



# CALCULATING "CST": TAXING CANNABIS IN CANADA

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In December 2017, Finance Ministers across the country, at both the federal and provincial/territorial level, agreed to participate in a coordinated cannabis framework, which led to Coordinated Cannabis Taxation Agreements ("CCTAs") being signed by most provinces and territories. The CCTAs include an agreement that excise duties that come from the sale of cannabis and cannabis products will be shared – 75% will go to provincial/territorial governments and the remaining 25% will go to the federal government. This mandate

was officially implemented when Bill C-74, the Budget Implementation Act, 2018, No.1 (the "Act") received Royal Assent on June 21, 2018.

## **THE FEDERAL EXCISE DUTY FRAMEWORK**

The Act implemented a new federal excise duty framework for cannabis products that:

- (a) requires cannabis cultivators and manufacturers to obtain cannabis licences from the Canada Revenue Agency ("CRA");

- (b) requires that all cannabis products that are removed from the premises of a cannabis licensee to be entered into the Canadian market for retail sale be affixed with an excise stamp;
- (c) imposes excise duties on cannabis products to be paid by cannabis licensees;
- (d) provides for administration and enforcement rules related to the excise duty framework;
- (e) provides the Governor in Council with authority to provide for an additional excise duty in respect of provinces and territories that enter into a coordinated cannabis taxation agreement with Canada; and
- (f) makes related amendments to other legislative texts, including ensuring that any sales of cannabis products that would have otherwise been considered basic groceries were subject to the GST/HST in the same way as sales of other types of cannabis products.

Under the Act, duty is not payable on: cannabis products taken for analysis or destruction (in a number of enumerated ways), cannabis products

delivered by a cannabis licensee to another person for analysis or destruction in a manner approved by the Minister, low-THC cannabis products, prescription cannabis drugs, non-duty paid cannabis products removed from the premises of a cannabis licensee for export in accordance with the Cannabis Act, and to additional cannabis products of a prescribed class.

### **PROVINCIAL SALES TAX**

It is expected that in addition to the federal excise tax, provinces and territories will charge provincial sales tax on recreational cannabis purchases. An exception to this, so far, is Manitoba. Manitoba's Budget Implementation and Tax Statutes Amendment Act provides for an amendment to The Retail Sales Tax Act to provide an exemption, effective October 17, 2018, for cannabis used for non-medicinal purposes, saving Manitobans the 8% sales tax that would have otherwise applied. This is all part of a stated attempt to compete with and eliminate the black market. Sales tax will continue to apply to medical cannabis.

This does not mean that recreational cannabis in Manitoba will be without any additional fees. After a competitive RFP process, Manitoba

selected four groups to run retail in the province. These retailers will be the ones required to pay additional fees to the government. Manitoba Liquor and Lotteries intends to charge retailers \$0.75 per gram plus 9% to the retailers as a fee for managing and distributing cannabis from licensed producers to retailers. Retailers will similarly be required to pay back 6% of their revenues to the provincial government as a “social responsibility fee”.

## **PROPOSED REGULATORY AND LEGISLATIVE PROPOSALS**

Months after the Act obtained Royal Assent, the Department of Finance Canada introduced a set of draft Regulatory and Legislative Proposals relating to the Taxation of Cannabis under the Excise Act, 2001 (the “Draft Proposals”). The Draft Proposals were released on September 17, 2018. The Draft Proposals, if adopted, will provide for additional excise duty rates for each province that has signed a CCTA with the Federal Government of Canada. The rates would come into effect on October 17, 2018, to coordinate with the recreational market becoming legal.

The CCTAs and the Draft Proposals are being introduced in an effort to

have a similar pricing structure for recreational cannabis nationwide. In order to do so, the Draft Proposals set a formula for the calculation of excise tax. Two parts of the formula are province-specific and are designed to implement tax that is specific to the type of cannabis product and specific to either the production or importation of cannabis.

### ***The Draft Proposals contain:***

- Draft ***Excise Duties on Cannabis Regulations***
- Draft amendments to the Regulations Respecting the Possession of Tobacco Products or Cannabis Products that are not stamped
- Draft Amendments to the Stamping and Marking of Tobacco and Cannabis Products Regulations
- Draft Amendments to the Credit for Provincial Relief (HST) Regulations; and
- Draft Amendments to the ***Excise Act, 2001***

The most interesting aspect to come out of the Draft Proposals are three

regulatory amendments which the Government is holding a consultation period for. These regulatory amendments are:

- Exemptions for certain entities to allow the possession of cannabis products stamped for multiple jurisdictions, under certain conditions;
- The ability for third parties to possess cannabis excise stamps for specific purposes; and
- Exemptions from the proposed excise duty for certain cannabis-based products that are not intended for human consumption.

### ***Exemptions for Possession of Cannabis Stamped for Multiple Jurisdictions***

Under the current framework, all cannabis and cannabis products coming from Licensed Producers (“LPs”) and destined for retail will be required to have an excise stamp. These stamps will be jurisdiction-specific and marked with specific colours and distinguishing marks. In order to possess cannabis or cannabis products stamped for a jurisdiction other than the jurisdiction in which it operates, you will need a cannabis license issued

by the CRA.

The Government recognizes the challenges for Health Canada licensees as well as some out-of-province retailers to operate without obtaining the CRA’s cannabis licenses. Without the CRA’s license, LPs and retailers will not be able to operate in a way that they otherwise would have been able to by law. Accordingly, the Government has proposed, firstly, that LPs be permitted to possess cannabis and cannabis products in a jurisdiction other than the jurisdiction which the cannabis or cannabis product is stamped for.

Second, if a province or territory allows out-of-province retailers to make sales of cannabis to their residents, those retailers would be entitled to possess cannabis or cannabis products stamped for that jurisdiction, as well as being permitted to possess cannabis products stamped for the jurisdiction in which it operates.

If this is adopted, in order for a retailer to possess cannabis products stamped for a different jurisdiction, it will be required to possess documentation that provides evidence of its ability to sell cannabis or cannabis product in that



jurisdiction.

### ***Third Party Possession of Cannabis Excise Stamps***

The Government recognizes that LPs, retailers, and others licensed to operate in the legal cannabis arena may utilize third parties to assist with packaging logistics. One part of this would be the addition of adhesives to the excise stamps so that they can be applied to packaged products. The proposal, therefore, is to allow these third parties to possess cannabis excise stamps for the purpose of applying adhesives for LPs. The liability/responsibility for the stamps would remain with the LP while the stamps were in possession of the third party.

### ***Exemption for Test Kits and Reference Standards***

The Government recognizes that certain cannabis-based products are not intended for human

consumption. These products are test kits and reference standards. “Test kits” are used to confirm the presence or concentration of a drug. Test kits are captured by the definition contained in the *Cannabis Regulations*. For any such test kit, a registration number will be issued under the *Cannabis Regulations*. If a registration number has been issued for a test kit, it is proposed that such a kit be exempt from the proposed excise duty framework.

Similarly, “reference standards” are designed for research purposes and not for human consumption. The idea is that the cannabis reference standard is a form of cannabis used as a measurement base to confirm the identity, strength, quality or purity of a substance. Given that reference standards are not likely to leave a laboratory or research facility, the proposal is that they too be exempt from the proposed excise duty framework.

The Government is seeking input on the Draft Proposals detailed above. The public consultation will remain open until October 17, 2018.

*\*Portions of this article were previously published on Canada Cannabis Legal, [www.canadacannabislegal.com](http://www.canadacannabislegal.com)*



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