



Department of Finance
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Ministère des Finances
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GOVERNMENT TABLES LEGISLATION TO IMPLEMENT PREVIOUSLY ANNOUNCED EXCISE MEASURES

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Secretary of State (International Financial Institutions) Jim Peterson today tabled in the House of Commons a detailed Notice of Ways and Means Motion to implement the Government's Excise Act Review Proposals. At the same time, the Honourable Martin Cauchon, Minister of National Revenue and Secretary of State responsible for the Economic Development Agency of Canada for the Regions of Quebec, released draft regulations to accompany the proposed new legislation.

"The proposed legislation and draft regulations will reduce the compliance costs of affected businesses," Secretary of State Peterson said. "The new excise framework will allow the Canada Customs and Revenue Agency to serve its clients better, and gives authorities the tools they need to protect government revenues and deal more effectively with smuggling," Minister Cauchon added.

The new *Excise Act* incorporates the legislative proposals for a new excise framework that were released for consultation purposes in April 1999. The new Act modernizes the legislative provisions governing the taxation of spirits, wine and tobacco products and introduces an updated administrative and enforcement framework that reflects current industry practices.

Consumers will not be affected by the changes to the legislative framework.

Key features of the new legislation include the replacement of the excise levy on sales of wine with a production levy, updated provisions relating to remittances, assessments and appeals and a strengthened enforcement structure. Some adjustments to the original proposals have been made to take into account representations from industry associations, businesses, provincial liquor boards and other interested groups.

Secretary of State Peterson expressed his gratitude for the comments received during the consultations on the legislative proposals. In addition, he said "the new Act will give affected businesses more flexibility to organize their commercial affairs and respond more quickly to market changes."

Also included in the Motion are previously announced proposals relating to other excise tax measures, including changes to the ships' stores provisions, which were announced on September 27, 2001, and measures to implement the tobacco tax increases announced by the Government on November 1, 2001.

The attached backgrounder provides details on the proposed new *Excise Act* and highlights the modifications that have been made to the 1999 legislative proposals relating to that Act. Additional information is provided in the related explanatory notes released today.

The Notice of Ways and Means Motion and explanatory notes can be viewed free of charge on the Department of Finance Web site at the address shown below. Printed copies of the Notice and explanatory notes are available for \$25 and \$22 respectively from the Department of Finance Distribution Centre at (613) 995-2855.

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BACKGROUND

Excise Act Review - Summary

The proposed *Excise Act, 2001* is the culmination of a comprehensive review of the federal legislative and administrative framework for the taxation of alcohol and tobacco products. A joint project undertaken by the Department of Finance and the Canada Customs and Revenue Agency (CCRA), the Excise Act Review aims to replace the existing old and outdated administrative and enforcement structure governing alcohol and tobacco products with a modern regime reflecting current practices. It does not address tax rate and base matters, other than to ensure equitable treatment between domestic and imported products.

In 1997 the federal government released a discussion paper, which outlined a proposal for a revised taxation structure for alcohol and tobacco products. Legislative proposals and draft regulations were subsequently released in 1999, reflecting the key elements of the taxation structure outlined in the 1997 discussion paper. The legislative proposals dealt with the tax regime governing wine and products subject to excise duty under the *Excise Act*, with the exception of beer, which, for the time being, will continue to be subject to the existing *Excise Act*.

The legislative proposals served as the basis for further consultations with other federal departments, affected industries, provincial governments and liquor boards, and enforcement agencies. The proposed *Excise Act, 2001* reflects refinements made to the Review proposals as a result of the consultation process.

The major elements of the proposed new Act, together with other measures contained in the legislation, are summarized below. The changes that have been made to the 1999 legislative proposals are also highlighted.

Licensing and Registration

Under the proposed new Act, producers of spirits, wine and tobacco products, users of industrial alcohol and persons warehousing non-duty-paid spirits and wine will be subject to more comprehensive licensing requirements than under the existing regime. In particular, all commercial vintners will be required to be licensed. New registration requirements will apply to persons who are not taxpayers under the proposed new Act but who carry on activities, such as transportation, in relation to spirits, wine or specially denatured alcohol.

Spirits and Wine

The proposed new Act retains the production levy on spirits but proposes the replacement of the existing excise levy on sales of wine with a production levy at an equivalent rate. The current tax exemption will be maintained for wine produced by a vintner whose sales of wine in the previous 12 months did not exceed \$50,000.

Prior to packaging, duty will not be payable on bulk alcohol. As a result, there will be tight controls over possession, distribution and use of bulk alcohol. Duty will become payable when spirits or wine is packaged for consumption or when packaged spirits or wine is imported. The introduction of excise warehouses will allow for the deferral of the payment of duty on domestic and imported packaged spirits and wine to the time of sale to a retailer.

The proposed new Act explicitly recognizes existing exemptions from the requirements to be licensed and to pay duty for wine produced by individuals for their personal use. An individual will be permitted to produce wine for personal use at a residence or a ferment-on-premises facility (commonly known as a u-vin), if the operator of the facility is a ferment-on-premises registrant.

Alcohol for Non-Beverage Use

The ability to acquire and use spirits on a non-duty-paid basis will continue to be determined in accordance with two categories of authorized users, namely licensed users, who will be able to use non-duty-paid spirits in approved non-beverage uses, and registered users, who will be able to use non-duty-paid spirits for medicinal or research purposes, if they are qualifying health, educational or research establishments. Licensed users will also be able to use wine in approved non-beverage uses, which they cannot currently do.

Licensed users will no longer have to meet the existing requirement to hold separate licences for different classes of products, nor will they be required to hold separate inventories for each product category. The nominal rates of duty that currently apply to spirits for non-beverage use will be eliminated. However, imported spirits acquired by a licensed user will continue to be subject to the special duty of \$0.12 per litre.

As under the current excise regime, there will be no restrictions on the distribution or use of denatured alcohol. However, there will be tight controls over the possession and use of specially denatured alcohol. Only SDA registrants may use specially denatured alcohol.

Tobacco Products

The current excise duty and excise tax on tobacco products other than cigars will be merged into a single production levy on tobacco products payable at the time of packaging. In the case of cigars, a production levy will be payable at the time of packaging and an additional duty identical to the current excise tax will be payable at the time of delivery to a purchaser by the tobacco licensee who manufactured the cigars. In the case of imported tobacco products, the duty will be payable at the time of importation. To ensure equitable treatment with Canadian raw leaf tobacco, duty will also be payable on raw leaf tobacco imported by a person other than a tobacco licensee.

The proposed new Act also incorporates the tax measures introduced in April 2001 as part of the Government's comprehensive strategy to reduce tobacco consumption. Those measures included the introduction of a new excise tax on imported manufactured tobacco sold in duty-free shops, a new customs duty on manufactured tobacco imported by returning residents under the terms of the traveller's allowance and a revised excise tax and duty structure for exported domestic manufactured tobacco. The proposed legislation transfers these levies to the new *Excise Act*.

The current stamping and marking requirements for tobacco products will continue to apply and play a key role in the enforcement of the proposed statute's tobacco provisions. Controls, similar to current controls, will apply to the possession and disposition of raw leaf tobacco and partially manufactured tobacco.

Administration and Enforcement

The revised excise framework for spirits, wine and tobacco products will include substantive changes to key administrative provisions.

Consistent with the CCRA's integrated accounting initiative, the proposed new duty remittance and return structure will be harmonized with other taxes and with commercial accounting periods. The new assessment and appeal provisions are similar to those under the goods and services tax/harmonized sales tax legislation.

The proposed new Act will also encompass a range of modern enforcement mechanisms, such as certificates of default, garnishment, seizure and sale of goods and chattels and directors' liability. While the posting of guarantee bonds will generally be eliminated under the new Act, spirits licensees and tobacco licensees will be required to provide security to complement the proposed collection tools.

With respect to other enforcement measures, the proposed new Act incorporates the current offence provisions relating to the illegal production, possession or sale of contraband tobacco. The new comprehensive controls on the possession, use and disposition of non-duty-paid spirits and wine will significantly improve the alcohol offence structure, and the fines for alcohol-related offences will be substantially increased. As well, the proceeds of crime provisions under the proposed new Act will cover serious alcohol offences.

In addition to strengthened offence provisions, the proposed new Act will provide for a range of administrative penalties that will be imposed on licensees, registrants and other persons dealing with excisable goods who fail to comply with particular requirements under the Act.

Coming-Into-Force

In order to give both affected industries and the CCRA time to prepare for the implementation of the new excise framework, there will be a delay between the time the proposed new Act is assented to and its coming-into-force. It will take effect on a date to be fixed by order of the Governor in Council.

Key Changes Made to the Excise Act Review Proposals

The major changes to the 1999 legislative proposals that are reflected in the proposed new *Excise Act* are summarized below.

Licensing/Registration

The generic alcohol licence for the production or packaging of spirits and wine will be replaced with two separate licences:

- a spirits licence, authorizing the licence holder to produce or package spirits; and
- a wine licence, authorizing the licence holder to produce or package wine.

The legislative and regulatory framework for licensing and registration has been significantly strengthened and includes, among other things, a requirement to post guarantee bonds by spirits licensees or tobacco licensees. In addition, the denaturing of spirits will no longer qualify a person for a spirits licence. The proposed licensing framework will dovetail with provincial legislation for the warehousing of packaged alcohol. Provincial approval will be required before a person can operate an excise warehouse for the storage of non-duty-paid packaged alcohol in a province. This requirement will not apply, however, to a spirits licensee or a wine licensee who produces or packages spirits or wine in the province.

Spirits and Wine

The definitions of "spirits" and "wine" have been modified to provide greater certainty as to the types of products that fall within the definitions and to ensure there is no overlap between the definitions. As well, new rules clarify the requirements relating to the blending of spirits and wine.

The current tax exemption for wine produced and packaged by small vintners with annual sales up to \$50,000 will be maintained. Unlike the existing excise framework, however, vintners of all sizes will be required to be licensed. The licensing requirement is consistent with the strict new controls on the possession of bulk wine and it will assist enforcement efforts against contraband wine.

The definitions of "packaged" and "special container" have been modified to recognize the types of containers currently in use in Canada. Under the proposed legislation, "packaged" alcohol means alcohol packaged in a container not larger than 100 litres that is ordinarily sold to consumers without the alcohol being repackaged. It also means packaged in a marked special container. A special container of wine is a container of a capacity greater than 100 litres. A special container of spirits is a container of a capacity greater than 100 litres but not more than 1,500 litres. Marked special containers of spirits will now also be able to be delivered to bottle-your-own spirits operations.

The requirement to label wine at the time of packaging has been changed to allow wine that is immediately placed in an excise warehouse after packaging to be labelled when the product is removed from the excise warehouse.

Industrial Alcohol

New measures have been incorporated in the proposed legislation to restrict the sale of specially denatured alcohol to certain licensees or registrants and to require imported denatured and specially denatured alcohol to be sampled and tested to ensure these imported products meet the denaturing standards under the new *Excise Act*. The Minister of National Revenue may waive the testing requirement on a risk-managed basis, taking into account such factors as the importer's compliance record and volume of shipments.

During consultations on the 1999 draft legislation and regulations, a number of concerns were expressed about the proposed grades of denatured and specially denatured alcohol. In response, the CCRA intends to establish an industry working group composed of industrial alcohol producers and users to make recommendations regarding changes to existing grades of denatured and specially denatured alcohol that will be incorporated in the denaturing regulations made under the proposed new *Excise Act*. As a result, draft regulations relating to denatured alcohol and specially denatured alcohol are not being released at this time.

Tobacco

Modifications have been made to incorporate the tax measures introduced in April 2001 as part of the Government's anti-tobacco strategy, including the two-tiered excise tax on exports of tobacco products.

In addition, to assist enforcement efforts against contraband tobacco, new measures have been introduced to require tobacco growers to maintain books and records relating to their production and disposition of raw leaf tobacco and to obtain approval to export Canadian raw leaf tobacco.

Administration and Enforcement

Under the proposed new Act, collection action will no longer be taken until certain time limits for objection or appeal have expired or certain decisions have been made.

Transitional Provisions and Consequential Amendments

The proposed new Act contains transitional provisions that will apply to spirits, wine and tobacco products, manufactured or imported prior to the coming into force of the Act, but in respect of which duty will not have become payable when it takes effect. In certain circumstances, refunds may be provided in respect of duty- or tax-paid product that becomes subject to the provisions of the new Act.

