tax Act*)

### **Section 165 – Small amounts owing**

If the total amount payable by a person is less than a prescribed amount, it is deemed to be nil. Similarly, if the total of the amount payable to a person by the Minister of National Revenue is less than a prescribed amount, the Minister is not required to pay it. The Minister may, however, deduct this amount from any amount payable by the person.

### **Section 166 – Electronic filing**

A person who is required to file returns under the Act and who meets the criteria specified by the Minister of National Revenue for electronic filing may use electronic media for filing the returns. A return filed electronically is deemed to be a return when the Minister acknowledges acceptance of it. (Section 278.1, *Excise Tax Act*)

### **Section 167 – Execution of returns, etc.**

This section specifies how a return (other than a return filed electronically), certificate or other document filed is to be signed on behalf of a corporation or other body. Senior officers named in the section are deemed to be duly authorized signing officers. (Section 279, *Excise Tax Act*)

### **Section 168 – Extension of time**

The Minister of National Revenue may extend the time for filing a return or providing information. Where an extension has been granted, any duty payable is to be paid within the extended time. However, interest accrues as if the time had not been extended. (Section 281, *Excise Tax Act*)

**Section 169 – Demand for return**

The Minister of National Revenue may require any person to file a return for any designated period within a reasonable time. The demand for the return must be served personally, or by registered or certified mail. (Section 282, *Excise Tax Act*)

***Interest*****Section 170 – Compound interest on amounts not paid when required**

This section imposes interest at the prescribed rate on amounts a person has failed to pay under the Act. Interest will be compounded daily at the rate prescribed from the day following that on which the amount was required to be paid until the day the amount is paid. The Minister of National Revenue may serve notice that if payment of an amount due is made by a given future date, interest from the date of notice to the date of payment will be waived. Under certain circumstances, the Minister may also write off interest of less than a prescribed amount. (Subsections 280(1) and (4.1), *Excise Tax Act*)

**Section 171 – Compound interest on amounts owed by Her Majesty**

This section imposes interest on amounts owed by Her Majesty to a person. Interest will be compounded daily at the rate prescribed from the day following that on which the amount was required to be paid by Her Majesty until the day the amount is paid or is applied against an amount owed by the person to Her Majesty.

**Section 172 – Application of interest provisions if Act amended**

This section clarifies that should the Act be amended by a provision that comes into force before it is assented to, the provisions of the Act relating to interest shall apply as if the amending provision were assented to on the day it came into force. (Subsection 124(3), *Excise Tax Act*)

**Section 173 – Waiving or reducing interest**

The Minister of National Revenue may waive or reduce interest payable under the Act. This section provides the Minister with the discretionary authority to waive interest where there are extraordinary circumstances beyond a person's control and the person has been prevented from complying with the requirement to pay duty or another amount. (Subsection 281.1(1), *Excise Tax Act*)

***Refunds***

Under certain conditions, licensees and other persons may apply for a refund of the duty paid on alcohol and tobacco products. Refund applications are generally required to be made within 2 years of the event that gave rise to the refund entitlement.

**Section 174 – Statutory recovery rights**

Duty, interest or another amount paid under the Act is not refundable except to the extent that the Act, the *Customs Act*, the *Customs Tariff* or the *Financial Administration Act* provides. (Section 312, *Excise Tax Act*)

**Section 175 – Applications for refunds**

A person applying for a refund under the Act must make an application in the prescribed form and manner. Only one application may be made for a particular refund. (Section 262, *Excise Tax Act*)

**Section 176 – Payment if error**

A person who pays an amount under the Act that is in fact not payable may apply for a refund of the amount, provided the person applies for the refund within 2 years of the day the amount was paid. The refund is not, however, payable to the person where the amount has been included in an assessment under section 188. (Section 261, *Excise Tax Act*)

**Section 177 – Restriction on refunds, etc.**

This section provides that a person is not entitled to a refund or payment of an amount under the Act to the extent that the person has been paid the refund or amount under this or any other Act of Parliament or has applied for the refund or amount under any other Act of Parliament. (Section 263, *Excise Tax Act*)

**Section 178 – Restriction re trustees**

A refund or other payment that a person was entitled to prior to the appointment of a trustee in bankruptcy for the person shall not be paid unless all returns for the fiscal months that ended before the appointment of the trustee have been filed and all outstanding payments for those fiscal months have been paid. (Section 263.1, *Excise Tax Act*)

**Section 179 – Overpayment of refunds, etc.**

This section provides that if a person receives a refund to which the person was not entitled or an overpayment of a refund, the person shall pay the amount of the refund or overpayment to the Receiver General. (Section 264, *Excise Tax Act*)

**Section 180 – No refund on exported tobacco products or alcohol**

The duty paid on alcohol or tobacco products entered into the duty-paid market shall not be refunded if the alcohol or tobacco products are subsequently exported.

**Section 181 – Re-worked or destroyed tobacco products**

A tobacco licensee may apply for a refund of the duty paid on tobacco products re-worked or destroyed by the tobacco licensee in accordance with section 41, provided the licensee applies for the refund within 2 years of the day the tobacco was re-worked or destroyed. (Section 207, *Excise Act*)

**Section 182 – Refund of tax to importer if foreign taxes paid**

The special duty imposed under paragraph 56(1)(a) on manufactured tobacco, other than partially manufactured tobacco, exported by the

tobacco licensee who manufactured them may be refunded to the person who imported the products into a foreign country. Evidence must be provided that the duties and taxes charged on the products by the government of the importing country have been paid, and that their containers were marked for export in accordance with this Act. The importer must apply for the refund within 2 years of the day the products were exported.

Where the duty imposed under paragraph 56(1)(a) exceeds the total amount of foreign taxes paid, the amount of the refund is restricted to the amount of the foreign taxes. In such a case, the Minister of National Revenue may refund the difference between the two amounts to the tobacco licensee who manufactured the tobacco. No refund of special duty paid under paragraph 56(1)(b) is granted. (Section 68.171, *Excise Tax Act*)

### **Section 183 – Refund of special duty to duty free shop licensee**

The Minister of National Revenue may grant a refund of the duty paid under section 53 to a duty free shop operator who is licensed under the Act to sell imported manufactured tobacco and who sells such tobacco to a non-resident who is departing from Canada. The refund is limited to the duty paid on the first 200 cigarettes, 200 tobacco sticks and 200 grams of other manufactured tobacco purchased by each non-resident traveller, and must be applied for by the duty free shop licensee within 2 years of the date of sale. (Section 68.172, *Excise Tax Act*)

### **Section 184 – Payment if bad debt**

A tobacco licensee who has paid *ad valorem* duty under section 43 in respect of an arm's length sale of cigars may claim bad debt relief in respect of the sale if the bad debt is written off in the licensee's books and if the licensee applies for the relief in the 2 years after the licensee's fiscal month during which the bad debt was written off. The amount the refund that may be claimed in respect of the bad debt is in equal proportion to the sale that was written off. If the tobacco licensee subsequently recovers any portion of the debt that was written off, the licensee must pay that portion of the duty refund to the Receiver General. (Section 68.21, *Excise Tax Act*)

**Section 185 – Refund – bulk or packaged imported spirits**

If a licensed user returns imported bulk spirits to the spirits licensee who supplied them to the user or returns packaged imported spirits to the excise warehouse licensee who supplied them, the spirits licensee or excise warehouse licensee who paid the special duty imposed under section 133 on the imported spirits may apply for a refund of the special duty if the licensee applies for the refund within 2 years after the day the spirits were returned.

If a licensed user exports imported spirits to return the spirits to their foreign supplier, the licensed user is entitled to apply for a refund of the special duty under the *Customs Act*.

**Section 186 – Refund – alcohol returned to warehouse**

The excise warehouse licensee from whose excise warehouse packaged alcohol was removed for the duty-paid market may apply for a refund of the duty paid on the alcohol if the alcohol is returned to the licensee's warehouse in accordance with section 152 and the licensee applies for the refund within 2 years after the day of the return of the alcohol.

**Section 187 – Refund – alcohol in special container**

Where a marked special container of alcohol is returned to the excise warehouse licensee who paid duty on the alcohol, the licensee may apply for a refund of the duty on the alcohol remaining in the marked special container, if the licensee destroys the alcohol in the manner approved by the Minister of National Revenue and applies for the refund within 2 years after the day the container was returned.

***Assessments***

The assessment provisions in the Act are similar to those in Part IX of the *Excise Tax Act*.

**Section 188 – Assessments**

This section authorizes the Minister of National Revenue to assess or reassess persons for their liabilities under the Act. When assessing a

person, the Minister may take into account any overpayment made by the person or refund owing to the person. (Section 296, *Excise Tax Act*)

### **Section 189 – Assessment of refund**

If a person applies for a refund, the Minister of National Revenue shall consider the application and assess the amount of the refund owing. To receive a refund a person must have filed all returns required to be filed under this Act, the *Customs Act*, the *Excise Act*, the *Excise Tax Act* and the *Income Tax Act*. Interest shall be paid at the prescribed rate on refunds for the period beginning 30 days after the refund application is filed with the Minister and ending on the day the refund is paid. (Subsection 229(2) and section 297, *Excise Tax Act*)

### **Section 190 – No assessment for penalty**

This section provides that no assessment shall be made for administrative penalties imposed under section 254 of the Act. A person liable to pay an administrative penalty may request a review and decision of the Minister of National Revenue concerning the penalty in accordance with section 271.

### **Section 191 – Limitation period for assessments**

This section sets out the limitation periods for assessing duty, interest or other amounts payable under the Act. Generally, an assessment of the duty payable for a fiscal month shall not be made more than 4 years after the later of the day on which the return was required to be filed under section 160 or 161 and the day the return was filed. (Section 298, *Excise Tax Act*)

### **Section 192 – Minister not bound**

The Minister of National Revenue is not bound by any return, application or information supplied by a person and an assessment may be made even if no return has been filed. A person's liabilities under the Act are not affected by an incorrect or incomplete assessment or the absence of an assessment. An assessment is deemed to be valid and binding despite any error, defect, or omission in it. (Section 299, *Excise Tax Act*)



**Section 193 – Notice of assessment**

This section requires the Minister of National Revenue to provide a notice of assessment to any person who has been assessed. A notice of assessment may include assessments of any number or combination of fiscal months, refunds or amounts payable under the Act. (Section 300, *Excise Tax Act*)

**Section 194 – Assessment payable**

Amounts assessed by the Minister of National Revenue are payable by the person assessed from the date of assessment.

***Objections to Assessment*****Section 195 – Objection to assessment**

A person who objects to an assessment may file a notice of objection with the Minister of National Revenue within 90 days from the date of the notice of assessment. The Minister is required to reconsider the assessment and either vacate or confirm the assessment or make a reassessment and notify the person accordingly. However, the Minister may confirm the assessment without reconsidering it if a person who wishes to appeal directly to the Tax Court requests the Minister to do so. (Section 301, *Excise Tax Act*)

**Sections 196 – Extension of time by Minister**

If a person does not file a notice of objection under section 195 within the time limited under the Act but wishes to do so, the person may make an application to extend the time for filing and the Minister of National Revenue may grant it. However, the application cannot be granted unless it is made within one year of the expiration of the time for objecting and as soon as circumstances permit. The person must demonstrate that the person was unable to act within the time otherwise limited for objecting and that the person had a *bona fide* intention to object to the assessment within that time. The person must also give the reasons why it would be just and equitable to grant the application. (Section 303, *Excise Tax Act*)

### *Appeal*

A taxpayer may appeal the Minister of National Revenue's decision on an objection relating to an assessment to the Tax Court of Canada. Appeals may be instituted under the general procedure or, if the matter at issue involves not more than \$25,000, the informal procedure. The Tax Court may either dismiss an appeal or allow it and cancel the assessment or refer the assessment back to the Minister for reconsideration. Any decision of the Tax Court may be appealed to the Federal Court of Appeal.

#### **Section 197 – Extension of time by Tax Court**

If the Minister of National Revenue refuses an application for an extension of time for filing a notice of objection or does not make a decision within 90 days of receiving the application, a person may apply to the Tax Court for an extension of time. However, the application cannot be granted unless it is made within 30 days from the day the Minister's decision under section 196 is mailed to the person. The applicant must meet the same conditions as in the case of an application to the Minister for an extension of time. (Section 304, *Excise Tax Act*)

#### **Section 198 – Appeal to Tax Court**

A person may appeal to the Tax Court where, in response to a notice of objection, the Minister of National Revenue has confirmed the assessment or made a reassessment, or, where the Minister has not made a decision on the notice of objection, within 180 days of the notice being filed. Where the Minister has confirmed the assessment or reassessed, the appeal is to be made within 90 days of notice of that decision being sent to the person. The Court may permit an appellant to amend an appeal to include any further relevant assessment. (Section 306, *Excise Tax Act*)

#### **Section 199 – Extension of time to appeal**

If an appeal to the Tax Court under section 198 is not commenced within the allotted time, an application may be made to the Court seeking an extension of the time for appealing. The application must be made within one year following the time allowed for appealing and must contain information to justify why an extension should be

granted. The applicant must also demonstrate that there are reasonable grounds for appealing. (Section 305, *Excise Tax Act*)

### **Section 200 – Limitation on appeals to the Tax Court**

An appeal to the Tax Court may only pertain to an issue specified in the notice of objection to an assessment, as required under section 195, and the relief sought with respect to an issue cannot be revised. These restrictions do not, however, apply if the issue was raised for the first time in the Minister of National Revenue's reconsideration of the assessment. A person cannot appeal in respect of an issue for which the right of objection or appeal has been waived in writing by the person. (Section 306.1, *Excise Tax Act*)

### **Section 201 – Institution of appeals**

Appeals to the Tax Court are to be instituted in accordance with the *Tax Court of Canada Act* and the related rules. Appeals to the Tax Court may be instituted under the general procedure and, if the matter at issue involves not more than \$25,000, under the informal procedure. (Section 307, *Excise Tax Act*)

### **Section 202 – Notice to the Commissioner**

Where an appeal has been commenced under the informal procedure of the Tax Court of Canada, the Court is required to notify the Commissioner of Customs and Revenue of the appeal. (Subsection 308(1), *Excise Tax Act*)

### **Section 203 – Disposition of appeal**

The Tax Court may either dismiss an appeal or allow the appeal and either vacate the assessment or refer the assessment back to the Minister of National Revenue for reconsideration and reassessment. (Section 309 of the *Excise Tax Act*)

### **Section 204 – References to Tax Court**

This section allows the Minister of National Revenue and another person to agree to have a question relating to an assessment or proposed assessment determined by the Tax Court. The time during which a question is being determined is excluded from the limitation

periods for issuing assessments and filing notices of objection and appeal. (Section 310, *Excise Tax Act*)

### **Section 205 – Reference of common questions to Tax Court**

The Minister of National Revenue may apply to the Tax Court to determine a question concerning transactions or occurrences that are common to assessments or proposed assessments of two or more persons. The determination of the Court is binding on all parties. It may be appealed to the Federal Court of Appeal. The time during which a question is being determined is excluded from the limitation periods for issuing assessments and filing notices of objection and appeal. (Section 311, *Excise Tax Act*)

## ***Records and Information***

Sections 206 to 211 set out the requirements under the Act relating to the keeping of records and the provision of records and information for any purpose relating to the administration and enforcement of the Act.

### **Section 206 – Keeping records – general**

Every licensee, registrant, person required to file a return, person applying for a refund and person who transports non-duty-paid packaged alcohol or unstamped tobacco products is required to keep records sufficient to enable a determination to be made of whether they have complied with the Act. Tobacco growers and provincial tobacco marketing boards are also required to keep records relating to the amount of raw leaf tobacco they have grown, received or disposed of.

The basic period for retaining records is 6 years after the end of the year to which they relate. (Subsections 286(1) to (3), *Excise Tax Act*)

### **Section 207 – Objection or appeal**

Where there is an objection, appeal or reference under the Act, all records relevant to the proceeding are to be kept until the proceeding and any subsequent appeals are finalized. A person required to keep records may be required, by way of a demand served by the Minister

of National Revenue, to retain the records for any period specified in the demand. A person may be able to dispose of them earlier than required if the Minister gives written permission for their disposal. (Subsections 286(4) to (6), *Excise Tax Act*)

### **Section 208 – Requirement to provide records or information**

The Minister of National Revenue may, by notice, require a person to provide information or records for any purpose relating to the administration or enforcement of the Act. However, court authorization is to be obtained, *ex parte*, if the information or records sought pertain to one or more unnamed persons. In granting the authorization, the judge may impose any conditions the judge considers appropriate. Where court authorization has been granted, the person directed to provide information or records may have the authorization reviewed in court and a judge may cancel, confirm or vary the authorization. (Section 289, *Excise Tax Act*)

### **Section 209 – Compliance order**

On summary application by the Minister of National Revenue, a judge may order a person to provide any access, assistance, information or records sought by the Minister under section 208 (requirement to provide records or information) or 260 (inspections). The judge must be satisfied that the person was required to provide the access, assistance, information or records requested, and did not do so, and that no information or record required is protected by solicitor-client privilege. Five clear days from service of notice must pass before the application is heard. The judge may attach any conditions to the order that are considered appropriate, and may find a person not complying with the order in contempt of court. The order may be appealed to a higher court, without, however, suspending its execution unless so ordered by a judge of the appellate court. (Section 289.1, *Excise Tax Act*)

### **Section 210 – Requirement to provide foreign-based information**

The Minister of National Revenue may, by notice, require a person resident in Canada or a non-resident carrying on business in Canada to produce information or records located outside Canada relevant to the administration or enforcement of the Act. A recipient of a notice may have the notice reviewed by a judge to determine whether the

requirement to disclose is unreasonable. A person who fails to comply substantially with a notice will be prohibited from introducing any information covered by the notice as evidence in any civil proceeding under the Act. (Section 292, *Excise Tax Act*)

### **Section 211 – Provision of confidential information**

This section provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person. This information may not be used or communicated unless specifically authorized under one or more of the exceptions contained in the section.

An official shall not be required to give or produce evidence concerning confidential information in any legal proceeding, except for proceedings concerning the administration or enforcement of the Act, criminal proceedings and certain other proceedings specified in subsection (4) (such as proceedings relating to the administration or enforcement of a federal or provincial tax statute). An order or direction made in connection with the production of confidential information in any legal proceedings may be appealed by the Minister or the person against whom the order or direction is made, and the order or direction is stayed pending the determination of the appeal (subsections (9) to (11)).

Confidential information may be disclosed if the information is regarded as necessary solely for a purpose relating to the life, health and safety of an individual or to the environment in Canada or any other country (subsection (5)). Confidential information may also be disclosed to a person for purposes of the administration or enforcement of the Act, the federal or provincial formulation or evaluation of fiscal policy and various other specified federal or provincial government operations (subsection (6)). Measures may be taken to maintain the security of confidential information used in legal proceedings dealing with the supervision, evaluation or discipline of an authorized person (subsection (7)). Confidential information may be released to the person to whom it relates and to other persons with that person's consent (subsection (8)). (Section 295, *Excise Tax Act*)

### *Bankruptcies and Corporate Reorganizations*

Certain obligations are imposed under section 212 on trustees in bankruptcy who are appointed to manage the estate of a bankrupt person and on receivers who are appointed to manage or wind up a business or property of a person. Section 213 deals with corporate amalgamations.

#### **Section 212 – Bankruptcies**

A bankrupt's trustee in bankruptcy is liable, to the extent of the bankrupt's property, for the payment of the bankrupt's debts that become payable under the Act after the day of the trustee's appointment. Where, on the day of bankruptcy, a bankrupt is licensed or registered under this Act, the licence or registration continues to apply, but in all respects as if the trustee in bankruptcy were the licensee or registrant and not the bankrupt. The trustee is required to file returns subsequent to the bankruptcy as well as any returns that were not filed prior to the bankruptcy.

A receiver appointed to manage or wind up a person's business or property, or to care for a person's assets, is jointly and severally or solidarily liable with the person in receivership for payment of amounts owing under the Act, whether they arose before or after the receiver's appointment. However, as regards the payment of amounts that were payable prior to the receiver's appointment, the receiver is liable only to the extent of those assets of the person that are under the management of the receiver after the payment of specified claims. The receiver is required to file relevant returns from the beginning of the receivership and any relevant returns that were not filed before that time.

A receiver or representative (i.e., a person, other than a receiver or trustee in bankruptcy, who is administering etc., any property, business or estate) may not distribute the property they are authorised to control until they have received a certificate from the Minister of National Revenue regarding payment of duty and other amounts. The certificate attests that all amounts payable or expected to become payable under the Act for the current and previous fiscal months have been paid, or that security has been provided. A receiver or representative who distributes property without obtaining a certificate is personally liable, to the extent of the value of the property

distributed, for the payment of any amount payable or becoming payable. (Subsections 265(1), 266(2) and 270(2) to (4), *Excise Tax Act*)

### **Section 213 – Amalgamations**

Where two or more corporations amalgamate or merge, the general rule for the purposes of the Act is that the resultant corporation becomes a new legal person, separate from each of the corporations that formed it. However, for prescribed purposes, the new corporation may be regarded as the same as, and a continuation of, each of its predecessor corporations. (Section 271, *Excise Tax Act*)

## **PART 6**

### **ENFORCEMENT**

#### ***Offences and Punishment***

Sections 214 to 229 contain offence provisions that impose criminal penalties for serious breaches of the Act relating to alcohol and tobacco products. A person charged with a criminal offence must be prosecuted in court and, if convicted, may face a fine or imprisonment or both.

