

BUDGET 2018: CANNABIS TAXATION PLANS MOVE FORWARD

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Budget 2018 moves forward with the Government's plans for the taxation of cannabis. Plans to tax cannabis have gained momentum as legalization approaches, which is currently expected this summer. A related goal has been to keep taxes on legal product low enough to discourage sales activity in the black market.

Components of the overall taxation of the industry will include the full range of regular taxes, such as income tax on business profits, GST on product sales, and the property taxes and licence fees payable by businesses in the normal course of operations. These are all components of taxation that arise under the existing framework of laws applicable to all businesses, and are not specifically addressed in Budget 2018. Budget 2018 deals specifically with the Government's plan to impose a special excise tax on cannabis products.

In December of 2017, the federal Government reached a deal with most Provinces on the general framework of the excise tax and how it would be shared. The overall intent of the framework was to impose a combined federal/provincial excise tax on cannabis products not to exceed the greater of (i) a flat rate duty of a maximum of \$1.00 per gram, and (ii) 10% of the producers' sale price of product. The amount of the flat rate duty will depend on whether the product represents flowering or non-flowering material (generally referred to as "flower" and "trim", respectively). The lower flat rate duty on trim will be \$0.30 per gram. The excise tax will generally apply to all cannabis products available for legal purchase, including fresh and dried cannabis, cannabis oils, and seeds and seedlings for home cultivation.

The federal Government had originally proposed that the excise tax would be split 50/50 with the participating Provinces, but the December, 2017 agreement increased the Provincial share to 75%. The Provinces will, of course, be on the front lines of implementation of legalization, with many attendant costs.

Budget 2018 also confirmed that while the tax will be shared, with 75% going to the participating Provinces, the federal portion will be capped at \$100 million for the first two years after legalization (with any excess also going to the participating Provinces), in recognition of the up-front costs of legalization.

Budget 2018 is consistent with the December, 2017 agreement. The new excise tax will apply when cannabis for non-medical purposes becomes available for retail sale. The tax is imposed on manufacturers, and paid only indirectly by consumers (in contrast to GST, which will be payable directly by consumers). Budget 2018

confirmed that while the new excise tax will generally apply to cannabis products containing THC (tetrahydrocannabinol), products containing very low amounts of THC, for instance, low-THC oils, will generally not be subject to the tax. Pharmaceutical products derived from cannabis that are approved by Health Canada with a Drug Identification Number, and can only be acquired with a prescription, will also not be subject to the tax.

Cannabis cultivators and manufacturers will be required to obtain a cannabis licence from the Canada Revenue Agency. All cannabis products that are introduced into the Canadian market for retail sale will also be required to have an excise stamp. (Excise stamps will have specified colours signifying the province or territory in which the product is to be sold.)

The statutory provisions governing the new excise tax will be enacted by amendments to the Excise Act, 2001. Unfortunately, the Notice of Ways and Means Motion that accompanied Budget 2018 did not contain the detailed legislative provisions that will govern the new tax (which will be released at a later date).

by Peter Botz

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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