The proposed new Act also includes consequential amendments to other federal statutes. These amendments have been expanded and incorporate a number of technical changes from the 1999 draft proposals. In particular, the consequential amendments to the *Importation of Intoxicating Liquors Act* have been modified to maintain the existing import restrictions and trade-related exemptions on bulk spirits.

Other Measures

The proposed new Act also implements the changes to the ships' stores provisions under the customs and excise legislation announced by the Government on September 27, 2001. These changes broaden the enabling legislation for ships' stores regulations and implement a temporary fuel tax rebate program for certain ships that, as a result of amendments to the *Ships' Stores Regulations* effective June 1, 2002, will no longer qualify for ships' stores relief.

In addition, the proposed new Act will implement the increases in the federal excise taxes on tobacco products that were announced by the Government on November 1, 2001. These increases are part of the federal government's comprehensive strategy to improve the health of Canadians by discouraging tobacco consumption.

[Bill C-47, An Act respecting the taxation of spirits, wine and tobacco and the treatment of ships' stores

2002, c. 22

Royal Assent: June 13, 2002]

Notice of Ways and Means Motion to introduce an Act respecting the taxation of spirits, wine and tobacco and to implement increases in tobacco taxes and changes to the treatment of ships' stores)

SUMMARY

This enactment introduces a modern framework for the taxation of spirits, wine and tobacco. It re-enacts existing provisions in the *Excise Act* and the *Excise Tax Act* relating to the excise levies on these products, together with technical improvements, and incorporates a range of new provisions. The key features of the enactment include the following:

- (a) the continued imposition of a production levy on spirits, tobacco products and raw leaf tobacco and the replacement of the existing excise levy on sales of wine with a production levy at an equivalent rate;
- (b) the replacement of the excise duty and excise tax on tobacco products other than cigars with a single excise duty;
- (c) the introduction of excise warehouses to allow for the deferral of the payment of the production levy on domestic and imported spirits and wine to the time of sale to the retailer;
- (d) more comprehensive licensing requirements and new registration requirements for persons carrying on activities in relation to goods subject to duty;
- (e) explicit recognition of limited exemptions for certain goods produced by individuals for their personal use;
- (f) tight new controls on the possession and distribution of goods on which duty has not been paid;

- (g) modern provisions concerning the use of spirits and wine for non-beverage purposes and the use of specially denatured alcohol;
- (h) updated administrative provisions, including new remittance, assessment and appeal provisions that are similar to those under the Goods and Services Tax/Harmonized Sales Tax legislation;
- (i) updated enforcement provisions, including new offence, penalty and collection provisions; and
- (j) transitional provisions applicable to spirits, wine and tobacco products produced before the enactment comes into force.

This enactment also implements changes to the ships' stores provisions, which were announced by the government on September 27, 2001. These changes broaden the enabling legislation for ships' stores regulations and implement a temporary fuel tax rebate program for certain ships that, as a result of amendments to the *Ships' Stores Regulations* effective June 1, 2002, will no longer qualify for ships' stores relief.

Furthermore, this enactment implements the tobacco tax increases announced by the government on November 1, 2001.

Finally, the replacement of the existing provisions in the *Excise Act* and the *Excise Tax Act* relating to the excise levies on spirits, wine and tobacco necessitates consequential amendments to those Acts as well as other Acts, including the *Budget Implementation Act, 2000*, the *Canada Customs and Revenue Agency Act*, the *Criminal Code*, the *Customs Act*, the *Customs and Excise Offshore Application Act*, the *Customs Tariff*, the *Export Act*, the *Importation of Intoxicating Liquors Act*, the *Special Economic Measures Act* and the *Tax Court of Canada Act*.

Notice of Ways and Means Motion to introduce an Act respecting the taxation of spirits, wine and tobacco and to implement increases in tobacco taxes and changes to the treatment of ships' stores

That it is expedient to introduce an Act respecting the taxation of spirits, wine and tobacco and to implement increases in tobacco taxes and changes to the treatment of ships' stores, as follows:

SHORT TITLE

1. Short title — This Act may be cited as the *Excise Act, 2001*.

INTERPRETATION

2. Definitions — The definitions in this section apply in this Act.

"absolute ethyl alcohol" means the substance with the chemical composition C_2H_5OH .

"accredited representative" means a person who is entitled under the *Foreign Missions and International Organizations Act* to the tax exemptions specified in Article 34 of the Convention set out in Schedule I to that Act or in Article 49 of the Convention set out in Schedule II to that Act.

"Agency" means the Canada Customs and Revenue Agency established under subsection 4(1) of the *Canada Customs and Revenue Agency Act*.

"alcohol" means spirits or wine.

"alcohol licensee" means a person who is a spirits licensee or a wine licensee.

"alcohol registrant" means a person who holds an alcohol registration issued under section 17.

"analyst" means a person who is designated as an analyst under section 11.

"approved formulation" means

(a) any product made with alcohol by a licensed user in accordance with a formula for which the user has approval from the Minister; and

(b) any imported product that, in the opinion of the Minister, would be a product under paragraph (a) if it were made in Canada by a licensed user.

"assessment" means an assessment under this Act and includes a reassessment.

"beer" means beer or malt liquor as defined in section 4 of the *Excise Act*.

"black stock", in respect of manufactured tobacco, means that the tobacco is stamped but not marked in accordance with any statute of a province to indicate that it is intended for retail sale in a particular province or in particular provinces.

"bottle-your-own premises" means premises in which, in accordance with the laws of the province in which they are located, alcohol is supplied from a marked special container of alcohol for the purpose of being packaged by a purchaser.

"bulk", in respect of alcohol, means alcohol that is not packaged.

"cigar" includes

(a) a cigarillo or cheroot; and

(b) any roll or tubular construction intended for smoking that consists of a filler composed of pieces of natural or reconstituted leaf tobacco, a binder of natural or reconstituted leaf tobacco in which the filler is wrapped and a wrapper of natural or reconstituted leaf tobacco.

"cigarette" includes any roll or tubular construction intended for smoking, other than a cigar or a tobacco stick. If a cigarette exceeds 102 mm in length, each portion of 76 mm or less is considered to be a separate cigarette.

"Commissioner" means the Commissioner of Customs and Revenue, appointed under section 25 of the *Canada Customs and Revenue Agency Act*.

"container", in respect of a tobacco product, means a wrapper, package, carton, box, crate or other container that contains the tobacco product.

"customs bonded carrier"

"customs bonded carrier" means a person who transports or causes to be transported goods in accordance with section 20 of the *Customs Act*.

"customs bonded warehouse" means a place that is licensed as a bonded warehouse under the *Customs Tariff*.

"customs bonded warehouse licensee" means a person licensed under the *Customs Tariff* to operate a bonded warehouse.

"data" means representations, in any form, of information or concepts.

"denature" means to denature spirits into denatured alcohol or specially denatured alcohol using prescribed denaturants in the prescribed manner.

"denatured alcohol" means any prescribed grade of denatured alcohol made from spirits in accordance with the prescribed specification for that grade.

"duty" means, unless a contrary intention appears, the duty imposed under this Act and the duty levied under section 21.1 or 21.2 of the *Customs Tariff* and, except in Parts 3 and 4, includes special duty.

"duty free shop" means a place that is licensed as a duty free shop under the *Customs Act*.

"duty free shop licensee" means a person licensed under the *Customs Act* to operate a duty free shop.

"duty-paid market" means the market for goods in respect of which duty, other than special duty, is payable.

"duty-paid value" means

(a) in respect of imported cigars, the value of the cigars as it would be determined for the purpose of calculating an *ad valorem* duty on the cigars in accordance with the *Customs Act*, whether or not the cigars are subject to *ad valorem* duty, plus the amount of any duty imposed on the cigars under section 42 of this Act and section 20 of the *Customs Tariff*; and

(b) in respect of imported cigars that, when imported, are contained in containers or otherwise prepared for sale, the total of the value of the cigars as determined in accordance with paragraph (a) and the value similarly determined of the container in which they are contained.

"excise warehouse" means the premises of an excise warehouse licensee that are specified by the Minister as the excise warehouse of the licensee.

"excise warehouse licensee" means a person who holds an excise warehouse licence issued under section 19.

"export" means to export from Canada.

"ferment-on-premises facility" means the premises of a ferment-on-premises registrant that are specified by the Minister as the registrant's ferment-on-premises facility.

"ferment-on-premises registrant" means a person who holds a ferment-on-premises registration issued under section 15.

"fiscal month" means a fiscal month as determined under section 159.

"foreign duty free shop" means a retail store that is located in a country other than Canada and that is authorized under the laws of that country to sell goods free of certain duties and taxes to individuals who are about to leave that country.

"foreign ships' stores" means tobacco products taken on board a vessel or aircraft while the vessel or aircraft is outside Canada and that are intended for consumption by or sale to the passengers or crew while the passengers and crew are on board the vessel or aircraft.

"Her Majesty" means Her Majesty in right of Canada.

"import" means to import into Canada.

"intoxicating liquor" has the same meaning as in section 2 of the *Importation of Intoxicating Liquors Act*.

"judge", in respect of any matter, means a judge of a superior court having jurisdiction in the province in which the matter arises or a judge of the Federal Court.

"licensed tobacco dealer" means a person who holds a tobacco dealer's licence issued under section 14.

"licensed user" means a person who holds a user's licence issued under section 14.

"liquor authority" means a government board, commission or agency that is authorized by the laws of a province to sell intoxicating liquor.

"manufacture", in respect of a tobacco product, includes any step in the preparation or working up of raw leaf tobacco into the tobacco product. It includes packing, stemming, reconstituting, converting or packaging the raw leaf tobacco or tobacco product.

"manufactured tobacco" means every article, other than a cigar or packaged raw leaf tobacco, that is manufactured in whole or in part from raw leaf tobacco by any process.

"mark" means, in respect of

- (a) a special container of spirits, to mark in the prescribed form and manner to indicate that the container is intended for
 - (i) delivery to and use by a registered user, or
 - (ii) delivery to and use at a bottle-your-own premises; and
- (b) a special container of wine, to mark in the prescribed form and manner to indicate that the container is intended for delivery to and use at a bottle-your-own premises.

"Minister" means the Minister of National Revenue.

"month" means a period beginning on a particular day in a calendar month and ending on

- (a) the day immediately before the day in the next calendar month that has the same calendar number as the particular day; or
- (b) if the next calendar month does not have a day that has the same calendar number as the particular day, the last day of that next calendar month.

"non-duty-paid", in respect of packaged alcohol, means that duty, other than special duty, has not been paid on the alcohol.

"officer", except in sections 167, 226 and 296, means a person who is appointed or employed in the administration or enforcement of this Act, a member of the Royal Canadian Mounted Police or a member of a police force designated under subsection 10(1).

"packaged" means,

- (a) in respect of raw leaf tobacco or a tobacco product, packaged in a prescribed package; or
- (b) in respect of alcohol, packaged
 - (i) in a container of a capacity of not more than 100 L that is ordinarily sold to consumers without the alcohol being repackaged, or
 - (ii) in a marked special container.

"partially manufactured tobacco" means manufactured tobacco that is cut filler or cut rag or that is manufactured less fully than cut filler or cut rag.

"peace officer" has the same meaning as in section 2 of the *Criminal Code*.

"person" means an individual, a partnership, a corporation, a trust, the estate of a deceased individual, a government or a body that is a society, a union, a club, an association, a commission or another organization of any kind.

"personal use", in relation to the use of a good by an individual, means the use of the good by the individual or by others at the individual's expense. It does not include the sale or other commercial use of the good.

"prescribed" means

- (a) in the case of a form or the manner of filing a form, authorized by the Minister;
- (b) in the case of the information to be given on or with a form, specified by the Minister; and
- (c) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation.

"produce" means

- (a) in respect of spirits, to bring into existence by distillation or other process or to recover; or
- (b) in respect of wine, to bring into existence by fermentation.

"raw leaf tobacco" means unmanufactured tobacco or the leaves and stems of the tobacco plant.

"record" means any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device.

"registered user" means a person who holds a user's registration issued under section 16.

"responsible", in relation to a person, means that the person is responsible for bulk alcohol in accordance with sections 104 to 121.

"sale price", in respect of cigars, means the total of

- (a) the amount charged as the price for the cigars before an amount payable in respect of a tax under Part IX of the *Excise Tax Act* is added,
- (b) the amount charged as the price for or in respect of the container in which the cigars are contained,
- (c) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale of the cigars in addition to the amount charged as the price, whether payable at the same or any other time, including, but not limited to, any amount charged for or to make provision for advertising, financing, commissions or any other matter, and
- (d) the amount of duty imposed on the cigars under section 42.

"SDA registrant" means a person who holds a specially denatured alcohol registration issued under section 18.