#### **Section 214 – Unlawful production, sale, etc. of tobacco or alcohol**

The following activities constitute offences under the Act:

- manufacturing a tobacco product without a tobacco licence (section 25);
- packaging or stamping a tobacco product or raw leaf tobacco without a tobacco licence (section 27);
- knowingly purchasing or receiving for sale tobacco products from unlicensed tobacco manufacturers, tobacco products that are not properly packaged and stamped, or fraudulently stamped tobacco products (section 29);
- producing or packaging spirits without a spirits licence (section 60); or
- producing or packaging wine without a wine licence (section 62).



A person convicted of any of these offences on indictment is liable to a fine of between \$50,000 and \$1,000,000, or imprisonment for a term not exceeding five years, or to both the fine and imprisonment. A person convicted of an offences on summary conviction is liable to a fine of not less than \$10,000 and not more than \$500,000, or imprisonment for a term not exceeding 18 months or both.

#### **Section 215 – Punishment – section 30**

This section provides that the disposal, sale, offering for sale, purchase or possession of raw leaf tobacco contrary to section 30 constitutes an offence. A person convicted of the offence is liable to a fine determined under subsections 215(2) and (3), or to imprisonment, on indictment, for a term not exceeding five years or, on summary conviction, for a term not exceeding 18 months or to both the fine and imprisonment.

#### **Section 216 – Punishment – section 32**

This section makes it an offence for a person to possess, offer to sell or sell, other than in accordance with section 32, tobacco products that are not stamped. A person convicted of selling, offering to sell or possessing contraband tobacco products is liable to a fine determined under subsections 216 (2) and (3), or to imprisonment, on indictment, for a term not exceeding five years or, on summary conviction, for a term not exceeding 18 months, or to both the fine and imprisonment. (Section 240, *Excise Act*)

#### **Section 217 – Punishment for certain alcohol offences**

This section makes the following activities an offence:

- the sale of wine produced or packaged for personal use (section 63);
- the unauthorized use or disposal of bulk alcohol by a licensed user (section 73);
- the unauthorized marking of a special container of spirits (subsection 78(1)) or wine (subsection 83 (1));
- the unauthorized use or disposal of non-duty-paid packaged alcohol by a licensed user (section 90); and
- the unauthorized use of specially denatured alcohol (section 96).

A person convicted of an offence under the section is liable to a fine determined in accordance with subsections 217(2) and (3) or to imprisonment, on indictment, for a term not exceeding five years or, on summary conviction, for a term not exceeding 18 months or to both the fine and imprisonment.

### **Section 218 – Punishment for more serious alcohol offences**

The following activities constitute offences under this section:

- the unauthorized sale of alcohol (section 67);
- the unauthorized ownership (section 69) or possession of bulk alcohol (section 70);
- the unauthorized supply of bulk spirits (section 71);
- the unauthorized supply of bulk wine (section 72);
- the unauthorized importation of bulk alcohol (section 74);
- the unauthorized possession of non-duty-paid packaged alcohol (section 88);
- the failure to export, dispose of or destroy spirits imported as denatured alcohol or specially denatured alcohol (subsection 101(1)); and
- the failure to return, dispose of or destroy spirits possessed as denatured alcohol or specially denatured alcohol (subsection 101(2)).

A person convicted of an offence under the section is liable to a fine determined in accordance with subsections 218(2) and (3) or to imprisonment, on indictment, for a term not exceeding five years or, on summary conviction, for a term not exceeding 18 months or to both the fine and imprisonment.

### **Section 219 – Falsifying or destroying records**

The following activities constitute offences under this section:

- making false or deceptive statements in a return or other record;
- seeking to evade paying any duty or seeking to obtain an improper refund, by destroying or altering records, or making a false or deceptive entry or omission in a record;
- wilfully evading or attempting to evade compliance with the Act or payment of duty, interest or other amount imposed under the Act;

- wilfully obtaining or attempting to obtain a refund to which the person is not entitled; or
- conspiring with any other person to commit an offence listed in the first four points.

A person convicted of an indictable offence is liable to a fine determined under paragraph 219(2)(a) or imprisonment for up to five years or to both the fine and imprisonment. A person found guilty on summary conviction is liable to a fine determined under paragraph 219(2)(b), imprisonment for up to 18 months or both. (Section 327, *Excise Tax Act*)

#### **Section 220 – Obstruction of officer**

This section makes it an offence to obstruct or hinder an officer who is carrying out the officer's duties or functions under the Act or to make a false or misleading statement to such an officer. A person found guilty of the offence on summary conviction is liable to a fine of between \$1,000 to \$25,000 or to imprisonment for up to 12 months or to both. (Subsection 291(2), *Excise Tax Act*)

#### **Section 221 – Offence – confidential information**

This section makes it an offence to contravene the confidentiality provisions in section 211 regarding information gathered by the Canada Customs and Revenue Agency in the administration or enforcement of the Act. A person found guilty on summary conviction is liable to a fine of up to \$5,000, imprisonment for up to 12 months or both. (Section 328, *Excise Tax Act*)

#### **Section 222 – Other contraventions**

Every person who contravenes a provision of the Act or regulations, the contravention of which is not specified elsewhere in the Act to be an offence, is guilty of an offence. A person found guilty on summary conviction faces a fine of up to \$100,000, imprisonment for up to 12 months or both.

**Section 223 – Defence of due diligence**

This section provides that a person who establishes that all due diligence was exercised to prevent the commission of an offence shall not be convicted of that offence.

**Section 224 – Compliance orders**

If a person has been convicted for non-compliance with a provision of the Act or regulations, the court has the authority to make an order to enforce compliance with the provision. (Subsection 326(2), *Excise Tax Act*)

**Section 225 – No penalty unless imposed before laying of information**

A person convicted for failing to comply with a provision of the Act is not liable to pay a penalty under sections 233 to 253 for the same failure. The person is, however, liable to pay a penalty imposed under section 254 before the information or complaint giving rise to the conviction was laid or made. (Subsection 326(3), *Excise Tax Act*)

**Section 226 – Officers of corporations, etc.**

This section provides that where a corporation or other entity or organization is convicted of an offence under the Act, every officer, director and agent of that organization who assented to or participated in the commission of the offence is also guilty of the offence and liable to the punishment provided for the offence. (Section 330, *Excise Tax Act*)

**Section 227 – Offences by employees or agents**

In a prosecution for an offence under the Act, it is sufficient proof of the offence that it was committed by an unknown employee or agent of the accused, unless the accused establishes that the accused neither knew of nor consented to the offence and exercised all due diligence to prevent its commission.

**Section 228 – Power to decrease punishment**

The court has no authority, in respect of any prosecution or proceeding under the Act, to impose less than the minimum fine specified or to suspend sentence for an offence under the Act. (Section 331, *Excise Tax Act*)

**Section 229 – Information or complaint**

Any officer may make an information or complaint concerning an offence under the Act. An information or complaint in respect of an offence under this Act may be for one or more offences. (Subsections 332(1) and (2), *Excise Tax Act*)

***Proceeds of Crime***

Sections 230 to 232 are proceeds of crime provisions that make it an offence to possess or launder money or property derived from the illegal production, possession or sale of spirits, wine or tobacco products and establish the framework for federal enforcement agencies to seize the proceeds obtained from serious alcohol and tobacco offences under the Act.

**Section 230 – Property obtained from offences**

This section makes it an offence to knowingly possess property or proceeds of property that were acquired by reason of the commission of or conspiracy to commit a tobacco or alcohol offence under:

- section 214 (unlawful manufacturing, packaging or stamping of tobacco products or unlawful production or packaging of spirits or wine);
- subsection 216(1) (unlawful possession or sale of unstamped tobacco products);
- subsection 218(1) (certain serious alcohol offences); or
- subsection 231(1) (concealing property or proceeds obtained by the commission of offences).

A person convicted by way of indictment is liable to a fine of up to \$500,000, imprisonment for up to five years or both. On summary conviction the person is liable to a fine of up to \$100,000,

imprisonment for up to 18 months or both. (Section 126.1, *Excise Act*)

### **Section 231 – Laundering proceeds of certain offences**

This section makes it an offence to deal with property or proceeds of property with intent to conceal, knowing that the property or proceeds were obtained by reason of the commission of or conspiracy to commit a tobacco or alcohol offence under:

- section 214 (unlawful manufacturing, packaging or stamping of tobacco products or unlawful production or packaging of spirits or wine);
- subsection 216(1) (unlawful possession or sale of unstamped tobacco products); or
- subsection 218(1) (certain serious alcohol offences).

A person found guilty of the offence on indictment is liable to a fine of up to \$500,000, imprisonment for up to five years or both. A person found guilty of the offence on summary conviction is liable to a fine of up to \$100,000, imprisonment for up to 18 months or both. (Section 126.2, *Excise Act*)

### **Section 232 – Part XII.2 of *Criminal Code* applicable**

Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* allow for the seizure and forfeiture of proceeds derived from the commission of enterprise crime offences. This section makes provisions of the *Criminal Code* relating to enterprise crime offences applicable to proceedings concerning the offences under:

- section 214 (unlawful manufacturing, packaging or stamping of tobacco products or unlawful production or packaging of spirits or wine);
- subsection 216(1) (unlawful possession or sale of unstamped tobacco products);
- subsection 218(1) (certain serious alcohol offences);
- section 230 (possession of property or proceeds obtained by the commission of offences); or
- section 231 (concealing property or proceeds obtained by the commission of offences). (Section 126.3 *Excise Act*)

### *Penalties*

Sections 233 to 253 provide for administrative penalties in cases where licensees, registrants or other persons fail to comply with particular sections of the Act. Persons liable to pay an administrative penalty may request the Minister of National Revenue to review the matter under section 271.

#### **Section 233 – Contravention of section 34 or 37**

A tobacco licensee who contravenes section 34 (requirement to package and stamp tobacco products) or section 37 (requirement to enter unstamped tobacco products into an excise warehouse) is liable to a penalty equal to 200% of the duty that was imposed on the tobacco products involved in the contravention.

#### **Section 234 – Contravention of section 38, 40, 41, 49, 61, 99, 149 or 151**

This section specifies a penalty of up to \$25,000 for contraventions of:

- section 38 (requirement to have tobacco markings on containers of tobacco products entered into an excise warehouse);
- section 40 (removal of raw leaf tobacco or waste tobacco);
- section 41 (re-working or destruction of tobacco);
- section 49 (improper entering of a tobacco product into an excise warehouse);
- section 61 (prohibition on possession of a still);
- section 99 (prohibition on sale of specially denatured alcohol);
- section 149 (improper entering of non-duty-paid packaged alcohol into an excise warehouse); or
- section 151 (improper removal of non-duty-paid packaged alcohol from an excise warehouse).

#### **Section 235 – Penalty for unauthorized export of raw leaf tobacco**

A tobacco grower who exports raw leaf tobacco without the written approval of the Minister of National Revenue or fails to comply with a condition imposed by the Minister in respect of the export (see paragraph 31(c)) is liable to a penalty of not more than \$25,000.

**Section 236 – Diversion of black stock tobacco**

This section introduces a penalty on tobacco licensees who pay duty on tobacco products at the lower rates set out in Schedule 1 to the Act, which apply to deliveries, in Canada and abroad, to duty free shops and as ships' stores, but deliver the products to other destinations. The amount of the penalty is 200% of the total of

- the difference between the regular, higher rates applicable under paragraphs 1(b), 2(b) or 3(b) of Schedule 1 to the tobacco concerned and the lower rates under paragraphs 1(a), 2(a) and 3(a) of Schedule 1, which were actually paid; and
- the amount, if any, of the special duty on exported manufactured tobacco payable under paragraph 56(1)(b).

**Section 237 – Diversion of non-duty-paid alcohol and duty-free tobacco**

If alcohol or tobacco products are removed from an excise warehouse for one purpose, but are diverted for another purpose, the following licensees are liable for a penalty of 200% of the duty that was imposed on the products concerned:

An excise warehouse licensee in respect of

- non-duty-paid packaged alcohol removed for a purpose described under section 147 (deliveries for export, the duty-free market and registered users);
- cigars manufactured in Canada removed for a purpose described in subsection 50(9) (deliveries for ships' stores); and
- imported tobacco products removed for a purpose described in subsection 51(2) (deliveries for export, the duty-free market and to other excise warehouses).

A tobacco licensee in respect of

- Canadian manufactured tobacco removed under subsection 50(4) (deliveries for export and the duty-free market);
- cigars removed for a purpose described in subsection 50(7) (deliveries for export and the duty-free market); and



- partially manufactured and foreign brand tobacco, removed for a purpose described in subsection 50(8) (deliveries for export other than to a foreign duty-free shop or as foreign ships' stores).

A special excise warehouse licensee in respect of

- tobacco products manufactured in Canada removed from special excise warehouse for a purpose laid down in section in subsection 50(11) (deliveries to accredited representatives).

No penalty is payable if the licensee proves to the satisfaction of the Minister that the products concerned were returned to the warehouse.

### **Section 238 – Penalty in respect of unaccounted tobacco**

An excise warehouse licensee or a special excise warehouse licensee is liable to a penalty equal to 200% of the duty that was imposed on a tobacco product entered into the licensee's warehouse if the licensee cannot account for the product as being in the warehouse, as having been removed from the warehouse in accordance with the Act or as having been destroyed by fire while in the warehouse.

### **Section 239 – Other diversions**

Unless a penalty under section 237 applies, a person is liable to a penalty if the person acquires packaged alcohol or a tobacco product on a duty-free basis because of the purpose for which it was acquired or its destination and the alcohol or tobacco product is diverted to a use or destination in respect of which duty would have been payable had it been acquired for that purpose or destination. The penalty is 200% of the duty that was imposed on the alcohol or tobacco product.

### **Section 240 – Contravention of subsection 50(5)**

This section makes a tobacco licensee who removes from the licensee's excise warehouse for export in a calendar year unstamped manufactured tobacco in excess of the 1.5% limit on exports laid down in subsection 50(5) liable to a penalty. The penalty is equal to twice the amount of the duty and special duty that should have been imposed on the manufactured tobacco concerned.

**Section 241 – Contravention of section 71**

A person who contravenes section 71 (improper supply of bulk spirits) is liable to a penalty equal to 200% of the duty imposed on the bulk spirits.

**Section 242 – Contravention of section 72**

A person who contravenes section 72 (improper supply of bulk wine) is liable to a penalty equal to \$1.0244 per litre of the bulk wine involved in the contravention.

**Section 243 – Contravention of section 73, etc.**

A person is liable to a penalty if the person contravenes:

- section 73 (improper use or disposal of bulk alcohol by a licensed user);
- section 76 (improper exportation of bulk alcohol);
- section 89 (improper storage of packaged wine by a ferment-on-premises registrant);
- section 90 (improper use or disposal of non-duty-paid packaged alcohol by a licensed user); or
- section 91 (improper use or disposal of non-duty-paid packaged spirits by a registered user).

In the case of a contravention involving spirits, the penalty is equal to the duty imposed on the spirits. If wine is involved, the penalty is equal to \$0.5122 per litre of the wine.

**Section 244 – Spirits improperly used as DA or SDA**

A person is liable to a penalty if the person uses an amount of spirits that the person believed to be denatured alcohol or specially denatured alcohol. The penalty is equal to the duty that was imposed on the spirits.

**Section 245 – Contravention of section 78, 83 or 94**

A person who contravenes section 78 (improper marking of a special container of spirits), 83 (improper marking of a special container of wine) or 94 (improper denaturing of spirits) is liable to a penalty

equal to 100% of the duty that was imposed on the alcohol concerned.

**Section 246 – Contravention of section 81, 86, 92 or 93**

A person is liable to a penalty if the person fails immediately to warehouse an imported marked special container of spirits (section 81) or wine (section 86) or improperly removes from a marked special container spirits (section 92) or wine (section 93). The penalty is equal to 50% of the duty that was imposed on the alcohol concerned.

**Section 247 – Unauthorized possession, etc., of SDA**

A person who uses, possesses, supplies, imports, exports or disposes of specially denatured alcohol such that any of sections 96 to 98, 100, 102 or 103 is contravened is liable to a penalty equal to \$10 per litre of specially denatured alcohol involved in the contravention.

**Section 248 – Unauthorized removal of marked special container**

An excise warehouse licensee who removes a marked special container of alcohol from the licensee's warehouse for entry into the duty-paid market is liable to a penalty of 50% of the duty that was imposed on the alcohol in the container unless the container is properly marked to indicate that it is for delivery to and use by a bottle-your-own premises and it is actually delivered to a bottle-your-own premises.

**Section 249 – Contravention of section 154**

An excise warehouse licensee who, from one of the licensee's premises, supplies to a single retail store more than 30% of the total annual volume of packaged alcohol supplied from the premises to all retail stores is liable to a penalty equal to \$1,000 and 50% of the duty imposed on the alcohol supplied in excess of the 30% ceiling. The penalty does not, however, apply to packaged alcohol supplied in accordance with subsection 154(2) to a retail store of an alcohol licensee or to packaged alcohol supplied in accordance with section 155 to remote stores.

**Section 250 – Failure to comply**

A person is liable to a penalty not exceeding \$25,000 if the person fails to comply with:

- the record-keeping requirements under sections 206 or 207;
- a requirement in a notice to provide information under section 208 or 210;
- a condition or requirement in a licence or registration issued under the Act;
- a condition or restriction concerning approved formulations under section 143; or
- the regulations.

**Section 251 – Failure to file return**

Failure to comply with a demand by the Minister of National Revenue to file a return entails a penalty equal to the greater of \$250 and 5% of the duty outstanding for the period specified in the demand. (Section 283, *Excise Tax Act*)

**Section 252 – Failure to provide information**

A person who fails to provide information or a record as and when required under the Act is liable to a penalty of \$100 for every failure unless, in the case of a failure to provide information in respect of another person, the person has made a reasonable effort to comply. (Section 284, *Excise Tax Act*)

**Section 253 – False statements or omissions**

A person who, knowingly or under circumstances amounting to gross negligence, is involved in the making of a false statement or omission in a return or other document made in respect of a fiscal month or activity is liable to a penalty equal to the greater of \$250 and 25% of the amount by which any duty was reduced, or refund was increased, as a result of the false statement or omission. (Section 285, *Excise Tax Act*)

### *Penalty Imposition*

#### **Section 254 – Notice of imposed penalty**

The Minister of National Revenue has the authority to impose a penalty on a person described in any of sections 233 to 253 by serving on the person a written notice of the penalty or by sending the notice by certified or registered mail. A penalty may be imposed in addition to the seizure or forfeiture of an item or the suspension or cancellation of a licence or registration arising from the same event as the contravention. (Subsections 109.3(1) and (3), *Customs Act*)

#### **Section 255 – When penalty becomes payable**

The amount of a penalty under section 254 is payable at the time it is imposed. (Section 109.4, *Customs Act*)

#### **Section 256 – Interest on penalty during review period**

The general interest rule laid down in subsection 170(1) is that interest is due on amounts owing from the day after payment is required. However, when a person appeals to the Minister of National Revenue under section 271 against a penalty imposed under section 254, no interest is payable from the date of the request for review until the date of the Minister's decision. If the person appeals against the Minister's decision to the Federal Court under section 276, no interest is payable until the day on which the appeal is resolved.

#### **Section 257 – Review of imposed penalty**

The debt due as a result of a penalty imposed under section 254 is final and not reviewable except in the manner provided under this Act. (Section 127 *Customs Act*)

### *Search Warrants*

#### **Section 258 – Information for search warrant**

A judge may issue a warrant authorizing an officer to enter and search any building, receptacle or place and seize any document or thing that may be evidence of a contravention of the Act. The judge

may issue the warrant if the judge is satisfied that there are reasonable grounds to believe that the Act has been contravened and evidence of the contravention is likely to be found in the building, receptacle or place. Things seized in the course of the execution of a search warrant are dealt with under section 490 of the *Criminal Code*. (Section 290, *Excise Tax Act*)

### **Section 259 – Warrant not necessary in exigent circumstances**

This section allows an officer to exercise the powers referred to in subsection 258(1) without a warrant if exigent circumstances make it impractical to obtain one.