"special container" means

- (a) in respect of spirits, a container of a capacity of more than 100 L but not more than 1,500 L; and
- (b) in respect of wine, a container of a capacity of more than 100 L.

"special duty" means

- (a) in respect of a tobacco product, a special duty imposed under subsection 53(1), 54(2) or 56(1); and
- (b) in respect of imported spirits, the special duty imposed under subsection 133(1).

"special excise warehouse" means the premises of a special excise warehouse licensee that are specified by the Minister as the special excise warehouse of the licensee.

"special excise warehouse licensee" means a person who holds a special excise warehouse licence issued under section 20.

"specially denatured alcohol" means any prescribed grade of specially denatured alcohol made from spirits in accordance with the prescribed specification for that grade.

"specified premises", in respect of a licensed user, means the premises of the licensed user that are specified by the Minister under subsection 23(3).

"spirits" means any material or substance containing more than 0.5% absolute ethyl alcohol by volume other than

- (a) wine;
- (b) beer;
- (c) vinegar;
- (d) denatured alcohol;
- (e) specially denatured alcohol;
- (f) an approved formulation; or
- (g) any product containing or manufactured from a material or substance referred to in paragraphs (b) to (f) that is not consumable as a beverage.

"spirits licensee" means a person who holds a spirits licence issued under section 14.

"stamped", in respect of a tobacco product, means that all prescribed information in a prescribed format is, in the prescribed manner, stamped, impressed, printed or marked on, indented into or affixed to the product or its container to indicate that duty, other than special duty, has been paid on the product.

"suffrance warehouse" has the same meaning as in subsection 2(1) of the *Customs Act*.

"suffrance warehouse licensee" means a person licensed under the *Customs Act* to operate a suffrance warehouse.

"take for use", in respect of alcohol, means to consume, analyze or destroy alcohol or to use alcohol for any purpose that results in a product other than alcohol.

"Tax Court" means the Tax Court of Canada.

"tobacco dealer" means a person, other than a tobacco licensee, who

- (a) purchases for resale, sells or offers to sell raw leaf tobacco on which duty is not imposed under this Act; and
- (b) does not take physical possession of the tobacco.

"tobacco licensee" means a person who holds a tobacco licence issued under section 14.

"tobacco marking" means prescribed information that is required under this Act to be printed on or affixed to a container of tobacco products that are not required under this Act to be stamped.

"tobacco product" means manufactured tobacco, packaged raw leaf tobacco or cigars.

"tobacco stick" means any roll or tubular construction of tobacco intended for smoking, other than a cigar, that requires further preparation to be consumed. If a tobacco stick exceeds 90 mm in length or 800 mg, each portion of 60 mm or less or each portion of 650 mg or less, respectively, is considered to be a separate stick.

"wine" means

(a) a beverage, containing more than 0.5% absolute ethyl alcohol by volume, that is produced without distillation, other than distillation to reduce the absolute ethyl alcohol content, by the alcoholic fermentation of

(i) an agricultural product other than grain,

(ii) a plant or plant product, other than grain, that is not an agricultural product, or

(iii) a product wholly or partially derived from an agricultural product or plant or plant product other than grain;

(b) sake; and

(c) a beverage described by paragraph (a) or (b) that is fortified not in excess of 22.9% absolute ethyl alcohol by volume.

"wine licensee" means a person who holds a wine licence issued under section 14.

3. References to other enactments — A reference in this Act to a repealed enactment, or a portion of it, of the legislature of a province or territory shall, with respect to a subsequent transaction, matter or thing, be read as a reference to the provisions of any enactment replacing the repealed enactment or portion that relate to the same subject-matter as the repealed enactment or portion. If there is no replacement enactment or portion, or if there are no provisions in the replacement enactment that relate to the same subject-matter, the repealed enactment or portion shall be read as unrepealed in so far as is necessary to maintain or give effect to the reference.

4. Meaning of "administration or enforcement of this Act" — For greater certainty, a reference in this Act to "administration or enforcement of this Act" includes the collection of any amount payable under this Act.

5.(1) Constructive possession — For the purposes of subsections 30(1) and 32(1), section 61, subsections 70(1) and 88(1) and sections 230 and 231, if one of two or more persons, with the knowledge and consent of the rest of them, has anything in the person's possession, it is deemed to be in the custody and possession of each and all of them.

(2) Meaning of "possession" — In this section and in subsections 30(1) and 32(1), section 61 and subsections 70(1) and 88(1), "possession" means not only having in one's own personal possession but also knowingly

(a) having in the actual possession or custody of another person; or

(b) having in any place, whether belonging to or occupied by one's self or not, for one's own use or benefit or that of another person.

6.(1) Arm's length — For the purposes of this Act,

(a) related persons are deemed not to deal with each other at arm's length; and

(b) it is a question of fact whether persons not related to each other were, at any particular time, dealing with each other at arm's length.

(2) Related persons — For the purposes of this Act, persons are related to each other if they are related persons within the meaning of subsections 251(2) to (6) of the *Income Tax Act*, except that

(a) a reference in those subsections to "corporation" shall be read as a reference to "corporation or partnership"; and

(b) a reference in those subsections to "shares" or "shareholders" shall, in respect of a partnership, be read as a reference to "rights" or "partners", respectively.

PART 1

APPLICATION AND ADMINISTRATIVE MATTERS

7. Act binding on Her Majesty — This Act is binding on Her Majesty and Her Majesty in right of a province.

Administration and Officers

8. Minister's duty — The Minister shall administer and enforce this Act and the Commissioner may exercise the powers and perform the duties of the Minister under this Act.

9.(1) Officers and employees — The officers, employees and agents that are necessary to administer and enforce this Act shall be appointed, employed or engaged in the manner authorized by law.

(2) **Delegation of powers** — The Minister may authorize a designated officer or agent or a class of officers or agents to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial power or duty of the Minister, under this Act.

10.(1) Designation of police forces — The Minister and the Solicitor General of Canada may designate any police force in Canada for the purposes of the enforcement of any of the provisions of this Act that are specified in the designation, subject to any terms and conditions specified in the designation, for any period specified in the designation.

(2) **Persons to have powers and duties of officers** — All members of a police force designated under subsection (1) have the powers and duties of an officer for the purposes of the enforcement of the provisions of this Act specified in the designation.

(3) **Designation to be published** — A designation under subsection (1) or any variation or cancellation of that designation must be published in the *Canada Gazette* and is not effective before it is so published.

11. Designation of analysts — The Minister may designate any person or class of persons as an analyst for the purposes of this Act.

12. Administration of oaths — Any officer, if designated by the Minister for the purpose, may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Act, and every officer so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits.

Inquiries

13.(1) Authorization of inquiry — The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer, to make any inquiry that the Minister considers necessary with reference to anything relating to the administration or enforcement of this Act.

(2) **Appointment of hearing officer** — If the Minister authorizes a person to make an inquiry, the Minister shall without delay apply to the Tax Court for an order appointing a hearing officer before whom the inquiry will be held.

(3) **Powers of hearing officer** — For the purposes of an inquiry, a hearing officer has all of the powers conferred on a commissioner under sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 of that Act.

(4) **When powers to be exercised** — A hearing officer shall exercise the powers conferred on a commissioner under section 4 of the *Inquiries Act* in relation to any person that the person authorized to make the inquiry considers appropriate for the conduct of the inquiry, but the hearing officer shall not exercise the power to punish any person unless, on application by the hearing officer, a judge certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the power is proposed to be exercised 24 hours notice of the hearing of the application, or any shorter notice that the judge considers reasonable.

(5) **Rights of witnesses** — Any person who gives evidence in an inquiry is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of that evidence.

(6) **Rights of person investigated** — Any person whose affairs are investigated in the course of an inquiry is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer, on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry, on the ground that the presence of the person and their counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

PART 2

LICENCES AND REGISTRATIONS

Licences

14.(1) Issuance — Subject to the regulations, on application, the Minister may issue to a person

- (a) a spirits licence, authorizing the person to produce or package spirits;
- (b) a wine licence, authorizing the person to produce or package wine;
- (c) a user's licence, authorizing the person to use bulk alcohol or non-duty-paid packaged alcohol;
- (d) a tobacco licence, authorizing the person to manufacture tobacco products; or
- (e) a tobacco dealer's licence, authorizing the person to carry on the activity of a tobacco dealer.

(2) **Deemed packaging excluded** — A person is not entitled to a licence under paragraph (1)(a) or (b) by reason only of having been deemed to have packaged alcohol under section 77 or 82.

(3) **Deemed production excluded** — A person is not entitled to a licence under paragraph (1)(a) by reason only of having been deemed to have produced spirits under subsection 131(2).

Registrations

15. Ferment-on-premises registration — Subject to the regulations, on application, the Minister may issue a ferment-on-premises registration to a person authorizing the person to possess at their ferment-on-premises facility bulk wine produced at the premises by an individual and owned by the individual.

16. User's registration — Subject to the regulations, on application, the Minister may issue a user's registration authorizing the use of non-duty-paid packaged spirits by

- (a) a scientific and research laboratory in receipt annually of aid from the Government of Canada or a province, for scientific purposes;
- (b) a university or other post-secondary educational institution recognized by a province, for scientific purposes;
- (c) a health care facility, for medicinal and scientific purposes; or
- (d) a health institution in receipt annually of aid from the Government of Canada or a province, for medicinal and scientific purposes.

17. Alcohol registration — Subject to the regulations, on application, the Minister may issue an alcohol registration to a person authorizing the person to store or transport bulk alcohol or specially denatured alcohol.

18.(1) SDA registration — Subject to the regulations, on application, the Minister may issue a specially denatured alcohol registration to a person authorizing the person to possess and use specially denatured alcohol.

(2) Restrictions on grades of SDA — The Minister may impose restrictions on the use of particular grades of specially denatured alcohol.

Excise Warehouses

19.(1) Issuance of licence — Subject to the regulations, on application, the Minister may issue an excise warehouse licence to a person who is not a retailer of alcohol authorizing the person to possess in their excise warehouse non-duty-paid packaged alcohol or a tobacco product that is not stamped.

(2) Eligible retailers of alcohol — Even if they are retailers of alcohol, the following persons may be issued an excise warehouse licence under subsection (1):

- (a) an alcohol licensee;
- (b) a liquor authority; and
- (c) any person who supplies goods in accordance with the *Ships' Stores Regulations*.

Special Excise Warehouses

20.(1) Issuance of licence — Subject to the regulations, on application, the Minister may issue a special excise warehouse licence to a person who is authorized by a tobacco licensee to be the only person, other than the licensee, who is entitled to distribute to an accredited representative a tobacco product manufactured by the licensee.

(2) Single licence — The Minister shall not issue to the same person more than one special excise warehouse licence.

(3) Licence limited to one premises — The Minister shall not specify more than one premises of a special excise warehouse licensee as a special excise warehouse.

21.(1) Return of tobacco products — If a person ceases to be authorized by a tobacco licensee to distribute to an accredited representative a tobacco product manufactured by the tobacco licensee,

- (a) the person shall immediately return the tobacco product of that licensee that is stored in the person's special excise warehouse to the excise warehouse of the tobacco licensee; and
- (b) the tobacco licensee shall immediately notify the Minister in writing that the person has ceased to be so authorized.

(2) Cancellations — The Minister shall cancel the special excise warehouse licence of the person if the person is no longer authorized by any tobacco licensee to distribute to an accredited representative a tobacco product.

Duty Free Shops

22. Issuance of licence — Subject to the regulations, the Minister may, on application, issue to a person who is licensed under the *Customs Act* to operate a duty free shop a licence authorizing the person to possess and sell imported manufactured tobacco that is subject to a special duty under section 53.

General

23.(1) Refusal to issue licence or registration — The Minister may, for any reason the Minister considers sufficient in the public interest, refuse to issue a licence or registration.

(2) Amendment or renewal — Subject to the regulations, the Minister may amend, suspend, renew, cancel or reinstate any licence or registration.

(3) Conditions imposed by Minister — On issuing a licence or registration, or at any later time, the Minister

(a) may, subject to the regulations, specify the activities that may be carried on under the licence or registration and the premises where those activities may be carried on;

(b) shall, in the case of a spirits licence or a tobacco licence, require security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations; and

(c) may impose any other conditions that the Minister considers appropriate with respect to the carrying on of activities under the licence or registration.

24. Compliance with Act — A licensee or registrant shall not carry on any activity under their licence or registration otherwise than in accordance with this Act.

PART 3

TOBACCO

Regulation of Tobacco

25.(1) Manufacturing tobacco product without a licence prohibited — No person shall, other than in accordance with a tobacco licence issued to the person, manufacture a tobacco product.

(2) Deemed manufacturer — A person who, whether for consideration or otherwise, provides or offers to provide in their place of business equipment for use in that place by another person in the manufacture of a tobacco product is deemed to be manufacturing the tobacco product and the other person is deemed not to be manufacturing the tobacco product.

(3) Exception - manufacturing for personal use — An individual who is not a tobacco licensee may manufacture a tobacco product

(a) from packaged raw leaf tobacco or manufactured tobacco on which the duty has been paid, if the product is for their personal use; or

(b) from raw leaf tobacco grown on land on which the individual resides, if

(i) the product is for their personal use or that of the members of their family who reside with the individual and who are 18 years of age or older, and

(ii) the quantity of product manufactured in any year does not exceed 15 kg for the individual and each member of the individual's family who resides with the individual and who is 18 years of age or older.

26. Tobacco dealer — No person shall carry on the activity of a tobacco dealer except in accordance with a tobacco dealer's licence issued to the person.

27. Unlawful packaging or stamping — No person shall package or stamp any raw leaf tobacco or tobacco product unless the person

(a) is a tobacco licensee; or

(b) is the importer or owner of the tobacco or product and it has been placed in a sufferance warehouse for the purpose of being stamped.

28.(1) Unlawful removal — Except as permitted under section 40, no person shall remove raw leaf tobacco or a tobacco product from the premises of a tobacco licensee unless the tobacco or product is packaged and

(a) if the product is intended for the duty-paid market, it is stamped; or

(b) if the product is not intended for the duty-paid market, all tobacco markings that are required under this Act to be printed on or affixed to its container are so printed or affixed.

(2) **Exception** — Subsection (1) does not apply to a tobacco licensee who removes from their premises

- (a) raw leaf tobacco for return to a tobacco grower, for delivery to another tobacco licensee or for export; or
- (b) partially manufactured tobacco for delivery to another tobacco licensee or for export.

29. Prohibition - certain tobacco products for sale, etc. — No person shall purchase or receive for sale a tobacco product

- (a) from a manufacturer who the person knows, or ought to know, is not a tobacco licensee;
- (b) that is required under this Act to be packaged and stamped unless it is so packaged and stamped; or
- (c) that the person knows, or ought to know, is fraudulently stamped.

30.(1) Selling, etc., unstamped raw leaf tobacco — No person shall dispose of, sell, offer for sale, purchase or have in their possession raw leaf tobacco unless the tobacco is packaged and stamped.

(2) **Exception** — Subsection (1) does not apply to

- (a) a person who is a tobacco licensee;
- (b) the possession of raw leaf tobacco
 - (i) in a customs bonded warehouse or a sufferance warehouse by the licensee of that warehouse, or
 - (ii) by a body established under provincial law for the marketing of raw leaf tobacco grown in the province; or
- (c) the sale, offer for sale or purchase of raw leaf tobacco by a licensed tobacco dealer.

31. Exceptions to sections 26 and 30 — A tobacco grower does not contravene section 26 or 30 by reason only that the grower deals in or has in their possession raw leaf tobacco

- (a) grown by the grower on their property for sale to a tobacco licensee or a licensed tobacco dealer or for other disposition to a tobacco licensee, if the tobacco is either on the grower's property or is being transported by the grower
 - (i) in connection with the curing of the tobacco,
 - (ii) for delivery to or return from a tobacco licensee, or
 - (iii) for delivery to or return from a body established under provincial law for the marketing of raw leaf tobacco grown in the province;
- (b) grown by any other person, if the grower operates a tobacco drying kiln on the grower's property and the grower's possession is solely for the purpose of curing the tobacco and returning it to the other person immediately after completion of the curing process or exporting it in accordance with paragraph (c); or
- (c) that is to be exported, if the grower has the written approval of the Minister and complies with any conditions that the Minister considers appropriate.

32.(1) Unlawful possession or sale of tobacco products — No person shall sell, offer for sale or have in their possession a tobacco product unless it is stamped.

(2) **Exceptions - possession** — Subsection (1) does not apply to the possession of a tobacco product by

- (a) a tobacco licensee at the place of manufacture of the product or at the excise warehouse of the licensee;
- (b) in the case of cigars or imported manufactured tobacco, an excise warehouse licensee at the excise warehouse of the licensee;
- (c) a special excise warehouse licensee at the special excise warehouse of the licensee, if the tobacco product is one that the licensee is permitted under this Act to distribute;
- (d) a prescribed person who is transporting the product under prescribed circumstances and conditions;
- (e) in the case of an imported tobacco product, a customs bonded warehouse licensee or a sufferance warehouse licensee in their warehouse;
- (f) in the case of cigars, a duty free shop licensee in their duty free shop;
- (g) in the case of imported manufactured tobacco, a duty free shop licensee in their duty free shop if the licensee holds a licence issued under section 22;
- (h) an accredited representative for their personal or official use;
- (i) in the case of cigars or imported manufactured tobacco, a person as ships' stores if the acquisition and possession of the product by that person are in accordance with the Ships' Stores Regulations;

- (j) an individual who has imported the product for their personal use in quantities not in excess of prescribed limits; or
- (k) an individual who has manufactured the product in accordance with subsection 25(3).

(3) Exceptions - sale or offer for sale — Subsection (1) does not apply where

- (a) a tobacco licensee sells or offers to sell a tobacco product that is exported by the licensee in accordance with this Act;
- (b) a tobacco licensee sells or offers to sell
 - (i) a tobacco product to a special excise warehouse licensee, if the product is one that the special excise warehouse licensee is permitted under this Act to distribute,
 - (ii) a tobacco product to an accredited representative for their personal or official use,
 - (iii) cigars to an excise warehouse licensee for delivery as ships' stores in accordance with the *Ships' Stores Regulations*,
 - (iv) cigars to a duty free shop for sale or offer for sale in accordance with the *Customs Act*, or
 - (v) cigars as ships' stores in accordance with the *Ships' Stores Regulations*;
- (c) a special excise warehouse licensee sells or offers to sell a tobacco product to an accredited representative for their personal or official use, if the product is one that the licensee is permitted under this Act to distribute;
- (d) an excise warehouse licensee sells or offers to sell
 - (i) an imported tobacco product that is exported by the licensee in accordance with this Act,
 - (ii) an imported tobacco product to an accredited representative for their personal or official use or to a duty free shop, or
 - (iii) cigars or imported manufactured tobacco as ships' stores in accordance with the *Ships' Stores Regulations*;
- (e) a duty free shop licensee sells or offers to sell cigars in accordance with the *Customs Act*;
- (f) a duty free shop licensee who holds a licence issued under section 22 sells or offers to sell imported manufactured tobacco in accordance with the *Customs Act*;
- (g) a customs bonded warehouse licensee sells or offers to sell an imported tobacco product that is exported by the licensee in accordance with this Act;
- (h) a customs bonded warehouse licensee sells or offers to sell an imported tobacco product
 - (i) to an accredited representative for their personal or official use,
 - (ii) to a duty free shop for sale or offer for sale in accordance with the *Customs Act*, or
 - (iii) as ships' stores in accordance with the *Ships' Stores Regulations*; and
- (i) a person sells or offers for sale cigars or imported manufactured tobacco as ships' stores in accordance with the *Ships' Stores Regulations*.

33. No sale or distribution except in original package — No person shall

- (a) sell or offer for sale cigars otherwise than in or from the original package;
- (b) sell or offer for sale manufactured tobacco otherwise than in the original package; or
- (c) distribute free of charge for advertising purposes any tobacco product otherwise than in or from the original package.

34. Packaging and stamping of tobacco — A tobacco licensee who manufactures a tobacco product shall not enter the tobacco product into the duty-paid market unless

- (a) the product has been packaged by the licensee;
- (b) the package has printed on it prescribed information; and
- (c) the product is stamped at the time of packaging.

35.(1) Packaging and stamping of imported tobacco — If a tobacco product or raw leaf tobacco is imported, it must, before it is released under the *Customs Act* for entry into the duty-paid market,

- (a) be packaged in a package that has printed on it prescribed information; and
- (b) be stamped.

(2) Exception for certain importations — Subsection (1) does not apply to

- (a) partially manufactured tobacco that is imported by a tobacco licensee for further manufacturing by the licensee;
- (b) a tobacco product that a tobacco licensee is authorized to import under subsection 41(2);

- (c) a tobacco product that is imported by an individual for their personal use in quantities not in excess of prescribed limits; or
- (d) raw leaf tobacco that is imported by a tobacco licensee.

36. Absence of stamping - notice — The absence of stamping on a tobacco product is notice to all persons that duty has not been paid on the product.

37. Unstamped products to be warehoused — If a tobacco product manufactured in Canada is not stamped by a tobacco licensee, the tobacco licensee shall immediately enter the product into the licensee's excise warehouse.

38.(1) No warehousing of tobacco without markings — No person shall enter into an excise warehouse a container of tobacco products unless the container has printed on it or affixed to it tobacco markings and other prescribed information.

(2) No delivery of imported tobacco without markings — No person shall deliver a container of imported tobacco products that does not have printed on it or affixed to it tobacco markings and other prescribed information to

- (a) a duty free shop for sale or offer for sale in accordance with the *Customs Act*;
- (b) an accredited representative; or
- (c) a customs bonded warehouse.

(3) Exception for prescribed tobacco product — Subsections (1) and (2) do not apply to a tobacco product of a brand if the brand is not commonly sold in Canada and is prescribed.

(4) Exception for prescribed cigarettes — Subsection (1) does not apply to cigarettes of a particular type or formulation, manufactured in Canada and exported under a brand that is also applied to cigarettes of a different type or formulation that are manufactured and sold in Canada, if

- (a) cigarettes of the particular type or formulation exported under that brand are prescribed cigarettes; and
- (b) cigarettes of the particular type or formulation have never been sold in Canada under that brand or any other brand.

(5) Distinguishing different cigarettes — For the purpose of subsection (4), a cigarette of a particular type or formulation sold under a brand may be considered to be different from another cigarette sold under that brand if it is reasonable to consider them to be different having regard to their physical characteristics before and during consumption.

39. Non-compliant imports — If an imported tobacco product or imported raw leaf tobacco intended for the duty-paid market is not stamped when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being stamped.

40.(1) Removal of raw leaf tobacco or waste tobacco — No person other than a tobacco licensee shall remove raw leaf tobacco or tobacco that is waste from the premises of the licensee.

(2) Removal requirements — If raw leaf tobacco or tobacco that is waste is removed from the premises of a tobacco licensee, the licensee shall deal with the tobacco in the manner authorized by the Minister.

41.(1) Re-working or destruction of tobacco — A tobacco licensee may re-work or destroy a tobacco product in the manner authorized by the Minister.

(2) Importation for reworking or destruction — The Minister may authorize a tobacco licensee to import any tobacco product manufactured in Canada by the licensee for re-working or destruction by the licensee in accordance with subsection (1).

Duty on Tobacco

42.(1) Imposition — Duty is imposed on tobacco products manufactured in Canada or imported and on imported raw leaf tobacco at the rates set out in Schedule 1 and is payable

- (a) in the case of tobacco products manufactured in Canada, by the tobacco licensee who manufactured the tobacco products, at the time they are packaged; and
- (b) in the case of imported tobacco products or raw leaf tobacco, by the importer, owner or other person who is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or who would be liable to pay that duty on the tobacco or products if they were subject to that duty.

(2) Imported partially manufactured tobacco — The following rules apply to partially manufactured tobacco that is imported by a tobacco licensee for further manufacture:

- (a) for the purposes of this Act, the tobacco is deemed to be manufactured in Canada by the licensee; and

(b) paragraph (1)(a) applies to the tobacco and paragraph (1)(b) and section 44 do not apply.

43. Additional duty on cigars — In addition to the duty imposed under section 42, duty is imposed on cigars at the rates set out in Schedule 2 and is payable

(a) in the case of cigars manufactured and sold in Canada, by the tobacco licensee who manufactured the cigars, at the time of their delivery to a purchaser; and

(b) in the case of imported cigars, by the importer, owner or other person who is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or who would be liable to pay that duty on the cigars if they were subject to that duty.

44. Application of *Customs Act* — The duties imposed under sections 42 and 43 on imported raw leaf tobacco and tobacco products shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duties were a duty levied under section 20 of the *Customs Tariff*, and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require.

45.(1) Duty relieved — The duties imposed under sections 42 and 43 are relieved on a tobacco product that is not stamped.