## *Inspections*

### **Section 260 – Inspections**

An officer may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property or processes in order to determine whether a person is in compliance with the Act. The officer may enter any premises or place of business and require persons to offer reasonable assistance. However, where the premises sought to be entered is a dwelling house, the consent of the occupant or a warrant issued by a judge is required. (Sections 287 and 288, *Excise Tax Act*)

### **Section 261 – Custody of seized things**

The officer who seizes anything under section 260 may retain custody of the thing or transfer custody to anyone the officer may designate. An officer may order that anything seized under section 260 be retained or stored at the place from where it was seized. (Section 114, *Customs Act*)

### **Section 262 – Copies of records**

Copies may be made of records seized or examined under section 260. Records seized as evidence under the Act shall not be detained for more than 3 months unless the person from whom they were seized agrees to their further detention, a judge orders their

further detention or judicial proceedings in which they may be required are instituted. (Section 115, *Customs Act*)

### **Section 263 – Officer must give notice of seizure**

The officer who seizes an item under section 260 is required to report the seizure immediately to the Commissioner of Customs and Revenue and take all reasonable measures to give notice of the seizure to any person who may be entitled to claim an interest or right in the seized item under section 278. (Section 128, *Customs Act*)

## ***Return or Disposal of Things Seized***

### **Section 264 – Certain things not to be returned**

Alcohol, specially denatured alcohol, raw leaf tobacco or tobacco products seized under section 260 may not be returned to anyone. The exception to this rule is if the seizure was made in error. An item seized in error may be returned.

### **Section 265 – Return if security provided**

The Minister of National Revenue may, subject to this or any other Act of Parliament, return any item seized under section 260 on receipt of security equal to the value of the item at the time of seizure or a lesser amount. (Section 117, *Customs Act*)

### **Section 266 – Dealing with things seized**

The Minister of National Revenue may sell, destroy or otherwise deal with any item seized under section 260. However, the Minister may only sell seized spirits or specially denatured alcohol to a spirits licensee, seized wine to a wine licensee and seized raw leaf tobacco or tobacco products to a tobacco licensee. If a person would be entitled to the return of a seized item if the item were available, the person is entitled to receive the value of the item at the time of the seizure or the proceeds from the sale of the item if it was sold. (Subsections 119.1(1) and (3), *Customs Act*)

### *Forfeitures*

Sections 267 to 269 deal with forfeitures. Subject to review or appeal, items seized under section 260 are forfeited to the Crown.

#### **Section 267 – Forfeiture from time of contravention**

Anything by means of or in relation to which the Act was contravened is forfeit to the Crown from the time of the contravention. (Section 122, *Customs Act*)

#### **Section 268 – Thing no longer forfeit**

Where security is received in respect of a seized item, the security is forfeit in place of the item, from the time the security is received. (Section 121, *Customs Act*)

#### **Section 269 – Review of forfeiture**

The forfeiture of an item under section 267 or of security held in lieu of the item is final and cannot be reviewed, except that the person from whom the item was seized may request the Minister of National Revenue to make a decision under section 271. (Section 123, *Customs Act*)

### *Review of Imposed Penalty or Seizure*

Persons from whom items were seized under section 260 and persons liable to pay an administrative penalty may request that the Minister of National Revenue review the matter. The Minister's decision may be appealed to the Federal Court.

#### **Section 270 – Penalty imposed or seizure made in error**

If the Minister of National Revenue determines that a penalty under section 254 was imposed in error, the Minister may cancel the penalty and return any money received. If the Minister determines that an item seized under section 260 was seized in error, the Minister may release the item or return any security received. The Minister may not, however, cancel a penalty or release a seized item if a request for a review has been made under section 271.



**Section 271 – Request for Minister’s decision**

A person from whom an item has been seized under section 260 or on whom a penalty has been imposed under section 254, may request a decision by the Minister of National Revenue under section 271. The request must be made in writing within 90 days of the seizure or of the service of the notice of penalty imposed. It may be supported by evidence that is given in due form and submitted within the time limits laid down. On receiving a request, the Commissioner of Customs and Revenue must give timely notice, in writing, of the reasons for the penalty or seizure. (Section 129, *Customs Act*)

**Section 272 – Extension of time by Minister**

A person who fails to meet the time limit in section 271 for making a request may apply for an extension. The Minister of National Revenue must consider the application without delay and notify the person of the Minister's decision. The application may not be granted unless it is made within a year of the time limit in section 271 and unless the Minister is satisfied that:

- the applicant had a bona fide intention to make the request within the time limit and was unable to make an application, either personally or through an agent;
- the application was made as soon as possible; and
- it is just and equitable to accept the application.

No appeal lies from the Minister's decision under this section.

**Section 273 – Decision of the Minister**

As soon as is reasonably possible after receipt of a request under section 271 for a review of a penalty or seizure, the Minister of National Revenue must review the circumstances of the case and decide whether a contravention of the Act or regulations occurred that would justify the seizure or penalty. The Minister’s decision is not subject to review except by way of an appeal to the Federal Court under section 276. (Section 131, *Customs Act*)

**Section 274 – If no contravention occurred**

If the Minister of National Revenue decides under section 273 that there was no contravention justifying the seizure of an item, the item or any security taken for it is to be returned without delay. If the Minister decides that a penalty imposed under section 254 was not justified, the amount of the penalty and any interest paid in respect of the penalty is to be returned along with interest at the prescribed rate computed on that amount. (Section 132, *Customs Act*)

**Section 275 – If contravention occurred – penalty**

If the Minister of National Revenue decides under section 273 that there was a contravention in respect of a penalty imposed, the Minister may:

- confirm the penalty;
- require the immediate payment of an additional amount of money, if the Minister considers that an insufficient penalty was levied; or
- reduce or waive the penalty imposed, if the Minister considers it would be proper in the circumstances.

If the Minister decides under section 273 that there was a contravention in respect of an item seized, the Minister may:

- confirm the seizure;
- return the item on receiving an amount of money equal to the value of the item when it was seized or of a lesser amount satisfactory to the Minister;
- return a portion of the security taken for the item; or
- require the immediate payment of an additional amount of money if the Minister considers that insufficient security for the item was taken or received.

Where the Minister demands payment of an additional amount, payment must be made within 90 days, unless the person appeals the decision under section 276 and gives satisfactory security. Despite subsection 170(1), no interest is payable on the additional amount demanded while the appeal remains unresolved. If the Minister returns a thing that was seized or security held instead of a seized thing, the thing or security ceases to be forfeit. (Section 133, *Customs Act*)

**Section 276 – Federal Court**

A person who requested a decision of the Minister of National Revenue under section 271 may, within 90 days of being notified of the Minister's decision, appeal the decision to the Federal Court. (Section 135, *Customs Act*)

**Section 277 – Restoration of things seized pending appeal**

If the Federal Court orders that an item seized under section 260 is to be returned and the Crown appeals that order, the execution of this order shall not be suspended if the person gives sufficient security to the Crown to ensure the return of the item or payment of its value to the Crown if the appeal is allowed. (Section 136, *Customs Act*)

***Third Party Claims***

A person who claims an interest in an item seized under section 260 or forfeited under section 267 may apply, within 90 days of the seizure, for a declaration by the Minister of National Revenue of the nature and extent of that interest and that the person's interest in the seized or forfeited item is not affected by the seizure or forfeiture.

**Section 278 – Third party may claim interest in seized or forfeited thing**

On receipt of an application by a person other than a person who is entitled to make a request under section 271, the Minister of National Revenue may declare that the person's ownership or other interest in an item seized under section 260 or forfeited under section 267 is unaffected by its seizure or forfeiture. The Minister may not make such a declaration if a request for review of the seizure of the item under section 271 has been made and the seizure has not been confirmed. Nor may such a declaration be made unless the Minister is satisfied that the applicant:

- acquired the interest in good faith prior to the contravention that led to the seizure or forfeiture;
- is innocent of complicity or collusion in respect of the contravention; and

- exercised all reasonable care that the item was not likely to be used by the person possessing it to contravene the Act or regulations.

The application must be made in writing to the officer who made the seizure within 90 days of the seizure or to the Minister within 90 days of the date on which the person became aware of the contravention giving rise to the forfeiture. It may be supported by evidence given by affidavit and submitted within 30 days of the request.

### **Section 279 – Extension of time by Minister**

Where no application for a declaration under section 278 is made within the time limit laid down in that section, a person may apply to the Minister of National Revenue for an extension of time and the Minister may grant the extension of time if:

- the applicant applies within one year of the time limit under section 278;
- the applicant genuinely intended to apply within the time limit but was unable to do so, either personally or through an agent;
- the application was made as soon as possible; and
- having regard to the applicant's reasons and the circumstances of the case, it is just and equitable to accept the application.

The Minister's decision is final and binding. The Minister must notify the applicant of the Minister's decision by registered or certified mail. If the Minister decides to extend the time under this section, the application under section 278 is deemed to have been made on the date of the decision.

### **Section 280 – Application to court**

If the Minister of National Revenue decides not to make a declaration under section 278 or an applicant is not satisfied with the Minister's decision, the applicant may, under section 280, within 90 days of the decision, apply in writing to the appropriate court for an order under section 281. (Section 138, *Customs Act*)

**Section 281 – Order**

An applicant under section 280 is entitled to an order declaring that the applicant's interest in a seized or forfeited item is not affected by its seizure or forfeiture and declaring the nature of the applicant's interest, if the court is satisfied that the applicant:

- acquired an interest in the item in good faith before the contravention which resulted in its seizure or forfeiture;
- is innocent of any complicity or collusion concerning the contravention; and
- exercised reasonable care that the person having possession of the item would not be likely to use it in a contravention of the Act or regulations.

(Section 139, *Customs Act*)

**Section 282 – Appeal**

An order of a court under section 281 may be appealed by the applicant or the Crown. The appeal is governed by the ordinary procedure applicable to appeals from the court. (Section 140, *Customs Act*)

**Section 283 – Delivery to applicant**

Where an applicant's interest in a seized item has been established under section 278, 281 or 282 and a request has been made for delivery of the item seized, the Minister of National Revenue must either return it to the applicant or return an amount equivalent to the applicant's interest in the item. Where the item has been sold, all or a portion of the net proceeds of sale are to be paid according to the interest of the applicant in the item at the time of the contravention which led to its seizure. (Section 141, *Customs Act*)

***Collection***

The Minister of National Revenue may take collection action where a person fails to pay any duty or other amount payable under the Act. The collection procedures, which are similar to those under the GST/HST legislation, include certificates of default, garnishment, deduction or set-off and the seizure and sale of items belonging to a

tax debtor. Directors of a corporation may also be jointly and severally liable together with the corporation for any payment of duty or interest. However, as under the *Income Tax Act*, the Minister may not take action to collect amounts owing under the Act until certain time limits for objection or appeal have passed or certain decisions have been made.

### **Section 284 – Debts to Her Majesty**

Duty and other amounts payable under the Act are debts due to Her Majesty and may be recovered through the court process. A proceeding in court to recover duty or other amount payable may only be commenced, in the case of an amount that may be assessed under this Act, if the person has been or may be assessed and in any other case if not more than four years have passed since the person became liable to pay the amount. (Section 313, *Excise Tax Act*)

### **Section 285 – Security**

The Minister of National Revenue may accept security in respect of any amount payable under the Act. On request, the Minister must surrender security to the extent that its value exceeds the amount payable for which the security was furnished. (Section 314, *Excise Tax Act*)

### **Section 286 – Collection restrictions**

This section restricts the actions the Minister of National Revenue may take to collect amounts from a person until certain time limits for objection or appeal have expired or certain decisions have been made. In particular, no collection actions may be taken in respect of:

- amounts owing under the Act until 90 days from the date of the notice of assessment or penalty;
- amounts involved in objections to assessments until 90 days from the date of notice of the Minister's decision;
- amounts involved in appeals to the Minister against penalties until 90 days from the date of the Minister's decision regarding the penalties;
- amounts involved in appeals to the Tax Court of Canada and the Federal Court, or in requests for questions to be determined by the Tax Court of Canada until the Court's decision has been duly

- mailed or the appeal has been discontinued, whichever is the earlier; and
- amounts involved in an objection or appeal where there is written agreement to delay proceedings until the decision in a similar case is known until the Minister has duly notified the person of the decision or judgement in the similar case.

The restrictions imposed on the Minister's actions include the Minister not:

- commencing legal proceedings;
- certifying an amount as payable by a person (section 288);
- requiring payment (subsections 289(1) and (2));
- retaining an amount by way of deduction or set-off (section 290);
- requiring money restorable to a person to be turned over to the Receiver General (subsection 292(1)); and
- taking any action towards the seizure and sale of a person's goods (subsection 293(1)).

Notwithstanding the time restrictions enumerated, if at any time the total of all unpaid amounts that a person has been assessed under the Act exceeds \$1 million, the Minister may collect up to 50% of the total without regard to those restrictions. (Section 225.1, *Income Tax Act*)

### **Section 287 – Authorization to proceed without delay**

This section lays down the conditions and procedure under which a judge may authorise the Minister of National Revenue to take actions that would otherwise be prohibited by section 286 where the collection of an assessed amount is reasonably believed to be in jeopardy if collection is delayed. (Section 225.2, *Income Tax Act*)

### **Section 288 – Certificates**

The Minister of National Revenue may certify any amount payable under this Act and register the certificate in the Federal Court. Upon registration, proceedings may be taken to collect the amount certified as if the certificate were a judgment of the Court. The Court may issue a notification or “memorial” that may be recorded in a province to create a charge, lien or priority on, or binding interest in, a property in which the person has an interest. Any property bound by

the registration of a certificate or memorial may not be sold or otherwise disposed of without the written consent of the Minister. (Section 316, *Excise Tax Act*)

### **Section 289 – Garnishment**

This section authorizes the collection of any amount payable under the Act by way of garnishment. Garnishment may be used in respect of amounts owing to a person indebted to Her Majesty under this Act and in respect of amounts to be loaned or advanced to the person. A third person who fails to comply with a garnishment notice is liable to Her Majesty for the amount not paid. Amounts paid in respect of a garnishment notice are deemed to have been paid to or on behalf of the debtor. (Section 317, *Excise Tax Act*)

### **Section 290 – Recovery by deduction or set-off**

If a person who is indebted under this Act is or may be owed an amount by the Crown, the Minister of National Revenue may require the satisfaction of all or part of the person's indebtedness under the Act out of the amount owing. (Section 318, *Excise Tax Act*)

### **Section 291 – Acquisition of debtor's property**

The Minister of National Revenue is authorized to acquire and dispose of any interest in property of a person indebted under this Act for the purpose of collecting the debt. (Section 319, *Excise Tax Act*)

### **Section 292 – Money seized from debtor**

The Minister of National Revenue may require a person holding money seized in the administration or enforcement of the criminal law of Canada from a debtor under this Act to pay the money to the Receiver General on account of the debtor's indebtedness. (Section 320, *Excise Tax Act*)

### **Section 293 – Seizure – failure to pay duty, etc.**

Where a person fails to pay duty or other amount as required under the Act, the Minister of National Revenue may give written notice of the Minister's intention to direct that the person's property be seized.



If payment is not made within 30 days as set out in the notice, the Minister may issue a certificate of failure and direct that the person's property be seized. Seized property is to be held for 10 days at the person's expense and, should the default in payment continue, the property may be disposed of as the Minister considers appropriate and the proceeds applied to the amount owing and all expenses. Any net surplus resulting from a disposition is to be paid to the person. Property that is exempt from seizure according to applicable provincial law is exempt from seizure under this section. (Section 321, *Excise Tax Act*)

#### **Section 294 – Person leaving Canada or defaulting**

Where the Minister of National Revenue suspects that a person has left or is about to leave Canada in advance of the due date for payment of any duty or other amount, the Minister may by notice demand that the person pay without delay all amounts for which they are liable or will be liable under the Act. If the person fails to pay the amount demanded, the Minister may direct that the person's property be seized and disposed of as the Minister considers appropriate in accordance with section 293. (Section 322, *Excise Tax Act*)

#### **Section 295 – Liability of directors**

Directors of a corporation who hold office at the time the corporation fails to pay duty or interest as and when required under the Act are jointly and severally or solidarily liable together with the corporation for the amount payable provided that:

- a certificate for the amount of the corporation's liability has been registered in the Federal Court under section 288 and execution has been returned unsatisfied;
- the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the liability has been proved within 6 months after the earlier of the commencement of the proceedings or the dissolution; or
- the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount owing has been proved within 6 months of the assignment or receiving order.

A director is not, however, liable if the director exercised a degree of care, diligence and skill to prevent the failure to pay that a reasonably prudent person would have exercised in comparable circumstances.

A director shall not be assessed more than 2 years after ceasing to be a director of that corporation. (Section 323, *Excise Tax Act*)

### **Section 296 – Compliance by unincorporated bodies**

In the case of unincorporated bodies other than individuals and partnerships, the obligations and liabilities under the Act are the joint and several or solidary liability and responsibility of every member of the body holding a senior office, or where there are no senior officers, every member of any management committee, and where there are no senior officers or management committee, every member of the body. However, no person may be assessed more than two years after the day the person ceased to be jointly and severally or solidarily liable unless the person was grossly negligent or participated or acquiesced in making an untruthful statement or omission in a return or other document. The Minister of National Revenue may assess any person liable under this section in respect of an amount owing by an unincorporated body. (Section 324, *Excise Tax Act*)

### **Section 297 – Liability re transfers not at arm's length**

This section provides an anti-avoidance rule for non-arm's length transfers of property by a person liable to make a payment under the Act. Under the section, the transferor and the transferee are jointly and severally or solidarily liable to pay the amount determined under subsection 297(1). (Section 325, *Excise Tax Act*)

### ***Evidence and Procedure***

Sections 298 to 303 deal with the serving, issuing or sending of a notice or other document by mail or other means of delivery, and specify matters relating to evidence under the Act.

### **Section 298 – Venue**

A prosecution for an offence under the Act may be instituted, heard and determined in the place where the offence was committed or

where the accused was apprehended, happens to be or carrying on business. (Subsection 332(3), *Excise Tax Act*)

### **Section 299 – Service**

This section deals with what constitutes good service in various situations. A notice or other document to be served on or sent to a person that is a partnership, a body such as a society, club or association, or a business not carried on in the person's name may be sent to the name of the partnership, the name of the body, or the name under which the business is carried on. In general, a notice is validly served on a person if it is left with an adult person employed at the place of business of the person. (Section 333, *Excise Tax Act*)

### **Section 300 – Sending by mail**

This section provides that anything sent by first class, registered or certified mail is deemed to have been received on the day it was mailed, except that an amount payable under the Act to the Receiver General is only considered to have been paid when it is actually received. (Section 334, *Excise Tax Act*)

### **Section 301 – Proof of service by mail**

This section describes how officers of the Canada Customs and Revenue Agency may use duly sworn affidavits as evidence that:

- a request, notice or demand was sent by mail to a named person on a stated day;
- a request, notice or demand was personally served on a named person on a stated day;
- a named person has not made a return, application, statement, or similar filing;
- a named person made a return, application, statement or similar filing on a stated day;
- the nature and contents of an attached document or copy are as they appear to be; or
- a notice of assessment was sent to a named person and that a notice of objection or appeal from the assessment was not received in the time allowed.

Where the Minister of National Revenue mails a notice or demand, the date of mailing is deemed to be the date of the notice or demand. (Section 335, *Excise Tax Act*)

**Section 302 – Certificate of analysis**

This section authorizes an analyst to issue a certificate or report stating the results of the analyst's analysis or examination. (Section 114, *Excise Act*)

**Section 303 – Certificate or report of analyst as proof**

The certificate or report of an analyst is admissible as evidence without proof of the signature of the analyst who made it. However, in order to be admissible, the party against whom the certificate or report is intended to be produced must be given reasonable notice of the Crown's intention to use the certificate or report and is to be provided with a copy. (Section 114, *Excise Act*)

**PART 7**

**REGULATIONS**

**Section 304 – Regulations – Governor in Council**

This section provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act, including setting out any conditions under which a licence or registration may be issued or renewed, the activities a licensee or registrant may carry on and the premises where those activities may be carried on, the types of acceptable security and the manner of determining the amount of security required by tobacco and spirits licensees, designating certain classes of goods as ships' stores, requiring any class of person to make returns and requiring persons to provide their Social Insurance Number to the Minister of National Revenue.

A regulation normally takes effect from the day it is published in the *Canada Gazette* or from a later date mentioned in the regulation. However, a regulation made under the Act may take effect from an earlier date if the regulation:

- has a relieving effect only;
- corrects an ambiguity or deficiency that is not consistent with the objects of the Act;
- is consequential to an amendment of the Act that is applicable prior to the date of publication of the regulation; or
- gives effect to a budgetary or other public announcement.  
(Subsection 277(2), *Excise Tax Act*)

## **PART 8**

### **TRANSITIONAL PROVISIONS AND CONSEQUENTIAL, RELATED AND COORDINATING AMENDMENTS**

#### *Transitional Provisions*

Part 8 sets out transitional provisions and amendments to other legislation that will be affected by the implementation of the *Excise Act, 2001*. The transitional provisions apply to spirits, wine and tobacco products which have been manufactured in accordance with the *Excise Act* or *Excise Tax Act*, or imported in accordance with the *Customs Act*, but in respect of which duty or tax has yet to become payable when the *Excise Act, 2001* takes effect. The purpose of the provisions is to ensure that such products are subject to the provisions of the new Act from the moment of its implementation.