(2) Tobacco imported by an individual for personal use — Subsection (1) does not apply to the importation of tobacco products by an individual for their personal use to the extent that the quantity of the products imported exceeds the quantity permitted under Chapter 98 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff* to be imported without the payment of duties (as defined in Note 4 to that Chapter).

46. Duty relieved - raw leaf tobacco — The duty imposed under section 42 is relieved on raw leaf tobacco that is imported by a tobacco licensee for manufacture by the licensee.

47. Duty relieved - stamped tobacco imported by individual — The duty imposed under section 42 is relieved on manufactured tobacco imported by an individual for their personal use if it was manufactured in Canada and is stamped.

48. Duty relieved - importation for destruction — The duty imposed under paragraph 42(1)(b) is relieved on stamped manufactured tobacco that was manufactured in Canada by a tobacco licensee and that is imported by the licensee for reworking or destruction in accordance with section 41.

Excise Warehouses

49. Restriction - entering tobacco — No person shall enter into an excise warehouse

(a) a tobacco product that is stamped; or

(b) any other tobacco product except in accordance with this Act.

50.(1) Definitions — The definitions in this subsection apply in this section.

"Canadian manufactured tobacco" means manufactured tobacco that is manufactured in Canada but does not include partially manufactured tobacco or foreign brand tobacco.

"foreign brand tobacco" means manufactured tobacco in respect of which the special duty imposed under section 56 is relieved because of section 58.

(2) Categories of Canadian manufactured tobacco — For the purposes of subsection (5), each of the following constitutes a category of Canadian manufactured tobacco:

(a) cigarettes;

(b) tobacco sticks; and

(c) manufactured tobacco other than cigarettes and tobacco sticks.

(3) Prohibition on removal — No person shall remove from an excise warehouse or a special excise warehouse a tobacco product manufactured in Canada.

(4) Exception for Canadian manufactured tobacco — Subject to the regulations, Canadian manufactured tobacco may be removed from the excise warehouse of the tobacco licensee who manufactured it only if it is

(a) for export by the licensee in accordance with subsection (5) and not for delivery to a foreign duty free shop or as foreign ships' stores;

(b) for delivery to the special excise warehouse of a special excise warehouse licensee, if the special excise warehouse licensee is permitted under this Act to distribute the Canadian manufactured tobacco; or

(c) for delivery to an accredited representative for their personal or official use.

(5) **Maximum quantity permitted to be exported from excise warehouse** — A tobacco licensee shall not, at a particular time in a calendar year, remove a particular quantity of a category of Canadian manufactured tobacco from the licensee's excise warehouse for export if the total quantity of that category removed in the year up to that time by the licensee from the warehouse for export, plus the particular quantity, exceeds 1.5% of the total quantity of that category manufactured by the licensee in the preceding calendar year.

(6) **Quantities to be excluded for the purposes of subsection (5)** — In subsection (5), the total quantity of a category of Canadian manufactured tobacco manufactured by a licensee in the preceding calendar year does not include any quantity of that category that was exported by the licensee for delivery to a foreign duty free shop or as foreign ships' stores.

(7) **Exception for cigars** — Subject to the regulations, cigars manufactured in Canada may be removed from the excise warehouse of the tobacco licensee who manufactured them only if they are

(a) for export by the licensee in accordance with this Act;

(b) for delivery to the special excise warehouse of a special excise warehouse licensee, if the special excise warehouse licensee is permitted under this Act to distribute the cigars;

(c) for delivery to an accredited representative for their personal or official use;

(d) for delivery as ships' stores in accordance with the *Ships' Stores Regulations*;

(e) for delivery to another excise warehouse, if the excise warehouse licensee of the other excise warehouse certifies in the prescribed form to the tobacco licensee that the cigars are for delivery as ships' stores in accordance with the *Ships' Stores Regulations*; or

(f) for delivery to a duty free shop for sale or offer for sale in accordance with the *Customs Act*.

(8) **Exception for partially manufactured tobacco or foreign brand tobacco** — Subject to the regulations, partially manufactured tobacco or foreign brand tobacco may be removed from the excise warehouse of the tobacco licensee who manufactured it only if it is exported by the licensee and not for delivery to a foreign duty free shop or as foreign ships' stores.

(9) **Removal from warehouse - ships' stores** — Subject to the regulations, cigars manufactured in Canada may be removed from an excise warehouse referred to in paragraph (7)(e) for delivery as ships' stores in accordance with the *Ships' Stores Regulations*.

(10) **Removal from warehouse for reworking or destruction** — Subject to the regulations, tobacco products manufactured in Canada may be removed from the excise warehouse of the tobacco licensee who manufactured them if they are removed for reworking or destruction by the licensee in accordance with section 41.

(11) **Removal from special excise warehouse - accredited representatives** — Subject to the regulations, Canadian manufactured tobacco and cigars may be removed from a special excise warehouse for delivery to an accredited representative for their personal or official use if the special excise warehouse licensee is permitted under this Act to distribute the tobacco or cigars.

51.(1) Removal of imported tobacco product — No person shall remove an imported tobacco product from an excise warehouse.

(2) **Exception** — Subject to the regulations, an imported tobacco product may be removed from an excise warehouse

(a) for delivery to another excise warehouse;

(b) for delivery to an accredited representative for their personal or official use;

(c) for delivery as ships' stores, in accordance with the *Ships' Stores Regulations*;

(d) for delivery to a duty free shop for sale or offer for sale in accordance with the *Customs Act*; or

(e) for export in accordance with this Act by the excise warehouse licensee.

52. Restriction - special excise warehouse — No special excise warehouse licensee shall store a tobacco product that is manufactured in Canada in their special excise warehouse for any purpose other than its sale and distribution to an accredited representative for the personal or official use of the representative.

Special Duties on Tobacco Products

53.(1) Special duty on imported manufactured tobacco delivered to duty free shop — A special duty is imposed on imported manufactured tobacco that is delivered to a duty free shop at the rates set out in section 1 of Schedule 3.

(2) **When and by whom duty is payable** — The special duty is payable at the time of delivery and is payable by the duty free shop licensee.

54.(1) Meaning of "traveller's tobacco" — In this section, "traveller's tobacco" means manufactured tobacco that is imported by a person at any time and

(a) is classified under tariff item No. 9804.10.00, 9804.20.00, 9805.00.00 or 9807.00.00 in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*; or

(b) would be classified under tariff item No. 9804.10.00 or 9804.20.00 in that List but for the fact that the total value for duty as determined under section 46 of the *Customs Act* of all goods imported by the person at that time exceeds the maximum value specified in that tariff item.

(2) **Special duty on traveller's tobacco** — A special duty is imposed on traveller's tobacco at the time it is imported at the rates set out in section 2 of Schedule 3.

(3) **When and how duty is payable** — The special duty shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the special duty were a duty levied under section 20 of the *Customs Tariff*, and for those purposes, the *Customs Act* applies with any modifications that the circumstances require.

(4) **Exception** — The special duty is not imposed on traveller's tobacco imported by an individual for their personal use if it was manufactured in Canada and is stamped.

55. Definition of "tobacco product" — In sections 56 to 58, "tobacco product" means manufactured tobacco other than partially manufactured tobacco.

56.(1) Imposition — A special duty is imposed on a tobacco product that is manufactured in Canada and exported

(a) if the export is in accordance with paragraph 50(4)(a) by the tobacco licensee who manufactured it, at the rates set out in section 3 of Schedule 3; or

(b) in any other case, at the rates set out in section 4 of Schedule 3.

(2) **When and by whom duty is payable** — Subject to sections 57 and 58, the special duty is payable, at the time the tobacco product is exported, by

(a) if paragraph (1)(a) applies, the tobacco licensee who manufactured it; or

(b) if paragraph (1)(b) applies, the person who exported it.

57. Duty relieved - deliveries to a foreign duty free shop and as foreign ships' stores — The special duty imposed under section 56 is relieved on a tobacco product that is exported by the tobacco licensee who manufactured it for delivery to a foreign duty free shop or as foreign ships' stores.

58.(1) Duty relieved - prescribed tobacco product — The special duty imposed under section 56 is relieved on a tobacco product of a particular brand if

(a) the tobacco product of that brand is prescribed;

(b) during the three-year period before the year in which the tobacco product of that brand is exported, the tobacco product of that brand was not sold in Canada, other than in a duty free shop, except in quantities not significantly greater than the minimum quantities sufficient for the purposes of registering the trade mark for that brand; and

(c) during any year before the three-year period referred to in paragraph (b), sales in Canada of the product of that brand never exceeded

(i) 0.5% of total sales in Canada of similar products, or

(ii) if another percentage that is less than 0.5% is prescribed for the purposes of this subsection, that percentage of total sales in Canada of similar products.

(2) **Duty relieved - prescribed cigarettes** — The special duty imposed under section 56 is relieved on cigarettes of a particular type or formulation manufactured in Canada and exported under a brand that is also applied to cigarettes of a different type or formulation that are manufactured and sold in Canada if

(a) cigarettes of the particular type or formulation exported under that brand are prescribed; and

(b) cigarettes of the particular type or formulation have never been sold in Canada under that brand or any other brand.

(3) **Distinguishing different cigarettes** — For the purpose of subsection (2), a cigarette of a particular type or formulation sold under a brand may be considered to be different from another cigarette sold under that brand if it is reasonable to consider them to be different having regard to their physical characteristics before and during consumption.

PART 4

ALCOHOL

General

59. Application - *Importation of Intoxicating Liquors Act* — For greater certainty, the *Importation of Intoxicating Liquors Act* continues to apply to the importation, sending, taking and transportation of intoxicating liquor into a province.

60.(1) Prohibition - production and packaging of spirits — No person shall, except in accordance with a spirits licence issued to the person, produce or package spirits.

(2) **Exception** — Subsection (1) does not apply to the packaging of spirits from a marked special container by a purchaser at a bottle-your-own premises.

61. Prohibition - possession of still — No person shall possess a still or other equipment suitable for the production of spirits with the intent of producing spirits unless the person

- (a) is a spirits licensee; or
- (b) has a pending application for a spirits licence.

62.(1) Prohibition - production and packaging of wine — No person shall, except in accordance with a wine licence issued to the person, produce or package wine.

(2) **Exception** — Subsection (1) does not apply to

- (a) the production of wine by an individual for their personal use;
- (b) the packaging of wine referred to in paragraph (a) by an individual for their personal use; or
- (c) the packaging of wine from a marked special container by a purchaser at a bottle-your-own premises.

63. Prohibition - sale of wine produced for personal use — No person shall sell or put to a commercial use wine that was produced, or produced and packaged, by an individual for their personal use.

64. Wine produced by individual — For the purposes of this Act, wine is not produced or packaged by an individual if it has been produced or packaged by a person acting on their behalf.

65. Prohibition - ferment-on-premises facility — No person shall carry on at a ferment-on-premises facility any activity specified in a licence or registration issued under this Act other than an activity specified in a ferment-on-premises registration.

66. Application - in-transit and transhipped alcohol — Sections 67 to 72, 74, 76, 80, 85, 88, 97 to 100 and 102 do not apply to imported alcohol or specially denatured alcohol that is, in accordance with the *Customs Act*, the *Customs Tariff* and the regulations made under those Acts,

- (a) transported by a customs bonded carrier from a place outside Canada to another place outside Canada;
- (b) stored in a customs bonded warehouse or sufferance warehouse for subsequent delivery to a place outside Canada; or
- (c) transported by a customs bonded carrier
 - (i) from a place outside Canada to a customs bonded warehouse or a sufferance warehouse for subsequent delivery to a place outside Canada, or
 - (ii) from a customs bonded warehouse or a sufferance warehouse to a place outside Canada.

67. Prohibition - sale of alcohol — No person shall sell

- (a) bulk alcohol unless it was produced or imported in accordance with this Act;
- (b) packaged alcohol unless it was, in accordance with this Act,
 - (i) produced and packaged in Canada,
 - (ii) imported and packaged in Canada, or
 - (iii) imported; or
- (c) a marked special container of alcohol unless it was marked in accordance with this Act.

68.(1) Availability and sampling of imported DA and SDA — Any person who imports a product that is reported under the *Customs Act* as being denatured alcohol or specially denatured alcohol shall make the product available for sampling and the product is required to be sampled by the Minister before it is released under that Act.

(2) **Testing** — The samples must be tested to verify that the product is denatured alcohol or specially denatured alcohol.

(3) **Minister may waive** — The Minister may at any time waive the requirement to sample an imported product under subsection (1).