#### **Section 305 – Meaning of “implementation date”**

In the transitional provisions implementation date is the day on which Parts 3 (Tobacco) and 4 (Alcohol) of the Act come into force. The implementation day will be fixed by order of the Governor in Council under section 433.

#### **Section 306 – Transitional treatment of packaged spirits**

This section establishes the transitional rules for packaged spirits that have been produced or imported before the implementation date, but in respect of which the duty imposed or levied has not become payable. It concerns, for example, packaged spirits held in the bonding warehouse of a distiller or a provincial liquor board and imported packaged spirits held in a customs bonded warehouse.

The section provides that the current provisions governing the taxation of spirits under the *Excise Act* and section 21 of the *Customs Tariff* cease to apply to such spirits. It also relieves the duty imposed under the *Excise Act* or section 21 of the *Customs Tariff* and it applies the *Excise Act, 2001* and the amended *Customs Act* and *Customs Tariff* as follows:

- imported packaged spirits awaiting release under the *Customs Act* are treated as if they were imported on the implementation date, the duty applicable under the *Excise Act, 2001* being indirectly imposed as “additional duty” under section 21.2 of the *Customs Tariff*;
- domestic packaged spirits are treated as if they were produced and packaged on the implementation date by the person who was in possession of them immediately before that day. This means that excise warehouse licensees who are in possession of packaged spirits immediately prior to the implementation date may enter them into their excise warehouses on that day and defer payment of duty until their removal. Likewise, licensed users who are in possession of packaged spirits immediately prior to the implementation date may enter them into their specified premises on that day and defer payment of duty until they are taken for use; and
- packaged spirits held in a duty free shop or by an accredited representative or delivered as ships' stores are deemed to have been entered into and the removed from an excise warehouse on the implementation date in accordance with paragraph 147(1)(a). This enables the appropriate penalties to be applied should diversions occur (see sections 237 and 239).

### **Section 307 – Transitional treatment of duties on bulk spirits**

This section establishes the transitional rules for bulk spirits produced or imported before the implementation date and on which the duty imposed or levied has not become payable before the implementation date. It provides that the current provisions governing the taxation of spirits under the *Excise Act* and section 21 of the *Customs Tariff* cease to apply to bulk spirits, it relieves the duty imposed under the *Excise Act* or section 21 of the *Customs Tariff* and it applies the

*Excise Act, 2001* and the amended *Customs Act* and *Customs Tariff* as follows:

- imported bulk spirits that, on the implementation date, are awaiting release under the *Customs Act* are treated as if they were imported on the implementation date. This means that the bulk spirits must be released on the implementation date to either a spirits licensee or a licensed user, unless they are for export or in a special container intended for marking in accordance with section 80 of the *Excise Act, 2001*; and
- other bulk spirits on which the duty imposed under the *Excise Act* has yet to become payable are treated as though they were produced on the implementation date by the person in whose possession they were immediately before that day.

Therefore, with two exceptions, on the implementation date bulk spirits may only be lawfully held by a spirits licensee, a licensed user or an alcohol registrant who acquired the bulk spirits on the implementation date. The two exceptions are:

- imported spirits for export, which may be held in a sufferance warehouse, in a customs bonded warehouse or by a customs bonded carrier; and
- imported spirits in a container intended for marking, which may be held in a sufferance warehouse.

### **Section 308 – Transitional treatment of excise taxes on wines**

This section establishes the transitional rules for wine on which excise tax has been imposed, but has not become payable before the implementation date. The section concerns, for example, imported wine held in a customs bonded warehouse and domestic wine that has yet to be delivered by the producer of the wine. It provides that, as of the implementation date, the *Excise Tax Act* ceases to apply to wine and the excise tax payable under it is relieved. The *Excise Act, 2001* and the amended *Customs Act* and *Customs Tariff* apply as follows:

- imported wine awaiting release under the *Customs Act* on the implementation date is treated as if it were imported on that day.

This means that if the imported wine is bulk wine, it must be released on the implementation day to either a wine licensee or a licensed user, unless it is for export or in a special container intended for marking, in accordance with section 85 of the *Excise Act, 2001*;

- bulk wine owned by an individual and located at a ferment-on-premises facility or an individual's residence is treated as though the wine were produced on the implementation date by the individual;
- all other bulk wine is treated as though it were produced in Canada on the implementation date by the person who was in possession of the bulk wine immediately before the implementation date. Unless that person is a wine licensee, the wine is held illegally;
- packaged wine (e.g., wine held by a wine producer or for sale in a duty free shop) is treated as though it were lawfully produced and packaged on the implementation date by the person who was in possession of it immediately before that day; and
- packaged wine held in a duty free shop or by an accredited representative or delivered as ships' stores is deemed to have been entered into and removed from an excise warehouse on the implementation date in accordance with paragraph 147(1)(a). This enables the appropriate penalties to be applied should diversions occur (see sections 237 and 239).

### **Section 309 – Transitional treatment of packaged wine in inventory of small manufacturers**

This section provides that duty under section 135 of the *Excise Act, 2001* will not be applied to wine that is exempt from excise tax by virtue of the *Small Manufacturers or Producers Exemption Regulations*, provided that the wine is packaged prior to the implementation date.

During the first year after the implementation date, the phrase “products subject to duty under subsection (1), or would have been so subject to duty in the absence of this subsection,” found in paragraph 135(2)(b) should be read as “goods referred to in paragraph 2(1)(a) of the *Small Manufacturers or Producers*



*Exemption Regulations*". Under paragraph 135(2)(b), duty does not apply to wine produced and packaged by a wine licensee if sales by the licensee of wine otherwise subject to duty did not exceed \$50,000 in the preceding 12 months.

### **Section 310 – Application of Act to tax-paid packaged wine**

If packaged wine in respect of which excise tax became payable prior to the implementation date is entered into an excise warehouse within six months of that day, the Act applies to the wine as though the wine were lawfully packaged on the day it is entered into the warehouse. An excise warehouse licensee who enters wine in respect of which excise tax was paid into the licensee's excise warehouse may apply for a refund of the excise tax paid on the wine, provided the licensee files an application for the refund within one year of the implementation date.

### **Section 311 – Application of Act to tax-paid bulk wine**

If bulk wine in respect of which excise tax became payable before the implementation date is entered into the specified premises of a licensed user on that day, the *Excise Act, 2001* applies to the wine as though it were lawfully produced by the licensed user on the implementation day. A user who enters into the user's specified premises bulk wine in respect of which excise tax was paid may apply for a refund of the excise tax paid on the wine, provided the user files an application for the refund within one year of the implementation date.

### **Section 312 – Application of Act to spirits in possession of bonded manufacturer or licensed pharmacist**

This section provides that if a bonded manufacturer or licensed pharmacist is possession of spirits on the implementation date of the *Excise Act, 2001* that were produced before that day, the *Excise Act* ceases to apply to them and the *Excise Act, 2001* applies as follows:

- bulk spirits are treated as though they were lawfully produced in Canada on the implementation date by the manufacturer or pharmacist. Thus, the manufacturer or pharmacist must be a licensed user; and

- packaged spirits are treated as though they were lawfully produced and packaged in Canada on the implementation date by the manufacturer or the pharmacist. Thus, duty must be paid on packaged spirits unless the manufacturer or the pharmacist is a licensed user.

The *Excise Act, 2001* eliminates the duties set out in subsections 1(2) and 1(3) of the schedule to the *Excise Act* that currently apply at nominal rates to spirits intended for certain non-beverage applications. This section therefore also provides that a bonded manufacturer or licensed pharmacist who is in possession on the implementation date of spirits in respect of which duty imposed under the *Excise Act* was paid may apply for a refund of the duty within one year of the implementation date.

### **Section 313 – Application of Act to spirits to be used for scientific purposes**

This section applies to spirits for use for a purpose described in section 135 of the *Excise Act* (such as scientific or medicinal purposes) that are held by persons described in that section (certain research laboratories, universities, hospitals and health institutions) on the implementation date of the *Excise Act, 2001*. As of that day, the *Excise Act* ceases to apply to these spirits, the excise duty imposed on the spirits is relieved and the *Excise Act, 2001* applies to them as follows:

- bulk spirits are treated as though they were produced in Canada on the implementation date by the person in whose possession they are and if that person is a registered user, as though the person was permitted to produce them under the Act; and
- packaged spirits are treated as though they were lawfully produced and packaged in Canada on the implementation date by the person and, if the person is a registered user, the spirits were entered into and then removed from an excise warehouse on the implementation date for delivery to a registered user for use in accordance with the user's registration.

If the spirits are in a special container and the person in whose possession they are is a registered user, the person is required to mark the container on the implementation date (see definitions of “mark”

and “special container”) and the container will be deemed to be entered into and removed from an excise warehouse in accordance with paragraph 147(2)(a) on that day.

The operation of these technical rules ensures that on the implementation date persons described in section 135 of the *Excise Act* who are registered users under the *Excise Act, 2001* may have in their possession non-duty-paid packaged spirits (including spirits in marked special containers) for purposes of their user's registration.

#### **Section 314 – Application of Act to alcohol in bottle-your-own premises**

A person who, on the implementation date of the *Excise Act, 2001*, possesses alcohol in a special container at a bottle-your-own premises is required to mark the container on that day to ensure that the container is a marked special container, (i.e. the only type of special container permitted at a bottle-your-own premises under the Act). Furthermore,

- in the case of spirits, the *Excise Act, 2001* applies as though any duty that had become payable under the *Excise Act* before that day were imposed and, if the duty is paid, were paid under the *Excise Act, 2001*; and
- in the case of wine, section 82, which deems marking to be packaging, does not apply for the purposes of subsection 135(1) and the *Excise Act, 2001* applies as though any tax under section 27 of the *Excise Tax Act* that became payable before that day were a duty imposed and, if paid, paid under the *Excise Act, 2001*. Subsection 135(1) and the *Excise Act, 2001* imposes duty on wine packaged in Canada.

#### **Section 315 – Removal of alcohol from customs bonded warehouse**

This section applies to packaged alcohol that is located on the implementation date in a customs bonded warehouse. The alcohol is required to be removed from the customs bonded warehouse on the implementation date of the Act and duty imposed under the *Excise*

*Act, 2001* or levied under section 21.2 of the *Customs Tariff* on the alcohol becomes payable, unless the alcohol is to be:

- exported in accordance with the Act; or
- delivered to an accredited representative, a duty free shop, as ships' stores or to a duly licensed international air carrier.

Furthermore, the duty is not required to be paid on the packaged alcohol that is removed from a customs bonded warehouse on the implementation date if the alcohol is without delay entered into an excise warehouse.

### **Section 316 – Transitional treatment of Canadian manufactured tobacco products**

Under the current legislative framework, tobacco products manufactured in Canada are subject to two separate excise levies: an excise duty imposed under the *Excise Act* payable at the time of packaging and an excise tax imposed under the *Excise Tax Act* payable at the time of delivery to a purchaser. Upon the implementation of the *Excise Act, 2001*, tobacco products will only be subject to duty under that Act.

This section applies to tobacco products manufactured in Canada before the implementation date of the *Excise Act, 2001*. It provides that, on the implementation date, the *Excise Act* and Parts III, VI and VII of the *Excise Tax Act* cease to apply to the products and if the products are marked or stamped in accordance with the *Excise Act* they are deemed marked or stamped in accordance with the *Excise Act, 2001*. This will ensure that the offence provisions under the new Act will apply to all offences involving unstamped tobacco products as of the implementation date.

Tobacco products in respect of which the excise tax has not become payable before the implementation date are relieved of the excise tax and of the applicable excise duty, if the duty had not become payable either (e.g., partially manufactured tobacco). The new Act applies to the products as though they were manufactured in Canada on the implementation day to the same extent that the product was manufactured immediately before that day. If on the implementation date, excise duty has become payable on a product but excise tax has

not, the manufacturer may apply for a refund of the duty within one year of the implementation date.

### **Section 317 – Transitional treatment of imported tobacco products**

This section establishes the transitional rules for imported tobacco products on which the duty levied under section 21 of the *Customs Tariff* and the excise tax imposed under section 23 of the *Excise Tax Act* have not become payable before the implementation date of the *Excise Act, 2001*. It relieves the duty and tax previously imposed and provides that the *Excise Act, 2001* and the *Customs Act* apply to the products as though they were imported on that day. The section also deems products stamped or marked under the previous system to be stamped or marked for the purposes of the new Act, thus ensuring that its offence provisions apply to unstamped product on the implementation date. Lastly, it provides that Parts III, VI and VII of the *Excise Tax Act* cease to apply to the products.

### **Section 318 – Transitional treatment of imported raw leaf tobacco**

This section applies the *Excise Act, 2001* to raw tobacco leaf imported before the implementation date. Such tobacco is treated as if it were imported on that day. This means that a person in possession of raw leaf tobacco on the implementation date must pay duty on it unless the person is a tobacco licensee.

### **Section 319 – Removal of cigars from customs bonded warehouse**

Cigars manufactured in Canada that are located in a customs bonded warehouse on the implementation date of the *Excise Act, 2001* must be removed and entered into an excise warehouse on that day.

### **Section 320 – Removal of tobacco products from bonding warehouse of manufacturer or authorised distributor**

Tobacco products that are located in a tobacco manufacturer's bonding warehouse on the implementation date of the *Excise Act, 2001* must be removed and entered into an excise warehouse on that day. Similarly, if tobacco products are located on the implementation date in the bonding warehouse of a person authorized to distribute them to accredited representatives, they must be removed on that day.

to the authorized person's special excise warehouse. If the authorized person is not a special excise warehouse licensee, the products must be returned to the excise warehouse of their manufacturer.

### *Consequential and Related Amendments*

#### *Budget Implementation Act, 2000*

##### **Section 321**

The definition of “tobacco product” in subsection 23(1) of the *Budget Implementation Act, 2000* is amended to refer to the new definition of “tobacco product” found in section 2 of the *Excise Act, 2001* instead of the current *Excise Act* definition of “tobacco product”. Similarly, paragraph (c) of the definition of “alcoholic beverage” in subsection 23(1) of the *Budget Implementation Act, 2000* is amended to refer to the new definition of “wine” found in section 2 of the *Excise Act, 2001* instead of the definition of “wine” in section 25 of the *Excise Tax Act*.

#### *Canada Customs and Revenue Agency Act*

##### **Section 322**

The *Excise Act, 2001* is added to the statutes that the Minister of National Revenue, the Canada Customs and Revenue Agency or an employee of the Agency is authorized to enforce.

##### **Section 323**

Section 7 of the *Canada Customs and Revenue Agency Act* is amended to add a reference to officer as defined under section 2 of the *Excise Act, 2001*. Thus, the Minister of National Revenue may designate a person as an officer under the *Excise Act, 2001* to exercise any powers or perform any duties and functions of an officer under that Act, the *Excise Act* or the *Customs Act* that the Minister may specify.

## *Criminal Code*

### **Section 324**

The definition of “peace officer” under section 2 of the *Criminal Code* is amended to include officers or persons administering the *Excise Act, 2001*.

### **Section 325**

The definition of “civil aircraft” in subsection 78(2) of the *Criminal Code* is amended to exclude aircraft operated by persons administering or enforcing the *Excise Act, 2001*.

### **Section 326**

The definition of “offence” in section 183 of the *Criminal Code* is amended to replace the reference to offences under the *Excise Act* with the offences laid down in sections 214 (unlawful production or sale, etc. of alcohol or tobacco), 216 (unlawful possession of tobacco product), 218 (unlawful possession or sale, etc. of alcohol), 219 (falsifying or destroying records), 230 (possession of property obtained from excise offences) and 231 (laundering proceeds of excise offences) of the *Excise Act, 2001*. This amendment enables enforcement officers to intercept private communications for purposes of investigating offences under those sections of the new Act.

### **Section 327**

The offences laid down in sections 214 (unlawful production or sale, etc. of alcohol or tobacco), 216 (unlawful possession of tobacco product), 218 (unlawful possession or sale, etc. of alcohol), 219 (falsifying or destroying records), 230 (possession of property obtained from excise offences) and 231 (laundering proceeds of excise offences) of the *Excise Act, 2001* are included in the definition of “enterprise crime offence” in paragraph 462.3(b. 1) of the *Criminal Code*

### *Customs Act*

A number of amendments are made to the *Customs Act* to ensure that the treatment of imported alcohol and tobacco products under the *Customs Act* is consistent with the treatment of these products under the *Excise Act, 2001*. Amendments are also required to reflect the replacement of the current duty under the *Excise Act* on imported spirits for use by bonded manufacturers by the special duty imposed under the *Excise Act, 2001* on imported spirits for use by licensed users. As a result of this change, the *Excise Act*, which will continue to impose duty on domestically produced beer, will no longer impose any duties on imported goods when the *Excise Act, 2001* comes into force.

#### **Section 328**

Subsection 2(1) of the *Customs Act* is amended as follows:

- the definitions of “cigar” and “manufactured tobacco” are repealed;
- the definition of “duties” includes duties imposed under the *Excise Act, 2001* instead of those imposed by the *Excise Act*;
- the definition of “tobacco product” is amended to refer to the definition of “tobacco product” in section 2 of the *Excise Act, 2001*;
- paragraph (a), “alcohol, ethyl alcohol and spirits”, in the definition of “designated goods” is repealed and paragraph (i.1), “spirits”, is added in its stead; and
- the definitions of “raw leaf tobacco”, “specially denatured alcohol”, “spirits”, “spirits licensee”, “tobacco licensee”, “wine” and “wine licensee” are added and all these definitions reference those in section 2 of the *Excise Act, 2001*.

The definitions of “alcohol”, “ethyl alcohol” and “spirits” and “wine” in subsection 2(1.1) are repealed.

#### **Section 329**

A reference to the duties imposed under the *Excise Act, 2001* on imported goods replaces the reference to those imposed under the *Excise Act* in subsection 3(1) of the *Customs Act*, which specifies that



all duties or taxes levied on imported goods under any law relating to customs are binding on Her Majesty in right of Canada or a province.

### **Section 330**

Paragraph 24(1)(c) of the *Customs Act* is amended to add a reference to the duties imposed under the *Excise Act, 2001*. Under paragraph 24(1)(c), the Minister of National Revenue may grant a licence for the operation of a duty free shop for the sale of goods free of certain duties and taxes to persons who are about to leave Canada.

### **Section 331**

Consistent with the amendment to paragraph 24(1)(c) of the *Customs Act*, subsection 26(2) of the Act is amended to add a reference to the duties imposed under the *Excise Act, 2001* in the definition of “duties” applicable in subsection 26(1), which requires the price of goods sold at a duty free shop to reflect the extent to which they have not been subject to duties and taxes.

### **Section 332**

This section amends section 28 of the *Customs Act*, which covers the liability of operators of sufferance warehouses, bonded warehouses or duty free shops in respect of the duty and tax on goods they receive in their warehouses or shops.

The duties imposed under the *Excise Act, 2001* are added to those for which an operator of a sufferance warehouse, bonded warehouse or duty free shop may be liable under subsection 28(1). Subsection 28(1.1) is repealed because it is spent and subsection 28(1.2) is repealed because the provision in the *Excise Tax Act* to which it refers is also being repealed (under section 368 of the *Excise Act, 2001*). Subsection 28(2), concerning the rates of duties payable, is clarified by the addition of the words “or taxes.”

### **Section 333**

Subsection 32.2(8) of the *Customs Act* is amended to delete the reference to duties imposed under the current *Excise Act* and insert a reference to the duties imposed under the *Excise Act, 2001*. This brings the duties imposed under the new excise legislation within the

group of duties that are not required to be paid in the event that a declaration of tariff classification is rendered incorrect as a result of a failure to comply with a condition imposed under a tariff item or any regulations made under the *Customs Tariff* in respect of a tariff item.

### **Section 334**

Under section 33 of the *Customs Act*, imported goods may be released in prescribed circumstances prior to the payment of duties on the goods. The duties are then required to be paid within the prescribed time following the release of the goods. Section 33 is amended to specifically exclude the additional duties levied under sections 21.1 (bulk spirits) and 21.2 (packaged alcohol) of the *Customs Tariff* from the requirement to pay duties within the prescribed time, if these additional duties are paid and collected under the *Excise Act, 2001*.

### **Section 335**

Section 44 of the *Customs Act* provides that *ad valorem* duties, other than those imposed under specified Acts, are calculated in accordance with sections 45 to 55 of the *Customs Act*. Section 44 is amended to add the duties imposed under the *Excise Act, 2001*, in place of those imposed under the *Excise Act*, to the list of Acts that are specifically excluded under section 44.

### **Section 336**

A reference to the duties imposed under the *Excise Act, 2001* replaces the reference to those imposed under the *Excise Act* in clause 48(5)(b)(ii)(B) of the *Customs Act*. Section 48 provides for the determination of the transaction value of goods for customs purposes.

### **Section 337**

A reference to the duties imposed under the *Excise Act, 2001* replaces the reference to those imposed by the *Excise Act* in subsection 74(1.2) of the *Customs Act*, thereby excluding duties under the *Excise Act, 2001* from the duties that can be refunded under paragraph 74(1)(f) of the *Customs Act*.