(4) **Fees** — The Minister may fix fees to be paid by the importer of the product but those fees must not exceed an amount determined by the Minister to be the costs to Her Majesty in respect of the sampling and testing.

Bulk Alcohol

69. Prohibition - ownership of bulk alcohol — No person shall own bulk alcohol unless it was produced or imported in accordance with this Act.

70.(1) Prohibition - possession — No person shall possess bulk alcohol.

(2) **Exception** — Subsection (1) does not apply

- (a) to a spirits licensee or a licensed user who possesses bulk spirits that were produced or imported by a spirits licensee;
- (b) to a wine licensee or a licensed user who possesses bulk wine that was produced or imported by a wine licensee;
- (c) to a licensed user who possesses bulk alcohol that was imported by the licensed user;
- (d) to an alcohol registrant who possesses, for the purposes of storage or transportation, bulk alcohol that was produced by an alcohol licensee or imported by an alcohol licensee or licensed user;
- (e) to a sufferance warehouse licensee who possesses in their sufferance warehouse bulk alcohol that was imported by a person permitted to do so under this Act;
- (f) to a ferment-on-premises registrant who possesses bulk wine that was produced at the registrant's ferment-on-premises facility by an individual for the individual's personal use; or
- (g) to an individual who possesses less than 500 L of bulk wine that was lawfully produced at a residence or a ferment-on-premises facility for an individual's personal use.

71. Prohibition - supply of spirits — No person shall give possession of bulk spirits to a person other than a spirits licensee, a licensed user or an alcohol registrant.

72.(1) Prohibition - supply of wine — No person shall give possession of bulk wine to a person other than a wine licensee, a licensed user or an alcohol registrant.

(2) **Exception** — Subsection (1) does not apply to an individual who, in connection with their personal use of it, gives possession of bulk wine lawfully produced by an individual for their personal use.

73. Restriction - licensed user — A licensed user shall not use or dispose of bulk alcohol other than to

- (a) use it in an approved formulation;
- (b) use it in a process in which the absolute ethyl alcohol is destroyed to the extent approved by the Minister;
- (c) use it to produce vinegar;
- (d) use it in accordance with section 130 or 131;
- (e) return it to
 - (i) in the case of alcohol returned in circumstances to which paragraph 105(1)(a) or 114(1)(a) applies, a licensee referred to in that paragraph, or
 - (ii) in any other case, the alcohol licensee who supplied it;
- (f) subject to section 76, export it;
- (g) use it for analysis in a manner approved by the Minister; or
- (h) destroy it in a manner approved by the Minister.

74.(1) Importation - bulk spirits — No person shall import bulk spirits other than a spirits licensee, a licensed user or, if the spirits are in a special container, an excise warehouse licensee in accordance with section 80.

(2) **Importation - bulk wine** — No person shall import bulk wine other than a wine licensee, a licensed user or, if the wine is in a special container, an excise warehouse licensee in accordance with section 85.

75. Importations involving a provincial authority — If bulk alcohol is imported under circumstances in which subsection 3(1) of the *Importation of Intoxicating Liquors Act* applies, the alcohol is deemed, for the purposes of this Act, to have been imported by the person who would have been the importer in the absence of that subsection and not by Her Majesty in right of a province or a liquor authority.

76. Unauthorized export — No person shall export bulk alcohol other than

- (a) the alcohol licensee who is responsible for the alcohol;
- (b) the licensed user who imported the alcohol; or
- (c) a person required to do so under section 101.

Special Containers of Spirits

77. Marked container deemed packaged — If a special container of spirits is marked, the spirits are deemed to be packaged at the time the container is marked.

78.(1) Marking — No person shall mark a special container of spirits unless

- (a) the person is a spirits licensee; or
- (b) the container is one that has been placed in a sufferance warehouse in accordance with section 80 and the person marks the container in the circumstances described in that section.

(2) Container to be warehoused — If a spirits licensee marks a special container of spirits, the licensee shall immediately enter it into an excise warehouse.

79. Importation — No person, other than an excise warehouse licensee, shall import a marked special container of spirits.

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*, it shall be placed in a sufferance warehouse for the purpose of being marked.

81. Imported container to be warehoused — If a marked special container of spirits is released under the *Customs Act*, the excise warehouse licensee who imported it shall immediately enter it into their excise warehouse.

Special Containers of Wine

82. Marked container deemed packaged — If a special container of wine is marked, the wine is deemed to be packaged at the time the container is marked.

83.(1) Marking — No person shall mark a special container of wine unless

- (a) the person is a wine licensee; or
- (b) the container is one that has been placed in a sufferance warehouse in accordance with section 85 and the person marks the container in the circumstances described in that section.

(2) Container to be warehoused — If a wine licensee marks a special container of wine, the licensee shall immediately enter it into an excise warehouse.

84. Importation — No person, other than an excise warehouse licensee, shall import a marked special container of wine.

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*, it shall be placed in a sufferance warehouse for the purpose of being marked.

86. Imported container to be warehoused — If a marked special container of wine is released under the *Customs Act*, the excise warehouse licensee who imported it shall immediately enter it into their excise warehouse.

Packaged Alcohol

87. Information on container — Every alcohol licensee who packages alcohol shall cause all prescribed information to be displayed on the container containing the alcohol and on any packaging encasing the container

- (a) in the case of wine that is entered into an excise warehouse immediately after it is packaged, before the wine is removed from the warehouse; and
- (b) in any other case, immediately after the alcohol is packaged.

88.(1) Prohibition - possession — No person shall possess non-duty-paid packaged alcohol.

(2) Exception — Non-duty-paid packaged alcohol, other than alcohol in a marked special container,

- (a) that is packaged by an alcohol licensee or imported by an excise warehouse licensee may be possessed by
 - (i) an excise warehouse licensee in their excise warehouse,
 - (ii) a licensed user in their specified premises,
 - (iii) a registered user for use in accordance with their registration,

- (iv) a prescribed person who is transporting the alcohol under prescribed circumstances and conditions,
- (v) a duty free shop licensee, in their duty free shop,
- (vi) an accredited representative, for their personal or official use, or
- (vii) a person as ships' stores, if the acquisition and possession of the alcohol by that person are in accordance with the Ships' Stores Regulations;
- (b) that is imported may be possessed by a sufferance warehouse licensee, in their sufferance warehouse;
- (c) that is imported by a licensed user may be possessed by
 - (i) the licensed user in their specified premises, or
 - (ii) a prescribed person who is transporting the alcohol under prescribed circumstances and conditions;
- (d) that is imported by an accredited representative may be possessed by
 - (i) the accredited representative, for their personal or official use, or
 - (ii) a prescribed person who is transporting the alcohol under prescribed circumstances and conditions;
- (e) that is imported for sale in a duty free shop, for sale to an accredited representative or for use as ships' stores, may be possessed by
 - (i) a customs bonded warehouse licensee, in their customs bonded warehouse,
 - (ii) a duty free shop licensee, in their duty free shop,
 - (iii) an accredited representative, for their personal or official use,
 - iv) a customs bonded carrier in accordance with the *Customs Act*, or
 - (v) a person as ships' stores, if the acquisition and possession of the alcohol by that person are in accordance with the Ships' Stores Regulations;
- (f) that is imported for supply to an air carrier that is licensed under section 69 or 73 of the *Canada Transportation Act* to operate an international air service may be possessed by a customs bonded warehouse licensee, in their customs bonded warehouse;
- (g) that is imported by an individual in accordance with the *Customs Act* and the *Customs Tariff* for their personal use may be possessed by an individual; and
- (h) that is wine that is produced and packaged by an individual for their personal use may be possessed by an individual.

(3) Exception - special containers — A non-duty-paid marked special container of alcohol may be possessed by

- (a) an excise warehouse licensee in their excise warehouse;
- (b) a prescribed person who is transporting the alcohol under prescribed circumstances and conditions;
- (c) in the case of an imported special container of alcohol, a sufferance warehouse licensee in their sufferance warehouse; or
- (d) in the case of a special container of spirits that is marked for delivery to and use by a registered user, a registered user for use in accordance with their registration.

89. Storage — A ferment-on-premises registrant shall not store packaged wine at their ferment-on-premises facility.

90. Restriction - licensed user — A licensed user shall not use or dispose of non-duty-paid packaged alcohol other than to

- (a) use it in an approved formulation;
- (b) use it in a process in which the absolute ethyl alcohol is destroyed to the extent approved by the Minister;
- (c) use it to produce vinegar;
- (d) return it under prescribed conditions to the excise warehouse licensee who supplied it;
- (e) export it, if the alcohol was imported by the licensed user;
- (f) use it for analysis in a manner approved by the Minister; or
- (g) destroy it in a manner approved by the Minister.

91. Restriction - registered user — A registered user shall not use or dispose of non-duty-paid packaged spirits other than to

- (a) use them in accordance with their registration;
- (b) use them for analysis in a manner approved by the Minister;
- (c) return them under prescribed conditions to the excise warehouse licensee who supplied them; or
- (d) destroy them in a manner approved by the Minister.

92.(1) Unauthorized removal - spirits — No person shall remove spirits from a marked special container of spirits other than

(a) a registered user, in the case of a container that is marked for delivery to and use by a registered user; and

(b) a purchaser of the spirits at a bottle-your-own premises, in the case of a container that is marked for delivery to and use at a bottle-your-own premises.

(2) Removal of spirits from returned container — If the operator of a bottle-your-own premises returns a marked special container of spirits to the excise warehouse licensee who supplied the container to the operator, the licensee may remove the spirits from the container for the purpose of destroying the spirits in a manner approved by the Minister.

93.(1) Unauthorized removal - wine — No person shall remove wine from a marked special container of wine other than a purchaser of the wine at a bottle-your-own premises.

(2) Removal of wine from returned container — If the operator of a bottle-your-own premises returns a marked special container of wine to the excise warehouse licensee who supplied the container to the operator, the licensee may remove the wine from the container for the purpose of destroying the wine in a manner approved by the Minister.

Denatured Alcohol and Specially Denatured Alcohol

94. Prohibition - denaturing of spirits — No person, other than a spirits licensee, shall denature spirits.

95. Prohibition - sale as beverage — (1) No person shall sell or provide denatured alcohol or specially denatured alcohol for use in or as a beverage.

(2) Prohibition - use as beverage — No person shall use denatured alcohol or specially denatured alcohol in or as a beverage.

96. Prohibition - use of SDA — No person shall, except in accordance with a specially denatured alcohol registration issued to the person, use specially denatured alcohol.

97.(1) Prohibition - possession of SDA — No person shall possess specially denatured alcohol.

(2) Exception — Subsection (1) does not apply to

(a) a spirits licensee or an SDA registrant who possesses specially denatured alcohol produced by a spirits licensee;

(b) a spirits licensee, an SDA registrant or a sufferance warehouse licensee who possesses specially denatured alcohol imported by a spirits licensee;

(c) an SDA registrant who possesses specially denatured alcohol that they imported;

(d) a sufferance warehouse licensee who possesses specially denatured alcohol imported by an SDA registrant; or

(e) an alcohol registrant who possesses specially denatured alcohol only for the purposes of its storage and transportation, if the alcohol was produced by a spirits licensee or imported by a spirits licensee or an SDA registrant.

98. Prohibition - supply of SDA — No person shall give possession of specially denatured alcohol to a person who is not a spirits licensee, an SDA registrant or an alcohol registrant.

99.(1) Prohibition - sale of SDA — No person shall sell specially denatured alcohol.

(2) Exceptions — Subsection (1) does not apply where

(a) a spirits licensee sells specially denatured alcohol to another spirits licensee or to an SDA registrant; or

(b) an SDA registrant returns specially denatured alcohol in accordance with paragraph 103(a) or exports it in accordance with paragraph 103(b).

100. Prohibition - importing of SDA — No person shall import specially denatured alcohol other than a spirits licensee or an SDA registrant.

101.(1) Spirits mistakenly imported as DA or SDA — If a person, other than a spirits licensee or licensed user, who has imported a product that was reported under the *Customs Act* as being denatured alcohol or specially denatured alcohol learns that the product is spirits and not denatured alcohol or specially denatured alcohol, the person shall without delay

- (a) export it for return to the person from whom it was acquired; or
- (b) dispose of or destroy it in the manner specified by the Minister.

(2) **Spirits mistakenly possessed as DA or SDA** — If a person, other than a spirits licensee, licensed user or alcohol registrant, who possesses a product that the person believed was denatured alcohol or specially denatured alcohol learns that the product is spirits and not denatured alcohol or specially denatured alcohol, the person shall without delay

- (a) return it to the spirits licensee who produced or supplied the product; or
- (b) dispose of or destroy it in the manner specified by the Minister.

(3) **If product used** — If the person is unable to comply with subsection (1) or (2) in respect of an amount of the product because they had already used it in the production of another product before they learned that the product was not denatured alcohol or specially denatured alcohol, the person shall

- (a) dispose of or destroy the other product in the manner specified by the Minister; and
- (b) pay any penalty imposed under section 254 for which they are liable under section 244 in respect of the amount.

(4) **Exception** — Subsection (3) does not apply if

- (a) the other product is not, in the opinion of the Minister, spirits;
- (b) the Minister deems the other product to have been produced using denatured alcohol or specially denatured alcohol, as the case may be; and
- (c) the person complies with any conditions imposed by the Minister.

102. Prohibition - exporting of SDA — No person shall export specially denatured alcohol other than the SDA registrant who imported it or a spirits licensee.

103. Restriction on disposal — An SDA registrant shall not dispose of specially denatured alcohol other than to

- (a) return it to the spirits licensee who supplied it;
- (b) export it, if it was imported by the SDA registrant; or
- (c) destroy it in a manner approved by the Minister.

Responsibility for Bulk Spirits

104. Responsibility — Subject to sections 105 to 107, 111 and 112, the person who is responsible for bulk spirits at any time is

- (a) the spirits licensee or licensed user who owns the spirits at that time;
- (b) if the spirits are not owned at that time by a spirits licensee or licensed user, the spirits licensee or licensed user who last owned them; or
- (c) if the spirits were never owned by a spirits licensee or licensed user, the spirits licensee who imported or produced them or the licensed user who imported them.

105.(1) Return of spirits purchased from unlicensed person — This section applies if a spirits licensee or licensed user (in this section referred to as the "purchaser") purchases bulk spirits from a person who is not a spirits licensee or licensed user (in this section referred to as the "unlicensed person"), and, within 30 days after the purchaser receives the spirits,

- (a) the purchaser returns the spirits to the spirits licensee who was responsible for them immediately before they were purchased by the purchaser (in this section referred to as the "previously responsible licensee") or to the spirits licensee who supplied them (in this section referred to as the "supplier"); and
- (b) the ownership of the spirits reverts to the unlicensed person.

(2) **Determination of person responsible for returned spirits** — At the later of the time at which the previously responsible licensee or supplier receives the spirits and the time at which the ownership of the spirits reverts to the unlicensed person,

- (a) the previously responsible licensee becomes again responsible for the spirits; and
- (b) the purchaser of the spirits ceases to be responsible for them.

106. Exception - provincial ownership — If, at any time, the government of a province or a liquor authority that is a spirits licensee or a licensed user owns bulk spirits for a purpose not related to its licence, section 104 applies as though that ownership by the government or the liquor authority did not exist at that time.

107. Spirits imported by licensed user — A licensed user who imports bulk spirits is responsible for them.

108.(1) Blended spirits - joint and several or solidary responsibility — If bulk spirits are blended with other bulk spirits, or if bulk spirits are blended with bulk wine and the resulting product is spirits, every person who is a person responsible for any of the spirits or who is a licensed user responsible for any of the bulk wine is jointly and severally or solidarily responsible for the resulting blended spirits.

(2) Responsibility for wine ceases — The wine licensee or licensed user who was responsible for the bulk wine before it was blended with bulk spirits as described in subsection (1) ceases to be responsible for the wine as of the time of blending.

109. Person not responsible — A person who is responsible for bulk spirits ceases to be responsible for them if they are

- (a) taken for use and the duty on them is paid;
- (b) taken for use in an approved formulation;
- (c) taken for use for a purpose described in section 145 or subsection 146(1);
- (d) denatured into denatured alcohol or specially denatured alcohol;
- (e) exported in accordance with this Act; or
- (f) lost in prescribed circumstances, if the person fulfills any prescribed conditions.

110. Notification of change of ownership — If a spirits licensee or licensed user (in this section referred to as the "purchaser") purchases bulk spirits from a person who is not a spirits licensee or licensed user, the purchaser shall, except in respect of bulk spirits that are to be imported,

- (a) at the time of the purchase, obtain from the vendor the name and address of the spirits licensee who is responsible for the spirits immediately before they are sold to the purchaser; and
- (b) without delay, notify in writing that licensee of the purchase.

111. Removal of special container — If an unmarked special container of spirits is removed by a spirits licensee from their excise warehouse in accordance with section 156, the licensee is responsible for the spirits unless they are owned by another spirits licensee or a licensed user, in which case the other spirits licensee or the licensed user is responsible for them.

112. Removal of spirits — If spirits are removed by a spirits licensee from their excise warehouse in accordance with section 158, the licensee is responsible for the spirits unless they are owned by another spirits licensee or a licensed user, in which case the other spirits licensee or the licensed user is responsible for them.

Responsibility for Bulk Wine

113. Responsibility — Subject to sections 114 to 116, 120 and 121, the person who is responsible for bulk wine at any time is

- (a) the wine licensee or licensed user who owns the wine at that time;
- (b) if the wine is not owned at that time by a wine licensee or licensed user, the wine licensee or licensed user who last owned it; or
- (c) if the wine was never owned by a wine licensee or licensed user, the wine licensee who imported or produced it or the licensed user who imported it.

114.(1) Return of wine purchased from unlicensed person — This section applies if a wine licensee or licensed user (in this section referred to as the "purchaser") purchases bulk wine from a person who is not a wine licensee or licensed user (in this section referred to as the "unlicensed person"), and, within 30 days after the purchaser receives the wine,

- (a) the purchaser returns the wine to the wine licensee who was responsible for it immediately before it was purchased by the purchaser (in this section referred to as the "previously responsible licensee") or to the wine licensee who supplied it (in this section referred to as the "supplier"); and
- (b) the ownership of the wine reverts to the unlicensed person.

(2) Determination of person responsible for returned wine — At the later of the time at which the previously responsible licensee or supplier receives the wine and the time at which the ownership of the wine reverts to the unlicensed person,

- (a) the previously responsible licensee becomes again responsible for the wine; and
- (b) the purchaser of the wine ceases to be responsible for it.

115. Exception - provincial ownership — If, at any time, the government of a province or a liquor authority that is a wine licensee or a licensed user owns bulk wine for a purpose not related to its licence, section 113 applies as though that ownership by the government or the liquor authority did not exist at that time.

116. Wine imported by licensed user — A licensed user who imports bulk wine is responsible for it.

117.(1) Blended wine - joint and several or solidary responsibility — If bulk wine is blended with other bulk wine, or if bulk wine is blended with bulk spirits and the resulting product is wine, every person who is a person responsible for any of the wine or who is a licensed user responsible for any of the bulk spirits is jointly and severally or solidarily responsible for the resulting blended wine.

(2) Responsibility for spirits ceases — The spirits licensee or licensed user who was responsible for the bulk spirits before they were blended with bulk wine as described in subsection (1) ceases to be responsible for the spirits as of the time of blending.

118. Person not responsible — A person who is responsible for bulk wine ceases to be responsible for it if it is

- (a) taken for use and the duty on it is paid;
- (b) taken for use in an approved formulation;
- (c) taken for use for a purpose described in section 145 or subsection 146(1);
- (d) exported in accordance with this Act; or
- (e) lost, if the loss is recorded in a manner authorized by the Minister.

119. Notification of change of ownership — If a wine licensee or licensed user (in this section referred to as the "purchaser") purchases bulk wine from a person who is not a wine licensee or licensed user, the purchaser shall, except in respect of bulk wine that is to be imported,

- (a) at the time of the purchase, obtain from the vendor the name and address of the wine licensee who is responsible for the wine immediately before it is sold to the purchaser; and
- (b) without delay, notify in writing that licensee of the purchase.

120. Removal of special container — If an unmarked special container of wine is removed by a wine licensee from their excise warehouse in accordance with section 156, the licensee is responsible for the wine unless the wine is owned by another wine licensee or a licensed user, in which case the other wine licensee or the licensed user is responsible for it.

121. Removal of wine — If wine is removed by a wine licensee from their excise warehouse in accordance with section 157, the licensee is responsible for the wine unless it is owned by another wine licensee or a licensed user, in which case the other wine licensee or the licensed user is responsible for it.

Imposition and Payment of Duty on Alcohol

122.(1) Imposition - domestic spirits — Duty is imposed on spirits produced in Canada at the rate set out in section 1 of Schedule 4.

(2) Time of imposition — The duty is imposed at the time the spirits are produced.

123. Imposition - low alcoholic strength spirits — If spirits do not contain more than 7% of absolute ethyl alcohol by volume at the time that they are packaged,

- (a) the duty imposed on the spirits under section 122 or levied under section 21.1 of the *Customs Tariff* is relieved; and
- (b) duty is imposed on the spirits at the rate set out in section 2 of Schedule 4.

124.(1) Duty payable when packaged — Subject to sections 126 and 127, the duty imposed on spirits is payable at the time the spirits are packaged unless, immediately after packaging, they are entered into an excise warehouse.

(2) Payable by responsible person — Duty is payable by the person who is responsible for the spirits immediately before they are packaged.

(3) Spirits licensee ceases to be liable for duty — If an excise warehouse licensee becomes liable under section 140 for duty on the spirits, the person required under subsection (2) to pay the duty ceases to be liable to pay it.

125. Duty payable when removed from warehouse — If packaged spirits are removed from an excise warehouse for entry into the duty-paid market, duty is payable on the spirits at the time of their removal and is payable by the excise warehouse licensee of the warehouse.

126. Duty payable on bulk spirits taken for use — Subject to sections 144 to 146, if bulk spirits are taken for use, duty is payable at the time the spirits are taken for use by the person who is responsible for the spirits at that time.

127.(1) Duty payable on unaccounted bulk spirits — Duty is payable by the person who is responsible for bulk spirits on any portion of the spirits that cannot be accounted for by the person as being in the possession of a spirits licensee, a licensed user or an alcohol registrant.

(2) When duty payable — The duty is payable at the time the spirits cannot be accounted for.

(3) **Exception** — Subsection (1) does not apply in circumstances where the person is convicted of an offence under section 218 or is liable to pay a penalty under section 241.

128. Duty payable on packaged spirits taken for use — Subject to sections 144 to 146, if non-duty-paid packaged spirits that are in the possession of an excise warehouse licensee or a licensed user are taken for use, duty is payable at the time the spirits are taken for use and is payable by the licensee or user.

129.(1) Duty payable on unaccounted packaged spirits — Duty is payable on non-duty-paid packaged spirits that have been received by an excise warehouse licensee or a licensed user but cannot be accounted for by the licensee or user

- (a) as being in the excise warehouse of the licensee or the specified premises of the user;
- (b) as having been removed, used or destroyed in accordance with this Act; or
- (c) as having been lost in prescribed circumstances, if the licensee or user fulfills any prescribed conditions.

(2) **When duty payable** — Duty is payable by the licensee or user at the time the spirits cannot be accounted for.

130.(1) Fortifying wine — A licensed user who is also a wine licensee may use bulk spirits to fortify wine to an alcoholic strength not in excess of 22.9% absolute ethyl alcohol by volume.

(2) **Duty relieved on spirits** — The duty imposed under section 122 or levied under section 21.1 of the *Customs Tariff* on the spirits that were used to fortify the wine is relieved.

131.(1) Blending wine with spirits — A licensed user who is also a spirits licensee may blend bulk wine with spirits if the resulting product is spirits.

(2) **Blending deemed to be production of spirits** — The resulting spirits are deemed to be produced at the time of the blending and the duty imposed under section 122 or levied under section 21.1 of the *Customs Tariff* on the spirits that were blended with the wine is relieved.

132. Duty relieved - DA and SDA — If a spirits licensee denatures bulk spirits into denatured alcohol or specially denatured alcohol, the duty imposed on the spirits under section 122 or levied under section 21.1 of the *Customs Tariff* is relieved.

133.(1) Imposition of special duty — In addition to the duty levied under section 21.1 or 21.2 of the *Customs Tariff*, a special duty is imposed on imported spirits delivered to or imported by a licensed user at the rate set out in Schedule 5.

(2) **Bulk spirits** — If a spirits licensee imports bulk spirits that are delivered to a licensed user, the special duty is payable at the time the spirits are delivered to the licensed user and is payable

- (a) by the spirits licensee who is responsible for the spirits at that time;
- (b) if the licensed user is responsible for the spirits at that time and there was a spirits licensee who was responsible immediately before that time, by that spirits licensee; or
- (c) if the licensed user is responsible for the spirits at that time and there was not a spirits licensee who was responsible immediately before that time, by the spirits licensee who delivered the spirits.