**Section 338**

Under the new subsection 117(2) of the *Customs Act*, spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products that were seized under the Act may not be returned, unless they were seized in error. This provision is consistent with the restrictions on the return of seized alcohol and tobacco under section 264 of the *Excise Act, 2001*.

**Section 339**

Under the new subsection 119.1(1.1) of the *Customs Act*, the Minister of National Revenue may, subject to the regulations, sell spirits, specially denatured alcohol, wine, raw leaf tobacco and tobacco products have been seized under the Act as follows:

- seized spirits or specially denatured alcohol may only be sold to spirits licensees;
- seized wine may only be sold only to wine licensees; and
- seized raw leaf tobacco and seized tobacco products may only be sold to tobacco licensees.

**Section 340**

Subsection 142(1) of the *Customs Act* is amended to exclude spirits, specially denatured alcohol, wine, raw leaf tobacco and tobacco products from the goods subject to the rules under section 142 covering the manner of disposal (such as export or public auction) of things that have been abandoned to Her Majesty or have become finally forfeit under the Act.

**Section 341**

Under new section 142.1 of the *Customs Act*, where spirits, specially denatured alcohol, wine, raw leaf tobacco and tobacco products have been abandoned to Her Majesty or have become finally forfeit, the Minister of National Revenue may, subject to regulations, only sell:

- seized spirits or specially denatured alcohol to spirits licensees;
- seized wine to wine licensees; and
- seized raw leaf tobacco and seized tobacco products to tobacco licensees.

**Section 342**

Section 163.1 of the *Customs Act* provides that a person who possesses property or proceeds obtained as a result of the commission of an offence under section 153 (false statements and evasion of duties) or 159 (smuggling) in relation to goods specified in paragraph 163.1(1)(a) is guilty of an offence. Paragraph 163.1(1)(a) is amended to add wine to the list of specified goods.

**Section 343**

Section 163.2 of the *Customs Act* provides that any person who launders property or proceeds obtained as a result of the commission of an offence under section 153 (false statements and evasion of duties) or 159 (smuggling) in relation to goods specified in paragraph 163.2(1)(a) is guilty of an offence. Paragraph 163.2(1)(a) is amended to add wine to the list of specified goods.

**Section 344**

Wine is added to the goods referred to in subsection 163.3(1) of the *Customs Act*, thereby allowing for the seizure and forfeiture under sections 462.3 and 462.32 to 462.5 of the *Criminal Code* of proceeds derived from the commission of an offence involving wine under section 153 (false statements and evasion of duties) or 159 (smuggling) of the *Customs Act*.

***Customs and Excise Offshore Application Act*****Section 345**

The definition of “federal customs laws” in subsection 2(1) of the *Customs and Excise Offshore Application Act*, which applies the customs and excise jurisdiction of Canada to the continental shelf of Canada, is amended to include a reference to the *Excise Act, 2001* and the outdated reference to the *Anti-dumping Act* is replaced with a reference to the *Special Import Measures Act*.

### *Customs Tariff*

Currently, section 21 of the *Customs Tariff* imposes duty on imported spirits, beer and tobacco products equivalent to the excise duty imposed under the current *Excise Act* on domestic spirits, beer and tobacco products. Imported wine is subject to excise tax under the *Excise Tax Act*.

Under the new excise structure, duty equivalent to the duty imposed on domestic spirits and wine under the *Excise Act, 2001* will be imposed under the *Customs Tariff* on imported bulk spirits and imported packaged spirits and wine. Imported raw leaf tobacco and tobacco products will be subject to duty under the *Excise Act, 2001*. The amendments to the *Customs Tariff* give effect to the new structure.

#### **Section 346**

Amended section 21 of the *Customs Tariff* provides for new definitions that are consistent with terms used in the *Excise Act, 2001*.

New section 21.1 of the *Customs Tariff* imposes duty on imported bulk spirits equivalent to the duty imposed under section 122 of the *Excise Act, 2001* on domestic spirits. The duty is payable under the *Excise Act, 2001* at the time the spirits are taken for use or packaged.

New section 21.2 of the *Customs Tariff* imposes duty on imported packaged spirits and wine equivalent to the duty imposed under the *Excise Act, 2001* under section 122 or 123, in the case of spirits, and section 135, in the case of wine. The duty is payable under the *Customs Act* at the time of importation, unless, as soon as they are released under that Act, the spirits or wine are entered into the excise warehouse of the excise warehouse licensee, or the specified premises of the licensed user, who imported the spirits or wine. In that case, the duty is payable under the *Excise Act, 2001*.

New section 21.3 of the *Customs Tariff* ensures that the duty on imported beer currently imposed under section 21 of the Tariff continues to apply. The duty on imported beer is equal to the duty imposed under section 170 of the current *Excise Act* on domestic beer.

**Section 347**

The definition of “duties” in section 80 of the *Customs Tariff* is amended to refer to the duties imposed under the *Excise Act, 2001* instead of those imposed under the *Excise Act*. The definition of “duties” applies to Part 3 of the Tariff, which deals with duties relief.

**Section 348**

Paragraph 83(a) of the *Customs Tariff*, concerning the travellers' allowance for returning residents, is amended to replace the reference to the current duty on traveller's tobacco under subsection 21(2) of the Tariff with a reference to the special duty imposed on traveller's tobacco under section 54 of the *Excise Act, 2001*.

**Section 349**

Subsection 89(2) of the *Customs Tariff*, which specifies that duty and tax relief may not be granted under subsection 89(1) in respect of tobacco products and designated goods, is amended to refer to new sections 21.1 to 21.3 of the Tariff in place of current section 21 and to refer to the *Excise Act, 2001* in place of the *Excise Act*.

**Section 350**

Subsection 92(3) of the *Customs Tariff* is amended to ensure that the duties that are not payable in respect of goods in a customs bonded warehouse do not include the duties payable on manufactured tobacco manufactured in Canada under the *Excise Act, 2001*. The reference to the duties under the new Act replaces the reference to the current excise levies imposed on Canadian manufactured tobacco under the *Excise Tax Act* and the *Excise Act*.

**Section 351**

The definition of “customs duties” under section 94 of the *Customs Tariff* is amended to refer to new sections 21.1 to 21.3 of the Tariff, instead of current section 21, and to replace the reference to the *Excise Act* with a reference to the *Excise Act, 2001*.

**Section 352**

Subparagraph 99(a)(iii) of the *Customs Tariff*, which provides for the authority to make regulations prescribing the circumstances in which and the classes of goods in respect of which relief from certain duties and taxes may not be granted, is amended to refer to new sections 21.1 to 21.3 of the Tariff, instead of current section 21, and to replace the reference to the *Excise Act* with a reference to the *Excise Act, 2001*.

**Section 353**

Subsection 106(1) of the *Customs Tariff*, which provides for the relief under prescribed circumstances of certain taxes and duties, is amended to refer to new sections 21.1 to 21.3 of the Tariff, instead of current section 21 and to replace the reference to the *Excise Act* with a reference to the *Excise Act, 2001*.

**Section 354**

Subsection 113(2) of the *Customs Tariff*, which specifies that no refund or drawback may be granted of the duties imposed on tobacco products under subsection 113(1), paragraph 113(4)(a), which provides for regulations prescribing the circumstances under which and classes of goods in respect of which relief from certain duties and taxes may not be granted, and subsection 113(5), which provides for a refund of certain duties and taxes in respect of designated goods, are amended to refer to new sections 21.1 to 21.3 of the Tariff, instead of current section 21, and to replace the reference to the *Excise Act* with a reference to the *Excise Act, 2001*.

**Section 355**

This section repeals the tariff items for

- sparkling wine (tariff item No. 2204.10.00), sparkling perry (tariff item No. 2206.00.30) and other sparkling wines, not being wines of fresh grapes (tariff item No 2206.00.40);
- grape must with fermentation arrested by the addition of alcohol (tariff item No. 2204.21.40 – not exceeding 2 litres – and tariff item No. 2204.29.40 – exceeding 2 litres) and for other grape must (tariff item No. 2204.30.00);

- other wines not being wines of fresh grapes and not elsewhere specified or included in heading No. 22.06, whether or not exceeding 22.9% absolute ethyl alcohol by volume (tariff item Nos. 2206.00.91 and 2206.00.92); and
- spirituous fruit juices not exceeding 14.3% absolute ethyl alcohol by volume (tariff item No. 2208.90.91).

### **Section 356**

This section establishes a maximum alcoholic strength of 22.9% by volume for sparkling cider (tariff item No. 2206.00.11).

### **Section 357**

This provision amends the description for tariff item No. 2207.20.11 to refer only to specially denatured alcohol within the meaning of the *Excise Act, 2001*. Denatured alcohol, which is currently included under tariff item No. 2207.20.11, will be classified under new tariff item No. 2207.20.12.

### **Section 358**

The description of goods in tariff item No. 2208.90.98 (other spirituous beverages of an alcoholic strength by volume not exceeding 7%) is amended to require that the goods falling under that tariff item be packaged.

### **Section 359**

The reference to the minimum alcoholic strength of the goods in tariff item No. 2208.90.99 (other spirituous beverages, of an alcoholic strength by volume exceeding 7%) is redundant and is therefore deleted.

### **Section 360**

Note 4 to Chapter 98 of the List of Tariff Provisions is amended to include within the meaning of the word “duties,” the duties levied under the *Excise Act, 2001*, with the exception of the special duty imposed on traveller’s tobacco under section 54 of that Act.



**Section 361**

Heading 98.26 is amended to refer to sections 21.1 to 22 of the *Customs Tariff* rather than sections 21 and 22. New sections 21.1 to 21.3, which replace current section 21, impose additional duty – equal to the duty imposed under the *Excise Act, 2001* – on imported spirits and wine, and maintain the additional duty – equal to the duty imposed on beer under the *Excise Act* – on beer and malt liquor.

**Section 362**

This section adds the new tariff provisions set out in Schedule 7 to this Act to the List of Tariff Provisions set out in the schedule to the *Customs Tariff*. The additional provisions introduce a new criterion to distinguish between alcoholic beverages, namely whether or not the alcoholic strength of the beverage exceeds 22.9% by volume. Wine of an alcoholic strength not exceeding 22.9% by volume is treated as wine for purposes of duty imposition under section 21.2 of the *Customs Tariff*. Product with an alcohol content in excess of 22.9% by volume is considered spirits for purposes of sections 21.1 and 21.2 of the Tariff.

***Excise Act***

Upon implementation, the *Excise Act, 2001* will replace the provisions of the current *Excise Act* that relate to spirits, denatured and specially denatured alcohol and tobacco.

**Section 363**

This section adds new section 1.1 to the *Excise Act* which provides that on the coming into force of Parts 3 and 4 of the *Excise Act, 2001*, the *Excise Act* will apply only to the manufacture of beer or malt liquor, as defined in section 4 of the Act, or malt products manufactured in accordance with subsection 169(2) and to the handling of, or dealing with, those products.

**Section 364**

This section amends the definition of “beer” or “malt liquor” in section 4 of the *Excise Act* to specifically exclude “wine” as defined in section 2 of the *Excise Act, 2001*.

**Section 365**

New subsection 176(3) of the *Excise Act* provides an exception to the requirement that only a person duly licensed under the Act may make or brew beer or malt liquor for commercial purposes. The exception covers spirits licensees under the *Excise Act, 2001* who produce beer solely for the purpose of distilling the beer.

***Excise Tax Act***

Currently, wine and tobacco products are subject to excise tax under the *Excise Tax Act*. Upon implementation of the *Excise Act, 2001*, the excise tax on wine will be replaced by a duty on wine under the new Act and, except in the case of cigars, the excise tax on tobacco products will be combined with the excise duties on tobacco products under the *Excise Act* to form a single duty under the new Act. In the case of cigars, two distinct duties, a specific duty and an additional duty that includes an *ad valorem* rate, will apply under the new Act.

**Section 366**

This section repeals the definition of “accredited representative,” and all definitions relating to tobacco contained in subsection 2(1) of the *Excise Tax Act*, since the provisions relating to tobacco products in Parts III to VII of the *Excise Tax Act* are repealed upon the implementation of the *Excise Act, 2001*.

**Section 367**

This section repeals subsections 23(5), (8.1) to (8.3), (9.2) and (9.3) of the *Excise Tax Act* which relate to tobacco products. It also removes references to Schedule II, which sets out the rates of excise tax on tobacco products, from subsections 23(1), 23(3.1) and 23(10) and the reference to distillers licensed under the *Excise Act* from

paragraph 23(7)(a), as well as the reference to section 27, which imposes excise tax on wine, from subsections 23(7) and (8).

### **Section 368**

This section repeals sections 23.1 to 23.3 of the *Excise Tax Act*. These sections impose a number of excise taxes on tobacco products, including the excise tax on exported tobacco products (section 23.13), the excise tax on domestic manufactured tobacco delivered to a duty free shop or as ships' stores (section 23.11) and the excise tax on imported manufactured tobacco delivered to a duty free shop (section 23.12). These excise taxes will be replaced by duties under the *Excise Act, 2001*.

### **Section 369**

The reference to “every packer of tobacco licensed under the *Excise Act*” is removed from section 24 of the *Excise Tax Act*, which authorizes the Minister of National Revenue to require taxpayers to give security.

### **Section 370**

This section repeals Part IV of the *Excise Tax Act*, which imposes excise tax on wine, and Part V of the Act, which imposes a tobacco products inventory tax. Upon implementation of the *Excise Act, 2001*, the current levies on wine and tobacco products under the *Excise Tax Act* (other than the GST) will be replaced by the duties on those products under the *Excise Act, 2001* and, in the case of imported packaged wine, section 21.2 of the *Customs Tariff*.

### **Section 371**

Subparagraph 48(4)(a)(ii) of the *Excise Tax Act* is amended to delete the reference to Part IV of the Act, which imposes excise tax on wine, and to refer to paragraph 23(7)(a), which is the current paragraph 23(7)(b). Current paragraph 23(7)(a) is deleted as a result of manufacturers referred to in that paragraph ceasing to be licensed under the *Excise Act* upon implementation of the new Act.

**Section 372**

This section repeals subsection 50(9) of the of the *Excise Tax Act*, which defines “wine” for purposes of section 50 as having the same meaning as “wine” in section 25. Section 25 is repealed by section 370 of the *Excise Act, 2001*.

**Section 373**

The reference to Part IV of the of the *Excise Tax Act*, which imposes excise tax on wine, is removed from subsection 56(3), which requires payment of all taxes by a licensed wholesaler upon the cancellation of the wholesaler's licence.

**Section 374**

The reference to Part IV, which imposes excise tax on wine, is removed from subsection 64(1) of the *Excise Tax Act*, which currently requires persons liable to pay excise tax under Parts III and IV to apply for a licence.

**Section 375**

This section amends section 66 of the *Excise Tax Act* by removing current paragraph 66(1)(b), which refers to spirits and fermented liquors, as well as current subsection 66(2) which excludes from the tax exemption for exported goods provided under subsection 66(1) the tax imposed under Part III on tobacco products. It also repeals section 66.1 of the Act, which provides for an exemption from the tax imposed under subsection 23(5) on tobacco products sold by the operator of a duty free shop in accordance with the regulations made under the *Customs Act*.

**Section 376**

Section 67 of the *Excise Tax Act* specifies that the taxes imposed under Parts III, IV and VI, apply to goods imported by Her Majesty in right of Canada or a province. The references to Parts IV (excise tax on wine) and VI (consumption or sales tax) are removed from the section.

**Section 377**

This section repeals subsection 68.1(2) of the *Excise Tax Act*. Under this subsection, the tax under Part III paid in respect of tobacco products that are exported cannot be refunded. As a result of the subsection's repeal, section 68.1(1) becomes section 68.1.

**Section 378**

The references to Parts IV (excise tax on wine), V (tobacco products inventory tax) and VI (consumption or sales tax) are removed from section 68.17 of the *Excise Tax Act* concerning the repayment of tax paid in respect of goods used as ships' stores. Furthermore, sections 68.171 and 68.172 are repealed. These sections are refunding provisions relating to tobacco products and they are replaced by sections 182 (refund of tax to importer if foreign taxes paid) and 183 (refund of special duty to duty free shop licensee) of the *Excise Act, 2001*.

**Section 379**

The references to Part IV (excise tax on wine) are removed from section 68.18 of the *Excise Tax Act*, which provides for the repayment of excise tax paid in respect of goods held in a person's inventory on the day the person is granted a licence under section 54, 55 or 64 of the Act. Subsection 68(3.1) is repealed since it relates to tobacco products only.

**Section 380**

The references to Parts IV (excise tax on wine), V (tobacco products inventory tax) and VI (consumption or sales tax), are removed from section 68.19 of the *Excise Tax Act*. This section authorizes the repayment, under certain circumstances, of tax paid in respect of goods acquired by a provincial government.

**Section 381**

Section 70 of the *Excise Tax Act* is amended to remove the references to Parts IV (excise tax on wine), V (tobacco products inventory tax) and VI (consumption or sales tax). As well, subsection 70(5) is repealed. Section 70 authorizes the Minister to grant a drawback of

tax paid under the Act (other than GST) in respect of certain goods, such as those supplied as ships' stores. Subsection 70(5) disallows a drawback of the excise taxes paid in respect of tobacco products.

### **Section 382**

All references to Parts II.1 (telecommunication programming services tax), IV (excise tax on wine) and VI (consumption or sales tax) are removed from section 78 of the *Excise Tax Act*, the section dealing with the filing of returns and the payment of tax (other than GST).

### **Section 383**

The references to Parts II.1 (telecommunication programming services tax), IV (excise tax on wine) and VI (consumption or sales tax) are removed from subsection 79(1.1) of the *Excise Tax Act*, which provides for the waiver of penalty and interest below a minimum amount.

### **Section 384**

Section 79.1 of the *Excise Tax Act* is amended to remove all references to Parts II.1 (telecommunication programming services tax), IV (excise tax on wine) and VI (consumption or sales tax). This section requires taxpayers to remit tax by instalments.

### **Section 385**

Subsection 80(1) of the *Excise Tax Act*, which requires licensees to submit an annual report to the Minister of National Revenue, is amended to remove the reference to Part IV – the Part that imposes excise tax on wine.

### **Section 386**

This section repeals subsection 100(5) of the *Excise Tax Act*, which makes a tobacco wholesaler who fails to comply with section 98.1 guilty of an offence.

**Section 387**

The definition of “excisable goods” in subsection 123(1) of the *Excise Tax Act* is amended to reflect the coming into force of the *Excise Act, 2001*.

**Section 388**

Amounts required to be paid under the *Excise Act, 2001* are added to those required to be paid under subparagraph 238.1(2)(c)(iii) of the *Excise Tax Act* before an application for the designation by the Minister of National Revenue of a particular reporting period may be granted.

**Section 389**

This section repeals paragraph 252(1)(b) of the *Excise Tax Act*, which excludes wine from the exported goods that are eligible for a non-resident rebate. With the change in the definition of “excisable goods” to include wine, paragraph 252(1)(b) is no longer needed.

**Section 390**

This section repeals Schedule II to the *Excise Tax Act*, which sets out the rates of excise tax on tobacco products. The rates set out in that Schedule are incorporated in Schedule I to the *Excise Act, 2001*.

**Section 391**

Section 3 of Part V of Schedule VI to the *Excise Tax Act* is amended to describe a zero-rated export of excisable goods in terms consistent with the *Excise Act, 2001*.

**Section 392**

This section replaces a reference in section 1.1 of Schedule VII to the *Excise Tax Act* to the duty charged under subsection 21(2) of the *Customs Tariff* on traveller's tobacco, with a reference to the special duty charged under section 54 of the *Excise Act, 2001* on traveller's tobacco.

### *Export Act*

#### **Section 393**

Under the *Export Act*, intoxicating liquor held in accordance with the *Customs Act* and the *Excise Act* may not be delivered for export to a country into which its importation is prohibited. This section extends the prohibition to liquor held in accordance with the *Excise Act, 2001*.

### *Importation of Intoxicating Liquors Act*

The *Importation of Intoxicating Liquors Act* is the federal statute that provides support for provincial controls on the distribution of alcohol imported into a province.

#### **Section 394**

This section amends section 2 of the *Importation of Intoxicating Liquors Act* by adding a number of definitions found in the *Excise Act, 2001* including “bulk”, “packaged”, “excise warehouse” and “spirits”.

#### **Section 395**

The section amends subsection 3(1.1) of the *Importation of Intoxicating Liquors Act* to refer to the renumbered paragraphs of amended subsection 3(2).

Subsection 3(2) of the Act is amended to reflect new concepts and terminology introduced in the *Excise Act, 2001*.

Subsection 3(3) is repealed. Regulations defining certain terms, such as “distilled spirits”, are no longer required since these terms are defined in section 2 of the Act as amended by section 394 of the *Excise Act, 2001*.



### *Special Economic Measures Act*

#### **Section 396**

This section amends subsection 9(1) of the *Special Economic Measures Act* in order to ensure that an officer under the *Excise Act, 2001* is a peace officer for the purposes of the *Special Economic Measures Act*.

### *Tax Court of Canada Act*

Amendments to the *Tax Court of Canada Act* are required in light of the proposed new appeals system under the *Excise Act, 2001*, whereby a taxpayer may appeal the Minister of National Revenue's decision on an objection relating to an assessment to the Tax Court of Canada.

#### **Section 397**

In subsection 2.2(2) of the *Tax Court of Canada Act*, the definition of "amount in dispute" is expanded to cover appeals under the *Excise Act, 2001*.

#### **Section 398**

This section extends the exclusive original jurisdiction of the Court:

- in subsection 12(1) of the *Tax Court of Canada Act* to include references and appeals arising under the *Excise Act, 2001*;
- in subsection 12(3) to include questions referred to the Court under section 204 or 205 of the *Excise Act, 2001*; and
- in subsection 12(4) to include applications for extensions of time under section 197 or 199 of the *Excise Act, 2001*.

#### **Section 399**

In subsection 18.18(2) of the *Tax Court of Canada Act*, the period during which proceedings are stayed under subsection 219(3) of the *Excise Act, 2001* becomes a period that is to be excluded from the calculation of time limits under sections 18.3003 and 18.3005.

**Section 400**

Subsection 18.29(3) of the *Tax Court of Canada Act* is amended to add applications for extensions of time under section 197 or 199 of the *Excise Act, 2001* to those to which the informal procedural rules, referred to in subsection 18.29(1), apply.

**Section 401**

Section 18.3001 of the *Tax Court of Canada Act* is amended such that the informal procedure laid down in that section and in sections 18.3003 to 18.301 applies in an appeal under the *Excise Act, 2001*, if a person so elects in the notice of appeal and the amount in dispute is \$25,000 or less.

**Section 402**

Subsection 18.3002(3) of the *Tax Court of Canada Act* is amended to provide that in appeals under the *Excise Act, 2001*, the Court must order all reasonable and proper costs of the appellant to be borne by Her Majesty in right of Canada, if the Attorney General of Canada requests that the general procedure apply and provided that the appellant's total sales for the preceding calendar year did not exceed \$1 million.

**Section 403**

Subsection 18.3007(1) of the *Tax Court of Canada Act* is amended to provide that in appeals under the *Excise Act, 2001*, the Court may make no order as to costs or, notwithstanding the ordinary rules respecting costs, order all reasonable and proper costs of the appellant be borne by Her Majesty in right of Canada if the amount in dispute does not exceed \$50,000 and the appellant's aggregate of sales for the preceding calendar year did not exceed \$6 million.

**Section 404**

Section 18.3008 of the *Tax Court of Canada Act* is amended to provide that, in the case of an application by the Minister for judicial review of an appeal under the *Excise Act, 2001*, the reasonable and proper costs of the appellant shall be borne by her Majesty in right of Canada if the amount in dispute does not exceed \$25,000 and the

appellant's aggregate of sales for the preceding calendar year did not exceed \$1 million.

#### **Section 405**

Subsection 18.3009(1) of the *Tax Court of Canada Act* is amended to permit the award of costs to successful appellants in certain appeals under the *Excise Act, 2001*, where the judgement reduces the amount in issue by more than half.

#### **Section 406**

In subsection 18.31(2) of the *Tax Court of Canada Act*, applications for the determination of questions under section 204 of the *Excise Act, 2001* are added to those to which the general procedure applies under sections 17.1, 17.2 and 17.4 to 17.8 of the *Tax Court of Canada Act*.

#### **Section 407**

In subsection 18.32(2) of the *Tax Court of Canada Act*, applications for the determination of questions under section 205 of the *Excise Act, 2001* are added to those to which the general procedure applies under sections 17.1, 17.2 and 17.4 to 17.8 of the *Tax Court of Canada Act*, provided that neither the Attorney General of Canada nor a taxpayer concerned requests the application of the informal procedure.

### ***Coordinating Amendments***

#### **An Act to amend the Customs Act and to make related amendments to other Acts**

#### **Section 408**

The following coordinating amendments are applicable in respect of *An Act to amend the Customs Act and to make related amendments to other Acts* (in this section, the "other Act"):

- On the later of the coming into force of subsection 19(1) of the other Act and subsection 332(1) of the *Excise Act, 2001*,

subsection 28(1) of the *Customs Act* is amended to refer to the *Excise Act, 2001*.

- If subsection 332(2) of the *Excise Act, 2001* comes into force before or on the same day as subsection 19(2) of the other Act, then subsection 19(2) is repealed on the day on which subsection 332(2) comes into force.
- On the later of the coming into force of section 58 of the other Act and section 297 of the *Excise Act, 2001*, the description of B in paragraph 97.29(1)(a) of the *Customs Act* is amended to refer to subsection 297(3) of the *Excise Act, 2001*.
- On the later of the coming into force of section 100 of the other Act and section 397 of the *Excise Act, 2001*, the definition of “amount in dispute” in subsection 2.2(2) of the *Tax Court of Canada Act* is amended to refer to appeals under Part V.1 of the *Customs Act* and the *Excise Act, 2001*.
- On the later of the coming into force of subsections 101(1) and (2) of the other Act and subsections 398(1) and (2) of the *Excise Act, 2001*, subsections 12(1), (3) and (4) of the *Tax Court of Canada Act* are amended to refer to Part V.1 of the *Customs Act* and the *Excise Act, 2001*.
- On the later of the coming into force of section 102 of the other Act and section 399 of the *Excise Act, 2001*, subsection 18.18(2) of the *Tax Court of Canada Act* is amended to refer to subsection 106(3) of the *Customs Act* and subsection 219(3) of the *Excise Act, 2001*.
- On the later of the coming into force of section 103 of the other Act and section 400 of the *Excise Act, 2001*, subsection 18.29(3) of the *Tax Court of Canada Act* is amended to refer to provisions of the *Customs Act* and the *Excise Act, 2001*.
- On the later of the coming into force of sections 104, 105 and 107 to 109 of the other Act and sections 401 to 405 of the *Excise Act, 2001*, section 18.3001, subsection 18.3002(3), subparagraphs 18.3007(1)(c)(i) and (ii), paragraphs 18.3008(a) and (b) and subsection 18.3009(1) of the *Tax Court of Canada Act* are

all amended to refer to appeals under Part V.1 of the *Customs Act* and the *Excise Act, 2001*.

- On the later of the coming into force of section 110 of the other Act and section 406 of the *Excise Act, 2001*, subsection 18.31(2) of the *Tax Court of Canada Act* is amended to refer to section 97.58 of the *Customs Act* and section 204 of the *Excise Act, 2001*.

## **Bill C-24**

### **Section 409**

If Bill C-24 – *An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts* (in this section, the “other Act”) – receives royal assent, then the following coordinating amendments are applicable:

- If section 4 of the other Act comes into force before or on the same day as section 326 of the *Excise Act, 2001*, then, on the later of the day on which section 4 comes into force and section 326 is assented to, section 326 is repealed and paragraph (g) of the definition “offence” in section 183 of the *Criminal Code*, as enacted by section 4, is replaced with a new paragraph (g) that refers to sections 214, 216, 218, 219, 230 and 231 of the *Excise Act, 2001*.
- If section 4 of the other Act comes into force after section 326 of the *Excise Act, 2001*, then, on the coming into force of section 4, paragraph (g) of the definition “offence” in section 183 of the *Criminal Code*, as enacted by section 4, is replaced with a new paragraph (g) that refers to sections 214, 216, 218, 219, 230 and 231 of the *Excise Act, 2001*.
- If section 327 of the *Excise Act, 2001* comes into force before subsection 12(2) of the other Act and Bill C-36, entitled the *Anti-terrorism Act*, receives royal assent, then, on the later of the coming into force of section 33 of the *Anti-terrorism Act* and section 327, paragraph (b.1) of the definition of “enterprise crime offence” in section 462.3 of the *Criminal Code* is amended to refer to certain offences under the *Excise Act, 2001* and the *Security of Information Act*.

- If section 327 of the *Excise Act, 2001* comes into force on the same day as or after subsection 12(2) of the other Act, then, on the later of the day subsection 12(2) comes into force and the day the *Excise Act, 2001* is assented to, section 327 is repealed.
- If section 62 of the other Act comes into force before or on the same day as sections 342 to 344 of the *Excise Act, 2001*, then on the later of the day on which section 62 comes into force and the day on which sections 342 to 344 are assented to, sections 342 to 344 are repealed.

### **Bill C-30**

#### **Section 410**

If Bill C-30 – the *Courts Administration Service Act* (in this section, the “other Act”) – receives royal assent, then the following coordinating amendments are applicable:

- On the later of the coming into force of section 14 of the other Act and subsection 205(6) of the *Excise Act, 2001*, the reference to the *Federal Court Act* in that subsection is replaced with a reference to the *Federal Courts Act*.
- On the later of the coming into force of section 14 of the other Act and subsection 276(2) of the *Excise Act, 2001*, the reference to the *Federal Court Act* in that subsection is replaced with a reference to the *Federal Courts Act*.

### **Bill C-32**

#### **Section 411**

If Bill C-32 – the *Canada-Costa Rica Free Trade Agreement Implementation Act* (in this section, the “other Act”) – receives royal assent then the following coordinating amendments are applicable:

- On the later of the coming into force of section 42 of the other Act and section 351 of the *Excise Act, 2001*, subsection 94(1) of the *Customs Tariff* (definition of “customs duties”) is amended to refer

to new sections 21.1 to 21.3 (instead of section 21) and 76.1 of the *Customs Tariff*.

- On the later of the coming into force of section 43 of the other Act and section 352 of the *Excise Act, 2001*, subparagraph 99(a)(iii) of the *Customs Tariff* is amended to refer to new sections 21.1 to 21.3 (instead of section 21) and 76.1 of the *Customs Tariff* and to a duty imposed under the *Excise Act, 2001*.
- On the later of the coming into force of section 44 of the other Act and subsection 354(2) of the *Excise Act, 2001*, paragraph 113(4)(a) of the *Customs Tariff* is amended to refer to new sections 21.1 to 21.3 (instead of section 21) and 76.1 of the *Customs Tariff* and to a duty levied under the *Excise Act, 2001*.
- On the later of the coming into force of section 46 of the other Act and section 362 of the *Excise Act, 2001*, the tariff provisions added to the List of Tariff Provisions by section 362 and Schedule 7 of the *Excise Act, 2001* are amended to add the reference “CRT: Free” below the reference to “CIAT” in the column “Preferential Tariff / Initial Rate”, and the reference “CRT: Free (A)” below the reference to “CIAT” in the column “Preferential Tariff / Final Rate”.
- If section 395 of the *Excise Act, 2001* comes into force before section 53 of the other Act:
  - on the later of the day section 395 comes into force and the day section 53 is assented to, section 53 is repealed;
  - on the coming into force of section 37 of the other Act, subsection 3(1.1) of the *Importation of Intoxicating Liquors Act* is amended to suspend to operation of paragraph 2(f) during the period in which paragraph 2(c) of that Act is in force; and
  - paragraphs 3(2)(e) to (g) of the *Importation of Intoxicating Liquors Act* are amended to permit the importation into a province of Costa Rican spirits by a licensed distiller for the purpose of being packaged by the distiller.
- If section 395 of the *Excise Act, 2001* comes into force on the same day as or after section 53 of the other Act, on the coming into force of section 395:

- subsection 3(1.1) of the *Importation of Intoxicating Liquors Act* is amended to suspend to operation of paragraph 2(f) during the period in which paragraph 2(c) of that Act is in force;
- subsection 3(2) of the *Importation of Intoxicating Liquors Act* is amended to update the provision and to reflect new concepts and terminology introduced in the *Excise Act, 2001*; and
- subsection 3(3) of *Importation of Intoxicating Liquors Act* is repealed.

## **PART 9**

### **AMENDMENTS RELATED TO EXCISE TAX ON TOBACCO PRODUCTS**

On November 1, 2001 the federal government announced its intention to increase tobacco taxes as part of its comprehensive strategy to reduce tobacco consumption in Canada.

Under the government's proposal, federal excise tax will be increased by \$2.00 per carton of cigarettes for sale in Quebec, \$1.60 per carton in Ontario and \$1.50 per carton elsewhere. These increases will bring the federal excise tax on cigarettes to a uniform rate in all provinces and territories. Federal excise tax will also be increased by \$1.50 per 200 tobacco sticks and \$1.50 per 200 grams for other manufactured tobacco products. Finally, federal excise taxes on exported tobacco products and on tobacco products for sale in duty free shops or as ships' stores will be increased, as will the customs duty on travellers' tobacco.

#### *Customs Tariff*

##### **Section 412 – Duty on tobacco products imported by a traveller**

Subsection 21(2) of the *Customs Tariff* imposes a duty on manufactured tobacco products imported by returning Canadian residents that qualify for relief under the traveller's allowance or similar provisions. The duty on these products is increased to:

- \$0.0575 per cigarette (\$11.50 per carton);
- \$0.0425 per tobacco stick (\$8.50 per 200); and



- \$0.0375 per gram for other manufactured tobacco products (\$7.50 per 200 grams).

### *Excise Tax Act*

#### **Section 413 – Definitions**

Subsection 2(1) of the *Excise Tax Act* contains, among other things, definitions relevant to the excise tax imposed under Part III of the Act on tobacco products. This subsection is amended to delete the definitions “black stock”, “black stock cigarettes” and “Indian”. These definitions were used only in sections relating to the different rates of excise tax on cigarettes for sale in Ontario, Quebec and the rest of Canada. The definitions are no longer required with the return to a uniform rate of excise tax on cigarettes for sale in all provinces and territories.

#### **Section 414 – Tax on domestic tobacco delivered to a duty free shop, bonded warehouse or as ships' stores**

Section 23.11 of the *Excise Tax Act* imposes an excise tax on Canadian-produced tobacco products that are delivered to a duty free shop, a bonded warehouse in Canada or for use as ships' stores. This tax is imposed in addition to the excise duty imposed on these products under the *Excise Act*. The excise tax imposed under paragraphs 23.11(2)(a) to (c) of the *Excise Tax Act* is increased to:

- \$0.03 per cigarette (\$6.00 per carton);
- \$0.02415 per tobacco stick (\$4.83 per 200); and
- \$19.15 per kilogram for other manufactured tobacco products (\$3.83 per 200 grams).

#### **Section 415 – Tax on imported tobacco products delivered to a duty free shop**

Section 23.12 of the *Excise Tax Act* imposes an excise tax on tobacco products that are imported and delivered to a duty free shop in Canada. The tax imposed under paragraphs 23.12(1)(a) to (c) is increased to:

- \$0.0575 per cigarette (\$11.50 per carton);
- \$0.0425 per tobacco stick (\$8.50 per 200); and
- \$0.0375 per gram for other manufactured tobacco products (\$7.50 per 200 grams).

#### **Section 416 – Tax on exports of tobacco products**

Section 23.13 of the *Excise Tax Act* imposes excise tax on exports of Canadian tobacco products. Subsection 23.13(1) imposes excise tax on exported tobacco products that do not exceed the annual quantity limit for in-bond exports established under the *Excise Act*. The tax imposed under paragraphs 23.13(1)(a) to (c) of the *Excise Tax Act* is increased to:

- \$0.0575 per cigarette (\$11.50 per carton);
- \$0.0425 per tobacco stick (\$8.50 per 200); and
- \$37.50 per kilogram for other manufactured tobacco products (\$7.50 per 200 grams).

Subsection 23.13(2) of the *Excise Tax Act* imposes excise tax on exported tobacco products that exceed the annual quantity limit for in-bond exports established under the *Excise Act*. This tax is imposed in addition to the excise duty imposed on these products under the *Excise Act*. The tax imposed under paragraphs 23.13(2)(a) and (c) of the *Excise Tax Act* is increased to:

- \$0.1025 per cigarette (\$20.50 per carton); and
- \$56.65 per kilogram for manufactured tobacco products other than cigarettes and tobacco sticks (\$11.33 per 200 grams).

The rate of tax imposed under paragraph 23.13(2)(b) on tobacco sticks remains unchanged.

#### **Section 417 – Tax on cigarettes diverted from sale in Ontario or Quebec**

Sections 23.31 to 23.35 of the *Excise Tax Act* are repealed. These provisions impose an additional excise tax on cigarettes for sale in Ontario and Quebec that were taxed at a reduced rate and are subsequently diverted for sale outside the licensed distribution system of the particular province. With the restoration of a uniform federal

excise tax on cigarettes for sale in all provinces and territories, these provisions are no longer required.

**Section 418 – Unauthorized sale of Ontario-marked, Quebec-marked or black stock cigarettes**

Sections 97.1 to 97.4 of the *Excise Tax Act* are repealed. These provisions make it an offence to divert cigarettes intended for sale in Ontario and Quebec that were taxed at a reduced rate. With the restoration of a uniform federal excise tax on cigarettes for sale in all provinces and territories, these provisions are no longer required.

**Section 419 – Excise tax rates for tobacco products**

Schedule II to the *Excise Tax Act* sets out the rates of excise tax imposed under section 23 of the Act. Sections 1 to 3 of Schedule II are amended to reflect the new rates of federal excise tax applicable to cigarettes, tobacco sticks and other manufactured tobacco products. Paragraphs (a) and (b) of Section 1 of Schedule II are removed as larger federal excise tax increases on cigarettes for sale in Ontario and Quebec eliminate the reduced rates of tax applicable in those provinces and result in one uniform federal excise tax rate applicable to cigarettes for sale in all provinces and territories.

The new rates of tax imposed under Sections 1 to 3 to Schedule II are:

- \$0.17138 per 5 cigarettes (\$6.85 per carton of 200 cigarettes);
- \$0.02715 per tobacco stick (\$5.43 per 200 tobacco sticks); and
- \$23.148 per kilogram for other manufactured tobacco products (\$4.63 per 200 grams).

**Section 420 – Application of interest**

This section provides that, for the purposes of applying the provisions of the *Customs Act* and the *Excise Tax Act* that provide for the payment of, or liability to pay, interest in respect of any amount, such as an amount of excise tax owing, that amount is to be determined, and interest is to be computed on it, as if Part 9, which implements the tobacco tax increases, were assented to on November 2, 2001.

**Section 421 – Coming into force**

The amendments described in sections 412 to 420 came into force on November 2, 2001.

**PART 10****AMENDMENTS RELATED TO SHIPS' STORES**

Sections 422 to 432 propose amendments to the ships' stores provisions under the customs and excise legislation that grant relief from duties and taxes for goods used on board ships and aircraft in international service. The proposed changes respond to a recent decision of the Federal Court of Appeal that the *Ships' Stores Regulations* went beyond the scope of their enabling authority and would cease to have effect as of October 1, 2001. These Regulations prescribe the scope of relief from duties and taxes on certain goods for use as ships' stores on prescribed classes of conveyances.

Amendments to the enabling legislation, which broaden the authority to designate by regulation classes of vessels based on criteria that may include the physical attributes, functions or legal descriptions of conveyances, areas within which conveyances voyage or any requirements or limitations related to the voyage of conveyances, are proposed to ensure that the proper legislative authority for the *Ships' Stores Regulations* is provided. To remove any uncertainty with respect to the treatment of past transactions and to ensure that the relief provided is not extended beyond the scope of the Regulations, these changes are made retroactive to the later of November 10, 1986, the date the provisions identified by the court were incorporated into the *Ships' Stores Regulations*, and the date the particular enabling provision was introduced into the relevant Act.

A temporary fuel tax rebate is also proposed to provide transitional relief to operators of ships that, following the coming into force of proposed amendments to the *Ships' Stores Regulations* on June 1, 2002, will no longer qualify for duty and tax relief under those Regulations.

### *Customs Act*

#### **Section 422 – Authority to make regulations**

Section 422 amends paragraph 164(1)(c) of the *Customs Act*, as it read on November 10, 1986. Prior to January 1, 1996, this paragraph provided authority to make regulations relating to ships' stores. It was repealed when this authority for making these regulations was transferred to the *Customs Tariff*. The amendment to paragraph 164(1)(c) comes into force on November 10, 1986.

### *Customs Tariff*

#### **Section 423 – Authority to make regulations**

Section 423 amends paragraph 95(1)(g) of the *Customs Tariff*, as that Act read on January 1, 1996, and adds new paragraph 95(1)(g.1). From 1996 to 1997, paragraph (g) provided authority to make regulations designating goods that could be supplied as ships' stores and the class of conveyance on which such goods could be used. It also provided authority to limit the quantity of goods that could be used as ships' stores, an authority that is transferred in this amendment to new paragraph 95(1)(g.1). Effective January 1, 1998, paragraph 95(1)(g) was renumbered as paragraph 99(g) in the newly enacted *Customs Tariff*. The amendments to subsection 95(1) come into force on January 1, 1996, the date on which the authority for making regulations respecting ships' stores was transferred from the *Customs Act* to the *Customs Tariff*.

#### **Section 424 – Authority to make regulations**

Section 424 amends paragraph 99(g) of the *Customs Tariff*. This paragraph provides the existing authority under the Tariff to make regulations relating to ships' stores. The existing authority relating to limiting the quantity of goods for use as ships' stores is transferred to new paragraph 99(g.1). These amendments come into force on January 1, 1998, the effective date of section 99 of the existing *Customs Tariff*.

The section also provides that amendments to the *Ships' Stores Regulations* that are made after June 1, 2002 can be made on a

retroactive basis, provided they do not go back further than that date and are made before 2004. The date of June 1, 2002 coincides with the effective date of proposed changes to those Regulations that limit the scope of relief for ships' stores for certain classes of vessels. This amendment is effective on Royal Assent.

### *Excise Act*

#### **Section 425 – Replacement of “approvisionnement de navire” with “provisions de bord”**

The phrases “approvisionnement de navire” and “provisions de bord” are used interchangeably in the French version of the *Excise Act* as the equivalent of the English phrase “ships' stores”. To ensure consistency in terminology, the phrase “approvisionnement de navire” is replaced in the French version of sections 52.1, 58, 58.1, 173, 202, 216, 239.1 and 240 with the phrase “provisions de bord”, the phrase more commonly used as the equivalent of the English phrase “ships' stores”. These amendments are effective on Royal Assent.

### *Excise Tax Act*

#### **Section 426 – Authority to make regulations**

Section 426 amends subsection 35(2.3) of the *Excise Tax Act*. Prior to the statutory revision of 1985, this subsection provided the authority to make regulations relating to ships' stores under the *Excise Tax Act*. The subsection was renumbered as subsection 59(3.2) in the statutory revision of 1985. The amendments to subsection 35(2.3) come into force on November 10, 1986.

#### **Section 427 – Authority to make regulations**

Section 427 amends subsection 59(3.2) of the *Excise Tax Act*. This subsection provides the existing authority under the Act to make regulations relating to ships' stores. Amended subsection 59(3.2) comes into force on December 12, 1988, the date on which chapter 7 of the 2<sup>nd</sup> supplement of the *Revised Statutes, 1985* came into force.

This amendment therefore supercedes the amendment made in 1993 to subsection 59(3.2).

Section 427 also provides that amendments to the *Ships' Stores Regulations* that are made after June 1, 2002 can be made on a retroactive basis provided they do not go back further than that date and are made before 2004. The date of June 1, 2002 coincides with the effective date of proposed changes to those Regulations that limit the scope of relief for ships' stores for certain classes of vessels. This amendment is effective on Royal Assent.

#### **Section 428 – Transitional rebate**

New section 68.5 of the *Excise Tax Act* provides a transitional rebate of an amount equal to the federal excise tax on fuel used in certain ships that, following the coming into force of amendments to the *Ships' Stores Regulations*, will no longer qualify for duty and tax relief under those Regulations. Ships that would be entitled to this rebate are commercial tugs, ferries and passenger ships voyaging on the Great Lakes and lower St. Lawrence River that are not engaged in international trade. The rebate would apply in respect of fuel purchased for use on board these ships from June 1, 2002 to December 31, 2004. These amendments are effective on Royal Assent.

#### **Section 429 – Replacement of “approvisionnement de navire” with “provisions de bord”**

The phrases “approvisionnement de navire” and “provisions de bord” are used interchangeably in the French version of the *Excise Tax Act* as the equivalent of the English phrase “ships' stores”. To ensure consistency in terminology, the phrase “approvisionnement de navire” is replaced in the French version of sections 23.11, 68.17 and 70 of the *Excise Tax Act* with the phrase “provisions de bord”, the phrase more commonly used as the equivalent of the English phrase “ships' stores”. These amendments are effective on Royal Assent.

*Ships' Stores Regulations***Section 430 – Retroactive effect of *Ships' Stores Regulations***

Section 430 provides that the *Ships' Stores Regulations* made in 1986, and everything done under and all consequences flowing from them, are valid since November 10, 1986, the date on which the Regulations came into force. This provision is intended to remove any uncertainty with respect to the treatment of past transactions and is effective on Royal Assent.

**Section 431 – Retroactive effect of *Ships' Stores Regulations***

Section 431 provides that the existing *Ships' Stores Regulations*, and everything done under and all consequences flowing from them, are valid since January 1, 1996, the date on which the regulations came into force. This provision is intended to remove any uncertainty with respect to the treatment of past transactions and is effective on Royal Assent.

*Ships Suppliers Drawback Regulations***Section 432 – Ships Suppliers Drawback Regulations**

The *Ships Suppliers Drawback Regulations* are repealed because they have been superseded by other regulations. This amendment is effective on Royal Assent.

**PART 11****COMING INTO FORCE****Section 433**

Recognizing that industry and the Canada Customs and Revenue Agency will need time to prepare for the implementation of the new excise framework, there will be a delay between Royal Assent and the coming-into-force of the new Act, other than sections 1 and 408 to 432. The Act or any part of it (other than sections 1 and 408 to



432) will come into force on a date or dates to be fixed by order of the Governor in Council.

### **Schedule 1**

Schedule 1 specifies the rates of duty imposed on tobacco products under section 42 of the Act. The rates of duty vary depending on the type of tobacco product (cigarettes, tobacco sticks, other manufactured tobacco, cigars and raw leaf tobacco) and the product's destination or use. Except for cigars and raw leaf tobacco, the rates of duty combine the existing rates of excise duty and tax under the current *Excise Act* and the *Excise Tax Act*, as amended by Part 9 of this Act. The rate of duty on cigars and raw leaf tobacco is the current excise duty imposed on those products under the existing *Excise Act*. (Part III of the schedule to the *Excise Act*, section 23.11 and Schedule II to the *Excise Tax Act*).

### **Schedule 2**

This Schedule specifies the rate of additional duty imposed on cigars under section 43 of the Act. The duty is the same as the existing excise tax imposed on cigars under the *Excise Tax Act*. (Section 4, Schedule II to the *Excise Tax Act*)

### **Schedule 3**

This Schedule sets out the rates of special duty imposed under sections 53, 54 and 56 of the Act. Section 1 sets out the rates of special duty imposed under section 53 on imported manufactured tobacco delivered to a duty free shop and section 2 sets out the rates of special duty imposed under section 54 on traveller's tobacco. Sections 3 and 4 cover the special duty imposed under section 56 on Canadian tobacco products that are exported. Section 3 sets out the rates where the product is exported by the tobacco licensee who manufactured it, in accordance with paragraph 50(4)(a) and section 4 sets out the rates applicable in any other case.

The rates of duty in sections 1 and 3 are the same as those set out in sections 23.12 and 23.13 of the *Excise Tax Act* as amended by Part 9 of this Act. The rates in section 2 are those set out in subsection 21(2) of the *Customs Tariff*, as amended by Part 9 of this Act. The rates of duty set out in section 4, together with the rates of

duty under section 42, are equal to the combined rates of excise duty and tax under the current *Excise Act* and the *Excise Tax Act* on exported tobacco products that exceed the annual quantity limit for in-bond exports. (Subsection 21(2), *Customs Tariff*; sections 23.12 and 23.13, *Excise Tax Act*)

#### **Schedule 4**

This Schedule specifies the rates of duty imposed on spirits under sections 122 and 123 of the Act. There are two rates: a general rate and a reduced rate for packaged spirits not exceeding 7% absolute ethyl alcohol by volume. The special rates of six cents and fifty-eight cents that apply under the existing *Excise Act* to spirits put to particular non-beverage uses are discontinued. (Subsections 1(1) and (7) of Part 1 of the schedule to the *Excise Act*)

#### **Schedule 5**

Schedule 5 specifies the rate of the special duty imposed under section 133 of the Act on spirits imported by or for a licensed user. (Section 2 of Part I of the schedule to the *Excise Act*)

#### **Schedule 6**

Schedule 6 specifies the rates of duty imposed on wine under sections 134 and 135 of the Act. The rates of duty are the same as those currently applicable to wine under section 27 of the *Excise Tax Act*. (Section 27, *Excise Tax Act*)

#### **Schedule 7**

Schedule 7 introduces additions to the list of Tariff Provisions in the schedule to the *Customs Tariff*. The changes introduce a new criterion to distinguish between the tariff item numbers of otherwise identical alcoholic beverages, according to whether or not their strength exceeds the alcoholic strength limit laid down for wine (22.9% absolute ethyl alcohol by volume) in section 2 of the *Excise Act, 2001*.

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# **Draft Regulations**

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REGULATIONS RESPECTING THE INFORMATION TO BE  
DISPLAYED ON A CONTAINER OF ALCOHOL

INFORMATION

1. For the purposes of section 87 of the *Excise Act, 2001*, the information to be displayed on a container containing alcohol is the name and address or the licence number of the alcohol licensee who packaged the alcohol.

COMING INTO FORCE

2. These regulations come into force < >.

REGULATIONS RESPECTING THE TRANSPORTATION OF  
NON-DUTY-PAID PACKAGED ALCOHOL

1. For the purposes of subparagraphs 88(2)(a)(iv), (c)(ii) and (d)(ii) of the *Excise Act, 2001*, a person may transport non-duty-paid packaged alcohol where the person

(a) is a person authorized by an officer under section 19 of the *Customs Act* and is acting in accordance with that authorization; or

(b) has in their possession documentation acceptable to the Minister, that indicates that the person is transporting the alcohol on behalf of

(i) an excise warehouse licensee,

(ii) a licensed user,

(iii) a registered user,

(iv) a person licensed under the *Customs Act* to operate a duty free shop,

(v) a person, where the alcohol is designated as ships' stores under the *Ships' Stores Regulations*, or

(vi) an accredited representative.

2. For the purposes of paragraph 88(3)(b) of the *Excise Act, 2001*, a person may transport a non-duty paid marked special container of alcohol where the person

(a) is a person authorized by an officer under section 19 of the *Customs Act* and is acting in accordance with that authorization; or

(b) has in their possession documentation acceptable to the Minister, that indicates that the person is transporting the special container on behalf of

(i) an excise warehouse licensee, or

(ii) a registered user.



COMING INTO FORCE

3. These regulations come into force < >.

REGULATIONS RESPECTING RETURNING PACKAGED  
ALCOHOL TO AN EXCISE WAREHOUSE

INTERPRETATION

1. In these Regulations, “Act” means the *Excise Act, 2001*.

CONDITIONS

2. For the purposes of paragraph 90(d) of the Act, a licensed user may return non-duty-paid packaged alcohol to the excise warehouse licensee who supplied it if, at the time of the re-entry into the warehouse, the alcohol is packaged in the same unopened container in which it was packaged when it was removed from the warehouse.

3. For the purposes of paragraph 91(c) of the Act, a registered user may return non-duty-paid packaged spirits to the excise warehouse licensee who supplied them if, at the time of the re-entry into the warehouse, the spirits are packaged in the same unopened containers in which they were packaged when they were removed from the warehouse.

4. For the purposes of sections 152 and 153 of the Act, packaged alcohol that has been removed from the excise warehouse of an excise warehouse licensee may be re-entered into that warehouse as non-duty-paid alcohol if, at the time of the re-entry into the warehouse, it is packaged in the same unopened container in which it was packaged when it was removed from the warehouse.

5. For the purposes of subsection 185(2) of the Act, the Minister may refund the special duty if, at the time of the re-entry into the warehouse of the packaged spirits, they are packaged in the same unopened containers in which they were packaged when they were removed from the warehouse.

COMING INTO FORCE

6. These regulations come into force < >.

## REGULATIONS RESPECTING LOSSES

## INTERPRETATION

1. The definitions in this section apply in these Regulations.

“Act” means the *Excise Act, 2001*; (*Loi*)

“licensee” means a person to whom the Minister has issued a spirits licence or a user's licence under the Act; (*exploitant*)

“registrant” means a person to whom the Minister has issued an alcohol registration under the Act. (*détenteur autorisé*)

## LOSSES OF BULK SPIRITS

2. For the purposes of subparagraph 109(f) of the Act, the following circumstances are prescribed, on the condition that the person responsible for the spirits at the time of the loss has records that substantiate the loss, in accordance with section 206 of the Act:

(a) theft;

(b) fire;

(c) losses through shrinkage by evaporation;

(d) losses through re-distillation, stock operations, vating, blending, racking, reducing, packaging and handling; or

(e) losses occurring during physical transfers between licensees and registrants.

## LOSSES OF PACKAGED ALCOHOL

3. For the purposes of paragraphs 129(1)(c) and 138(1)(c) of the Act, breakage constitutes a prescribed circumstance, on condition that

(a) immediately prior to the breakage,

(i) the alcohol was packaged in its original unopened container, and located in an excise warehouse or in the specified premises of a licensed user, and

(ii) the excise warehouse licensee or the licensed user who was in possession of the packaged alcohol has kept records that substantiate the breakage, in accordance with section 206 of the Act; or

(b) the breakage occurred during a physical transfer between excise warehouses or between an excise warehouse and the specified premises of a licensed user.

COMING INTO FORCE

4. These regulations come into force < >.

REGULATIONS RESPECTING THE FEES FOR THE  
EXAMINATION OF INSTRUMENTS

INTERPRETATION

1. The definitions in this section apply in these Regulations.

“Act” means the *Excise Act, 2001*; (*Loi*)

“alcoholometric tables” means the *Canadian Alcoholometric Tables, 1980*, copyright by the Minister of Supply and Services, published under the authority of the Minister of National Revenue; (*tables alcoométriques*)

“laboratory table” means the *Canadian Alcoholometric Laboratory Table, 1996*, copyright by the Minister of Public Works and Government Services, published under the authority of the Minister of National Revenue; and (*table de laboratoire*)

“obscuration tables” means the *Canadian Alcoholometric Obscuration Equivalent Tables, 1993*, copyright by the Minister of Supply and Services, published under the authority of the Minister of National Revenue. (*tables d’obscurcissement*)

FEES

2.(1) Where, for the purpose of the Act, a person submits an instrument to the Minister for examination, the person shall pay a fee of \$25 to the Minister for the examination.

(2) Where, under subsection 148(3) of the Act, the Minister directs that an instrument be re-examined, no fee shall be charged for the re-examination.

3.(1) Subject to subsection (2), the price to be charged per copy by the Minister for

(a) alcoholometric tables is \$50;

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(b) a laboratory table is \$15;

(c) obscuration tables is \$15; and

(d) the tables described in paragraphs (a) to (c) on compact disc is \$10.

(2) The Minister shall provide every alcohol licensee and licensed user, at the time the licence is issued, with one copy of the alcoholometric tables, laboratory table and obscuration tables, free of charge.

COMING INTO FORCE

4. These regulations come into force < >.

REGULATIONS RESPECTING EXCISE LICENCES AND  
REGISTRATIONS

INTERPRETATION

1. The definitions in this section apply in these Regulations.

“Act” means the *Excise Act, 2001*; (*Loi*)

“alcohol registration” means an alcohol registration issued under section 17 of the Act; (*autorisation d'alcool*)

“ferment-on-premises registration” means a ferment-on-premises registration issued under section 15 of the Act; (*autorisation de vinerie libre-service*)

“licence” means

(a) for the purposes of sections 2 and 4, a licence issued under section 14, 19 or 20 of the Act, and

(b) for all other provisions of these regulations, a licence issued under section 14, 19, 20 or 22 of the Act; (*licence*)

“licensee” means a person to whom the Minister has issued a licence under the Act; (*titulaire de licence*)

“registrant” means a person to whom the Minister has issued a registration under the Act; (*détenteur autorisé*)

“registration” means an alcohol registration, an SDA registration, a user’s registration or a ferment-on-premises registration; (*autorisation*)

“SDA registration” means an SDA registration issued under section 18 of the Act; (*autorisation d'alcool spécialement dénaturé*)

“user’s registration” means a user’s registration issued under section 16 of the Act. (*autorisation d'utilisateur*)

ISSUANCE OF LICENCE OR REGISTRATION

2. (1) The Minister may issue a licence or registration to any person who submits to the Minister a completed application in the form

authorized by the Minister, accompanied by a list of the premises to be designated by the Minister for the purposes of the licence or registration, and

(a) in the case of a person applying for a licence, the person meets the requirements described in section 4; and

(b) in the case of a person applying for a licence or registration, the person

(i) is not the subject of a receivership in respect of their debts,

(ii) has not failed in the five years immediately preceding the date of the application to comply with any Act of Parliament or of the legislature of a Province that deals with the taxation of or controls on alcohol or tobacco products, or any regulation made pursuant to such an Act,

(iii) had not acted in the five years immediately preceding the date of the applications to defraud Her Majesty.

(2) The Minister may issue an excise warehouse licence specifying a premises in which the excise warehouse licensee will possess non duty paid packaged alcohol if the person applying for the licence

(a) meets the relevant requirements described in section 4; and

(b) where the province in which the premises is located has enacted legislation respecting the warehousing of packaged alcohol, the person has been authorized by the province or the province's liquor authority to warehouse the alcohol in the premises.

(3) Subsection (2) does not apply to alcohol licensees that are producing or packaging alcohol in the province where the warehouse is located.

3. The Minister may issue a licence under section 22 of the Act to any person who submits to the Minister a completed application in the form authorized by the Minister, and who has a licence to operate a duty free shop, issued by the Minister under paragraph 24(1)(c) of the *Customs Act*.



## PRESCRIBED REQUIREMENTS FOR APPLICANT

4. (1) The Minister may issue a licence to an individual if the individual

(a) is at least eighteen years of age; and

(b) has sufficient financial resources to conduct the business in a responsible manner.

(2) The Minister may issue a licence to a partnership or an unincorporated body if the partnership or unincorporated body

(a) in the case of a partnership or unincorporated body composed of individuals,

(i) is composed of individuals each of whom meets the requirements set out in paragraph (1)(a), and

(ii) has sufficient financial resources to conduct its business in a responsible manner, or

(b) in the case of a partnership or unincorporated body composed of corporations, has sufficient financial resources to conduct its business in a responsible manner;

(c) in the case of a partnership or unincorporated body composed of individuals and corporations,

(i) with respect to the individuals, each of them meets the requirements set out in subsection (1),

(ii) with respect to the corporations, each of them has sufficient financial resources to conduct its business in a responsible manner.

(3) The Minister may issue a licence to a corporation if the corporation has sufficient financial resources to conduct its business in a responsible manner.

## DURATION OF LICENCE

5. (1) Subject to subsection (2), a licence is valid for a period beginning on the date indicated on the licence as being the date on

which the licence becomes effective and ending on the date indicated on the licence as being the date on which the licence expires.

- (2) No licence shall be valid for more than two years.

#### RENEWAL OF LICENCE

**6.** The Minister may renew a licence on the expiration of its term on condition that

- (a) the licensee submits to the Minister a completed renewal application in the form authorized by the Minister, at least thirty days before the date on which the licence is to expire; and
- (b) no grounds exist for the Minister to suspend or cancel the licence

#### SECURITY

**7.** (1) A person who applies for a spirits licence or a tobacco licence, or a person who applies for a renewal of that licence, shall include with their application, security in an amount determined in accordance with subsection (2), but in no case shall the amount of security be less than \$5000 or greater than \$2 million.

(2) The amount of security to be given by a person applying for a licence or for a licence renewal shall be,

- (a) in the case of a spirits licence, sufficient to ensure payment of all amounts for which the licensee is or will be responsible under sections 104 to 112 of the Act; and
- (b) in the case of a tobacco licence, sufficient to ensure payment of the amount referred to in paragraph 160(1)(b) of the Act.

**8.** The security referred to in section 7 shall be deposited with an officer and shall be in the form of

- (a) cash;
- (b) a certified cheque;
- (c) a transferable bond issued by the Government of Canada; or

(d) a bond issued by

(i) an entity that is licensed or otherwise authorized under the laws of Canada or of a province to carry on the fidelity or surety class of insurance business in Canada and that is recommended to the Treasury Board by the Office of the Superintendent of Financial Institutions as an entity whose bonds may be accepted by the Government of Canada,

(ii) a member of the Canadian Payments Association referred to in section 4 of the *Canadian Payments Association Act*,

(iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the *Régie de l'assurance-dépôts du Québec* to the maximum permitted by the statutes under which those institutions were established,

(iv) a credit union as defined in subsection 137(6) of the *Income Tax Act*, or

(v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province.

#### AMENDMENT OF LICENCE OR REGISTRATION

**9.** The Minister may amend a licence or registration where

(a) the Minister receives a notification from the licensee or registrant, as described in section 14; or

(b) the legal name of the licensee or registrant has been changed.

#### CANCELLATION OR SUSPENSION OF LICENCE OR REGISTRATION

**10.** The Minister may cancel a licence or registration where the licensee or registrant

(a) requests the Minister in writing to cancel the licence or registration; or

(b) is bankrupt.

**11.** Subject to section 12, the Minister may suspend or cancel a licence or registration where the licensee or registrant

(a) no longer meets the requirements of an applicant for a licence or registration;

(b) ceases to carry on the business for which the licence or registration was issued;

(c) is the subject of a receivership in respect of the licensee or registrant's debts;

(d) fails to comply with any Act of Parliament or of the legislature of a Province that deals with the taxation of or controls on alcohol or tobacco products, or any regulation made pursuant to such an Act;

(e) acts to defraud Her Majesty;

(f) has not met any of the requirements set out in sections 14 to 16;  
or

(g) fails to carry out the responsibilities of a licensee or registrant.

**12.** (1) The Minister shall, immediately after suspending a licence or registration, give to the licensee or registrant a notice confirming the suspension and providing all relevant information concerning the grounds on which the Minister has suspended the licence or registration.

(2) The licensee or registrant may, within 90 days after the day on which the licence or registration is suspended, make representations to the Minister regarding why the licence or registration should be reinstated.

(3) The Minister shall, before cancelling a licence or registration under section 11, give the licensee or registrant 90 days notice of the proposed cancellation and provide the licensee or registrant with all relevant information concerning the grounds on which the Minister proposes to cancel the licence or registration.

(4) The licensee or registrant may, within 90 days after the day on which the notice referred to in subsection (3) is given, make

representations to the Minister regarding why the licence or registration should not be cancelled.

#### REINSTATEMENT OF LICENCE OR REGISTRATION

**13.** The Minister may reinstate a suspended licence or registration where the cause for the suspension no longer exists.

#### NOTIFICATION OF CHANGES TO LICENCE OR REGISTRATION INFORMATION

**14.** Every licensee and registrant shall, without delay, notify the Minister in writing of any changes to any of the information provided under section 2 or 4 or any notifications made under this section.

#### CHANGES TO FISCAL MONTH

**15.** Every licensee shall notify the Minister in writing of any changes to the licensee's fiscal month determined under section 159 of the Act.

#### FACILITIES, PERSONNEL AND EQUIPMENT

**16.** Every licensee and registrant shall provide at the premises in respect of which the licence or registration was issued

(a) adequate space for the examination of goods or records by officers;

(b) the personnel and equipment necessary to ensure that the goods or records to be examined by an officer are made available to the officer for examination; and

(c) the personnel necessary to furnish information, for audit purposes, to an officer with respect to the operations, inventory system and records system of the licensee.

#### PROVINCIAL OBLIGATIONS

**17.** (1) Prior to the coming into force of these Regulations, each province shall notify the Minister in writing if it has legislation in force respecting the issuance of warehouse licences for warehouses in which are stored packaged alcohol.

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(2) Every province shall, without delay, notify the Minister in writing of any changes to the information provided under subsection (1) or any notifications made under this subsection.

COMING INTO FORCE

**18.** These regulations come into force < >.

AMALGAMATIONS AND MERGERS CONTINUATION  
REGULATIONS

PRESCRIBED PURPOSE

1. For the purposes of section 213 of the *Excise Act, 2001*, “prescribed purpose” means for the purpose of applying any provision of Parts 5 and 6, other than the provisions of section 213, of that Act.

COMING INTO FORCE

2. These regulations come into force < >.

REGULATIONS RESPECTING MINIMAL AMOUNTS

INTERPRETATION

1. For the purposes of these regulations, “Act” means *Excise Act, 2001*. (*Loi*)

AMOUNTS

2. For the purposes of subsection 165(1) of the Act, if the amounts owing do not exceed \$2.00, the amount is deemed to be nil.

3. For the purposes of subsection 165(2) of the Act, the Minister is not required to pay amounts that do not exceed \$2.00.

4. For the purposes of subsection 170(5) of the Act, the Minister may write off and cancel interest owed if the amount is less than \$25.00.

COMING INTO FORCE

5. These regulations come into force < >.



## REGULATIONS RESPECTING INTEREST RATES

## INTERPRETATION

1. The definitions in this section apply in these Regulations.

“Act” means the *Excise Act, 2001*; (*Loi*)

“quarter” means any of the following periods in a calendar year:

- (a) the period beginning on January 1 and ending on March 31;
- (b) the period beginning on April 1 and ending on June 30;
- (c) the period beginning on July 1 and ending on September 30; and
- (d) the period beginning on October 1 and ending on December 31. (*trimestre*)

## PRESCRIBED RATES OF INTEREST

2. (1) For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid to the Receiver General, the prescribed rate in effect during any particular quarter is the total of

- (a) the rate that is the simple arithmetic mean, expressed as a percentage per year and rounded to the next higher whole percentage where the mean is not a whole percentage, of all amounts each of which is the average equivalent yield, expressed as a percentage per year, of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that are sold at auctions of Government of Canada Treasury Bills during the first month of the quarter preceding the particular quarter, and
- (b) 4 per cent.

(2) For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid or applied on an amount payable by the Minister to a person, the prescribed rate in effect during any particular quarter is the total of

(a) the rate determined under paragraph (1)(a) in respect of the particular quarter, and

(b) 2 per cent.

COMING INTO FORCE

3. These regulations come into force < >.

REGULATIONS REPEALING CERTAIN REGULATIONS MADE  
UNDER THE EXCISE ACT

REPEALS

1. The Regulations listed in the Schedule are repealed.

COMING INTO FORCE

2. These Regulations come into force < >.

SCHEDULE  
(Section 1)

Item	Column 1 Title	Column 2 Reference
1	<i>Departmental Alcohol Determination Regulations, 1997</i>	SOR/97-282
2	<i>Distillery Departmental Regulations</i>	C.R.C., c. 570
3	<i>Distillery Regulations</i>	C.R.C., c. 569
4	<i>Excise Warehousing Departmental Regulations</i>	C.R.C., c. 573
5	<i>Excise Warehousing Regulations</i>	C.R.C., c. 572
6	<i>Experimental Fuel Spirit Regulations</i>	SOR/82-204
7	<i>Ontario Flue-Cured Tobacco Excise Regulations</i>	C.R.C., c. 577
8	<i>Pharmacists Regulations</i>	C.R.C., c. 578
9	<i>Spirits Drawback Regulations</i>	C.R.C., c. 579

REGULATIONS RESPECTING THE MARKING OF  
SPECIAL CONTAINERS

MARKING

1. The marking on a special container shall be

- (a) legible;
- (b) clearly visible during normal handling; and
- (c) capable of remaining in place until the alcohol in the special container is completely removed.

2. The marking on a special container of spirits shall indicate, in English and French, that

- (a) the contents of the container are packaged spirits; and
- (b) the container is intended for delivery to, and
  - (i) use by, a registered user, or
  - (ii) use at, a bottle-your-own premises.

3. The marking on a special container of wine shall indicate, in English and French, that

- (a) the contents of the container are packaged wine; and
- (b) the container is intended for delivery to, and use at, a bottle-your-own premises.

COMING INTO FORCE

4. These regulations come into force < >.

REGULATIONS EXEMPTING CERTAIN TOBACCO PRODUCTS  
FROM SPECIAL DUTY

1. For the purposes of paragraph 58(1)(a) of the *Excise Act, 2001*, a tobacco product of a brand set out in Schedule 1 is a prescribed tobacco product.
2. For the purposes of paragraph 58(2)(a) of the *Excise Act, 2001*, a cigarette of a brand set out in Schedule 2 is a prescribed cigarette.
3. The *Export Tax Exemption Regulations (Tobacco Products)*<sup>1</sup> are repealed.
4. These regulations come into force < >.

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<sup>1</sup> SOR/94-749

SCHEDULE 1  
(Section 1)

BRANDS OF TOBACCO PRODUCTS

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Brand

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Al-Shalal Canadian Tobacco Leaves

Canadian

Canadian Extra Light

Canadian Gold

Canadian Light

Canadian Natural Fine Cut Tobacco

Capitol Full Flavour

Capitol Lights

CIGS Extra Light 100's

CIGS Extra Light King Size

CIGS Full Flavour 100's

CIGS Full Flavour King Size

CIGS Light 100's

CIGS Light King Size

CIGS Menthol 100's

CIGS Menthol King Size

CIGS Menthol Light 100's

CIGS Menthol Light King Size

CIGS Ultra Light 100's

CIGS Ultra Light King Size

Doral

Gauloises Blondes

Gitanes

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**Gold Coast**

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**Brand**

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GPC

Imperial Special Blend

Kent

Kool

Lucky Strike

Mercer

Mild Seven

Monte Carlo

Montréal Blend

Regular

Scenic 101

Seneca 100's Full Flavour

Seneca 100's Lights

Seneca 100's Menthol Full Flavour

Seneca 100's Menthol Lights

Seneca 100's Ultra Lights

Seneca Full Flavour

Seneca Lights

Seneca Menthol Full Flavour

Seneca Menthol Lights

Seneca Ultra Lights

Seneca's Iroquois Fine Cut Tobacco

Viceroy

Yankee Blend Fine Cut Tobacco

SCHEDULE 2  
(Section 2)

BRANDS OF CIGARETTES

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Brand

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Canadian Gold

Old Port



REGULATIONS RESPECTING THE STAMPING AND MARKING  
OF TOBACCO PRODUCTS

INTERPRETATION

1. The definitions in the section apply in these Regulations.

“Act” means the *Excise Act, 2001*; (*Loi*)

“manufacturer” means a manufacturer of tobacco products; (*fabricant*)

“package” means

(a) in respect of raw leaf tobacco, the hand into which the tobacco is formed for sale or the package in which the hand or broken portions of the leaf are packed for sale, and

(b) in respect of tobacco products, the smallest package in which the tobacco products are normally offered for sale to the general public, including any outer wrapping that is customarily displayed to the consumer. (*emballage*)

INFORMATION ON PACKAGES

2. (1) Every package containing tobacco products shall have shown thereon, in legible type, the name and address or the licence number of the manufacturer who packaged the tobacco products.

(2) Where a manufacturer packages tobacco products for another person, the name and address of the principal place of business of that other person may be shown on the package instead of the information described in subsection (1).

(3) Every box, crate or other container that contains a tobacco product shall show

(a) where the packages of the tobacco product are packed in cartons, the number of cartons in the container and the number of packages in each carton; and

(b) in any other case, the weight of the tobacco product in a package and the number of packages in the container.

(4) The words “not for sale in Canada” and “vente interdite au Canada” shall be printed on, in a conspicuous manner, the following packages containing manufactured tobacco that is to be exported:

- (a) those that are for delivery to a foreign duty free shop;
- (b) those that are for delivery as foreign ships' stores; and
- (c) those containing manufactured tobacco to which paragraph 56(1)(b) of the Act applies.

#### STAMPS

3. (1) A stamp set out in the applicable schedule shall be stamped on a package of a tobacco product, in a conspicuous place and in such a manner as to seal the package, as follows:

- (a) in respect of packages of cigarettes and tobacco sticks, a stamp set out in Schedule 1;
- (b) in respect of packages of cigars, a stamp set out in Schedule 4; and
- (c) in respect of packages of manufactured tobacco other than cigarettes or tobacco sticks, a stamp set out in Schedule 5.

(2) A stamp set out in Schedule 2 shall be stamped on each end of a carton of cigarettes or tobacco sticks.

(3) A stamp set out in Schedule 3 shall be stamped in a conspicuous place on any two opposite facing sides of a box, crate, or other container of cigarettes or tobacco sticks.

(4) The stamp set out in Schedule 6 shall be affixed in a conspicuous place to packages of raw leaf tobacco, and if the raw leaf tobacco is further packaged than by being formed into a hand, the stamp shall be affixed in such a manner as to seal the package.

(5) The stamps referred to in subsections (1) to (4) may be modified to include, in addition to the information required by these Regulations, any information required by an Act or regulation of a province or to comply with any colour specification required by an Act or regulation

of a province in relation to stamps required by an Act or regulation of the province.

#### EXEMPTION FROM STAMPING

4. (1) For the purposes of paragraphs 32(2)(j) and 35(2)(c) of the Act, the prescribed quantity of tobacco products is five units.

(2) For the purposes of subsection (1), a unit is

- (a) 200 cigarettes;
- (b) 50 cigars;
- (c) 200 tobacco sticks; or
- (d) 200 grams of manufactured tobacco.

#### TOBACCO MARKING

5. For the purposes of subsection 38(1) of the Act, and subject to sections 6 and 7,

(a) the tobacco markings set out in Schedule 7 are prescribed tobacco markings and shall be printed on or affixed to, in a conspicuous manner, packages, cartons, pouches, tubs, boxes, crates, shipping containers and other containers that contain a tobacco product other than cigars, smokeless tobacco or Canada twist; and

(b) the words “In bond” and “En entrepôt” are prescribed information and shall be printed on or affixed to, in a conspicuous manner, any shipping container that contains cigars, smokeless tobacco or Canada twist.

6. The tobacco markings set out in Schedule 8 shall be printed on or affixed to, in a conspicuous manner, packages, cartons, pouches, tubs, boxes, crates, shipping containers and other containers that contain a tobacco product for delivery to an accredited representative.

7. The tobacco markings set out in Schedule 9 shall be printed on or affixed to, in a conspicuous manner, packages, cartons, pouches, tubs, boxes, crates, shipping containers and other containers that contain an

imported tobacco product for delivery in accordance with paragraph 38(2)(a) or (c) of the Act.

EXEMPTION FROM TOBACCO MARKING

**8.** For the purposes of subsection 38(3) of the Act, a brand of tobacco product set out in Schedule 10 is a prescribed brand.

**9.** For the purposes of paragraph 38(4)(a) of the Act, a cigarette of a brand set out in Schedule 11 is a prescribed cigarette.

**10.** The Tobacco Ministerial Regulations<sup>1</sup> are repealed.

**11.** The Tobacco Regulations<sup>2</sup> are repealed.

COMING INTO FORCE

**12.** These regulations come into force < >.

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<sup>1</sup> C.R.C., C. 581

<sup>2</sup> C.R.C., c. 580

SCHEDULE 1  
(Paragraph 3(1)(a))

STAMPS FOR PACKAGES OF CIGARETTES AND TOBACCO  
STICKS

CANADA
DUTY PAID DROIT ACQUITTÉ
CIGARETTES

CIGARETTES
DROIT ACQUITTÉ
CANADA
DUTY PAID
CIGARETTES

CANADA DUTY PAID DROIT ACQUITTÉ
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**The following specifications apply:**

Background colour: Pantone Peach 713

Text Colour: Process Black 100%

Text Font: Helvetica, minimum 8 point

SCHEDULE 2  
(Subsection 3(2))

STAMPS FOR CARTONS OF CIGARETTES AND  
TOBACCO STICKS

DUTY PAID CANADA DROIT ACQUITTE
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*Alternatively, two separate unilingual stamps, one English and one French, may be used*

**The following specifications apply:**

Background colour: Pantone Peach 713

Text Colour: Process Black 100%

Text Font: Helvetica bold, minimum 7 point

Stamp width: minimum 2.9 cm

Stamp height: minimum 1.4 cm

Stamp border: minimum 1.5 point

SCHEDULE 3  
(*Subsection 3(3)*)

STAMPS FOR BOXES, CRATES AND OTHER CONTAINERS OF  
CIGARETTES AND TOBACCO STICKS

**DUTY PAID  
CANADA  
DROIT ACQUITTÉ**

**The following specifications apply:**

Text Colour: Process Black 100%

Text Font: Helvetica bold, minimum 36 point

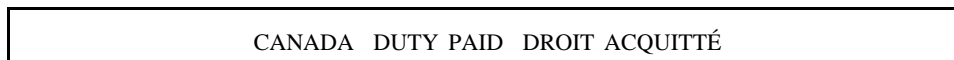
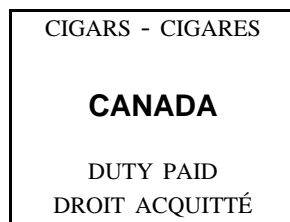
Stamp width: minimum 19 cm

Stamp height: minimum 7 cm

Stamp border: minimum 1.5 point

SCHEDULE 4  
*(Paragraph 3(1)(b))*

STAMPS FOR PACKAGES OF CIGARS



**The following specifications apply:**

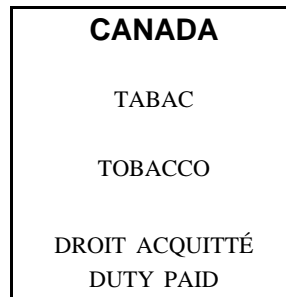
Text Colour: Process Black 100%

Text Font: Helvetica, minimum 8 point



SCHEDULE 5  
 (Paragraph 3(1)(c))

STAMPS FOR MANUFACTURED TOBACCO (OTHER THAN  
 CIGARETTES AND TOBACCO STICKS)



**The following specifications apply:**

Text Colour: Process Black 100%

Text Font: Helvetica, minimum 8 point

SCHEDULE 6  
(Subsection 3(4))

STAMPS FOR RAW LEAF TOBACCO

	CANADA DROIT ACQUITTE	TABAC CANADIEN EN FEUILLES	CANADIAN RAW LEAF TOBACCO	CANADA DUTY PAID	
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**The following specifications apply:**

Text Colour: Process Black 100%

Text Font: Helvetica, minimum 8 point

If the raw leaf tobacco is not further packaged than by being formed into a hand, the stamp shall be of sufficient length so that it can be interlaced and wrapped around the hand of tobacco.

SCHEDULE 7  
(Paragraph 5(a))

TOBACCO MARKING

NOT FOR SALE  
VENTE INTERDITE  
IN/AU CANADA

*Alternatively, two separate unilingual markings, one English and one French, may be used for cartons.*

**The following specifications apply:**

Background colour: light blue for cartons

Text Colour: Process Black 100%

Text Font: Helvetica, minimum 8 point

Size: 7 cm x 19 cm for boxes, crates, shipping containers and other containers

SCHEDULE 8  
*(Section 6)*

TOBACCO MARKING FOR TOBACCO PRODUCTS FOR  
DELIVERY TO ACCREDITED REPRESENTATIVES

**DUTY NOT PAID**  
**- CANADA -**  
**DROIT NON**  
**ACQUITTE**

*Alternatively, two separate unilingual markings, one English and one French, may be used for cartons.*

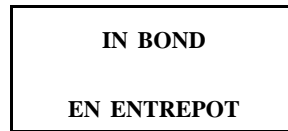
**The following specifications apply:**

Text Colour: Process Black 100%

Text Font: Helvetica, minimum 8 point

SCHEDULE 9  
(Section 7)

TOBACCO MARKING FOR IMPORTED TOBACCO PRODUCTS  
FOR DELIVERY TO DUTY FREE SHOPS AND AS SHIPS'  
STORES



*Alternatively, two separate unilingual markings, one English and one French, may be used for cartons*

**The following specifications apply:**

Text Colour: Process Black 100%

Text Font: Helvetica, minimum 8 point

SCHEDULE 10  
(Section 8)

BRANDS OF TOBACCO PRODUCTS

**Brand**

Al-Shalal Canadian Tobacco Leaves  
Canadian  
Canadian Extra Light  
Canadian Gold  
Canadian Light  
Canadian Natural Fine Cut Tobacco  
Capitol Full Flavour  
Capitol Lights  
CIGS Extra Light 100's  
CIGS Extra Light King Size  
CIGS Full Flavour 100's  
CIGS Full Flavour King Size  
CIGS Light 100's  
CIGS Light King Size  
CIGS Menthol 100's  
CIGS Menthol King Size  
CIGS Menthol Light 100's  
CIGS Menthol Light King Size  
CIGS Ultra Light 100's  
CIGS Ultra Light King Size  
Doral  
Gauloises Blondes  
Gitanes  
Gold Coast  
GPC  
Imperial Special Blend  
Kent  
Kool  
Lucky Strike  
Mercer  
Mild Seven  
Monte Carlo

Montréal Blend  
Regular  
Scenic 101  
Seneca 100's Full Flavour  
Seneca 100's Lights  
Seneca 100's Menthol Full Flavour  
Seneca 100's Menthol Lights  
Seneca 100's Ultra Lights  
Seneca Full Flavour  
Seneca Lights  
Seneca Menthol Full Flavour  
Seneca Menthol Lights  
Seneca Ultra Lights  
Seneca's Iroquois Fine Cut Tobacco  
Viceroy  
Yankee Blend Fine Cut Tobacco

SCHEDULE 11  
*(Section 9)*

BRANDS OF CIGARETTES

**Brand**

Canadian Gold  
Old Port



REGULATIONS RESPECTING THE TRANSPORTATION OF  
TOBACCO PRODUCTS THAT ARE NOT STAMPED

1. For the purposes of paragraph 32(2)(d) of the *Excise Act, 2001*, a person may transport tobacco products that are not stamped where the person

(a) is a person authorized by an officer under section 19 of the Customs Act and is acting in accordance with that authorization; or

(b) has in their possession documentation acceptable to the Minister, that indicates that the person is transporting the tobacco products on behalf of

(i) a tobacco licensee,

(ii) an excise warehouse licensee,

(iii) a special excise warehouse licensee,

(iv) a person licensed under the Customs Act to operate a duty free shop,

(v) a person, where the tobacco products are designated as ships' stores under the Ships' Stores Regulations, or

(vi) an accredited representative.

COMING INTO FORCE

2. These regulations come into force < >.