(3) **Packaged spirits** — If imported packaged spirits or imported spirits that have been packaged in Canada are removed from an excise warehouse for delivery to a licensed user, the special duty is payable by the excise warehouse licensee at the time the spirits are removed from the excise warehouse.

(4) **Spirits imported by licensed user** — If bulk or packaged spirits are imported by a licensed user, the special duty

- (a) is payable by the licensed user at the time the spirits are imported; and
- (b) shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duty were a duty levied on the spirits under section 20 of the *Customs Tariff*, and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require.

134.(1) Imposition - bulk wine taken for use — Duty is imposed on bulk wine that is taken for use at the rates set out in Schedule 6.

(2) **Payable by responsible person** — Subject to sections 144 to 146, the duty is payable at the time the wine is taken for use and is payable by the person who is responsible for the wine at that time.

(3) **Wine produced for personal use** — Subsection (1) does not apply to wine produced by an individual for their personal use and that is consumed in the course of that use.

135.(1) Imposition - wine packaged in Canada — Duty is imposed on wine that is packaged in Canada at the rates set out in Schedule 6.

(2) **Wine produced for personal use and by small producers** — Subsection (1) does not apply to wine that is

(a) produced and packaged by an individual for their personal use; or

(b) produced by a wine licensee and packaged by the licensee during a fiscal month of the licensee if the sales by the licensee of products subject to duty under subsection (1), or that would have been so subject to duty in the absence of this subsection, in the 12 fiscal months preceding that fiscal month did not exceed \$50,000.

(3) **Time of imposition** — The duty is imposed at the time the wine is packaged. It is also payable at that time unless the wine is entered into an excise warehouse immediately after packaging.

(4) **Payable by responsible person** — The duty is payable by the person who is responsible for the wine immediately before it is packaged.

(5) **Wine licensee ceases to be liable for duty** — If an excise warehouse licensee becomes liable under section 140 for duty on the wine, the person required under subsection (4) to pay the duty ceases to be liable to pay it.

136. Duty payable on removal from warehouse — If packaged wine is removed from an excise warehouse for entry into the duty-paid market, duty is payable on the wine at the time of its removal and is payable by the excise warehouse licensee.

137. Duty payable on packaged wine taken for use — Subject to sections 144 to 146, if non-duty-paid packaged wine that is in the possession of an excise warehouse licensee or a licensed user is taken for use, duty is payable on the wine at the time it is taken for use and is payable by the licensee or user.

138.(1) 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 a licensed user but that cannot be accounted for by the licensee or user

(a) as being in the excise warehouse of the licensee or the specified premises of the user;

(b) as having been removed, used or destroyed in accordance with this Act; or

(c) as having been lost in prescribed circumstances, if the licensee or user fulfills any prescribed conditions.

(2) **When duty payable** — Duty is payable by the licensee or user at the time the wine cannot be accounted for.

139.(1) Duty on wine in marked special container relieved — Duty imposed under subsection 135(1) is relieved on wine that is contained in a marked special container of wine from which the marking has been removed in accordance with section 156.

(2) **Duty on returned wine relieved** — Duty imposed under subsection 135(1) or levied under subsection 21.2(2) of the *Customs Tariff* is relieved on wine that is returned to the bulk wine inventory of a wine licensee in accordance with section 157.

Liability of Excise Warehouse Licensees and Licensed Users

140. Non-duty-paid packaged alcohol — If non-duty-paid packaged alcohol is entered into an excise warehouse immediately after being packaged, the excise warehouse licensee is liable for the duty on the alcohol at the time it is entered into the warehouse.

141. Imported packaged alcohol — If, in accordance with subsection 21.2(3) of the *Customs Tariff*, imported packaged alcohol is, without the payment of duty, released under the *Customs Act* to the excise warehouse licensee or licensed user who imported it, the excise warehouse licensee or licensed user is liable for the duty on the alcohol.

142.(1) Transfer between warehouse licensees — If non-duty-paid packaged alcohol is removed from the excise warehouse of an excise warehouse licensee (in this subsection referred to as the "transferor") to the excise warehouse of another excise warehouse licensee, at the time the alcohol is entered into the warehouse of the other licensee,

(a) the other licensee becomes liable for the duty on the alcohol; and

(b) the transferor ceases to be liable for the duty.

(2) **Transfer to licensed user** — If non-duty-paid packaged alcohol is removed from an excise warehouse to the specified premises of a licensed user, at the time the alcohol is entered into those premises,

(a) the licensed user becomes liable for the duty on the alcohol; and

(b) the excise warehouse licensee ceases to be liable for the duty.

(3) **Transfer from licensed user** — If non-duty-paid packaged alcohol is removed from the specified premises of a licensed user to an excise warehouse, at the time the alcohol is entered into the warehouse,

(a) the excise warehouse licensee becomes liable for the duty on the alcohol; and

(b) the licensed user ceases to be liable for the duty.

Non-dutiable Uses and Removals of Alcohol

143. Approved formulations — The Minister may impose any conditions or restrictions that the Minister considers necessary in respect of the making, importation, packaging, use or sale of, or other dealing with, an approved formulation.

144. Non-dutiable uses - approved formulations — Duty is relieved on bulk alcohol and non-duty-paid packaged alcohol used by a licensed user in an approved formulation.

145.(1) Duty not payable - bulk alcohol — Duty is not payable on bulk alcohol

(a) taken for analysis by an alcohol licensee or a licensed user in a manner approved by the Minister;

(b) destroyed by an alcohol licensee or a licensed user in a manner approved by the Minister; or

(c) used by a licensed user in a process in which the absolute ethyl alcohol is destroyed to the extent approved by the Minister.

(2) **Duty not payable - packaged alcohol** — Duty is not payable on non-duty-paid packaged alcohol

(a) taken for analysis by an excise warehouse licensee or a licensed user in a manner approved by the Minister;

(b) destroyed by an excise warehouse licensee or a licensed user in a manner approved by the Minister; or

(c) used by a licensed user in a process in which the absolute ethyl alcohol is destroyed to the extent approved by the Minister.

(3) **No duty payable - alcohol taken for analysis or destroyed** — Duty is not payable on bulk alcohol or non-duty-paid packaged alcohol that is taken for analysis or destroyed by the Minister.

146.(1) Duty not payable - vinegar — Duty is not payable on alcohol that is used by a licensed user to produce vinegar if not less than 0.5 kg of acetic acid is produced from every litre of absolute ethyl alcohol used.

(2) **Deemed taken for use if deficiency** — If a licensed user uses alcohol to produce vinegar and 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, at the time the vinegar is produced, the number of litres of that alcohol that is equivalent to the number determined by the formula

$$A - (2 \times B)$$

where

A is the number of litres of absolute ethyl alcohol used, and

B is the number of kilograms of acetic acid produced.

147.(1) Duty not payable - packaged alcohol — Duty is not payable on non-duty-paid packaged alcohol, other than alcohol contained in a marked special container, that is removed from an excise warehouse

(a) for delivery

(i) to an accredited representative for their personal or official use,

(ii) to a duty free shop for sale in accordance with the *Customs Act*,

(iii) to a registered user for use in accordance with their registration, or

(iv) as ships' stores in accordance with the *Ships' Stores Regulations*; or

(b) for export by the excise warehouse licensee in accordance with this Act.

(2) **Duty not payable - special container of spirits** — Duty is not payable on spirits contained in a marked special container that is removed from an excise warehouse

(a) for delivery to a registered user for use in accordance with their registration, if the container is marked for delivery to and use by a registered user; or

(b) for export by the excise warehouse licensee in accordance with this Act, if the container was imported.

(3) **Duty not payable - special container of wine** — Duty is not payable on wine imported in a marked special container that is removed from an excise warehouse for export by the excise warehouse licensee in accordance with this Act.

Determining Volume of Alcohol

148.(1) Volume of alcohol — The volume and absolute ethyl alcohol content of alcohol shall be determined in a manner specified by the Minister using approved instruments.

(2) **Approval of instrument** — The Minister may examine and approve an instrument or a class, type or design of instruments for the measurement of the volume and absolute ethyl alcohol content of alcohol.

(3) **Re-examination** — The Minister may direct in writing that any instrument previously examined and approved, or of a class, type or design previously examined and approved, by the Minister be submitted to the Minister for re-examination and, if the Minister so directs, the person who has the custody and control of the instrument shall immediately submit it to the Minister for re-examination.

(4) **Revocation of approval** — After re-examining an instrument, the Minister may, in writing, revoke the Minister's approval of that instrument or instruments of the same class, type or design as that instrument.

(5) **Indicating instrument is approved** — Every approved instrument the approval of which has not been revoked shall indicate the approval in a manner acceptable to the Minister.

Excise Warehouses

149. Restriction - entering into warehouse — No person shall enter non-duty-paid packaged alcohol into an excise warehouse except in accordance with this Act.

150.(1) Import by warehouse licensee — If imported packaged alcohol is, without the payment of duty, released under the *Customs Act* to the excise warehouse licensee who imported it, the licensee shall immediately enter it into the excise warehouse of the licensee.

(2) **Import by licensed user** — If imported packaged alcohol is, without the payment of duty, released under the *Customs Act* to the licensed user who imported it, the licensed user shall immediately enter it into the specified premises of the licensed user.

151.(1) Restriction on removal — No person shall remove non-duty-paid packaged alcohol from an excise warehouse.

(2) **Exception** — Subject to the regulations, a person may remove from an excise warehouse

(a) non-duty-paid packaged alcohol, other than alcohol in a marked special container, for

(i) entry into the duty-paid market,

(ii) delivery to another excise warehouse,

(iii) delivery to an accredited representative for their personal or official use,

(iv) delivery as ships' stores, in accordance with the *Ships' Stores Regulations*,

(v) delivery to a duty free shop for sale in accordance with the *Customs Act* to persons who are about to leave Canada,

(vi) delivery to a licensed user,

(vii) delivery to a registered user for use in accordance with their registration, or

(viii) export;

(b) a non-duty-paid marked special container of wine for

(i) delivery to another excise warehouse, or

(ii) entry into the duty-paid market for delivery to a bottle-your-own premises;

(c) a non-duty-paid marked special container of spirits for

(i) delivery to another excise warehouse,

(ii) if the container is marked for delivery to and use by a registered user, delivery to a registered user for use in accordance with their registration, or

(iii) if the container is marked for delivery to and use at a bottle-your-own premises, entry into the duty-paid market for delivery to a bottle-your-own premises; or

(d) an imported non-duty-paid marked special container of alcohol, for export.

152. Return of duty-paid alcohol — If packaged alcohol that has been removed from an excise warehouse for entry into the duty-paid market is returned to that warehouse under prescribed conditions, the alcohol may be entered into the warehouse as non-duty-paid packaged alcohol.

153. Return of non-duty-paid alcohol — If non-duty-paid packaged alcohol that has been removed from an excise warehouse in accordance with section 147 is returned to an excise warehouse under prescribed conditions, the alcohol may be entered into the warehouse as non-duty-paid packaged alcohol.

154.(1) Supplying packaged alcohol to retail store — Subject to subsections (2) and 155(1), an excise warehouse licensee shall not, during a calendar year, supply from a particular premises specified in the excise warehouse licence of the licensee to a retail store more than 30% of the total volume of packaged alcohol supplied from those premises to all retail stores during the year.

(2) Exception for certain retail stores — An excise warehouse licensee who is an alcohol licensee may supply from the particular premises to a retail store of the licensee more than 30% of that total volume if

- (a) the store is located at a place at which the licensee produces or packages alcohol; and
- (b) not less than 90% of the volume of packaged alcohol supplied to the store from the particular premises in the year consists of alcohol that was packaged by, or, if the licensee was responsible for the alcohol immediately before it was packaged, on behalf of, the licensee.

155.(1) Exception for remote stores — On application in the prescribed form and manner by an excise warehouse licensee who is a liquor authority or a nonretailer of alcohol, the Minister may authorize the licensee to supply during a calendar year from a particular premises specified in their excise warehouse licence to a retail store more than 30% of the total volume of packaged alcohol to be supplied from the premises to all retail stores during the year if the Minister is satisfied that the delivery of packaged alcohol by railway, truck or water vessel to the store is not possible for five consecutive months in every year.

(2) Revocation — The Minister may revoke an authorization under subsection (1) if

- (a) the licensee makes a written request to the Minister to revoke the authorization;
- (b) the licensee fails to comply with any condition imposed in respect of the authorization or any provision of this Act;
- (c) the Minister is no longer satisfied that the requirements of subsection (1) are met; or
- (d) the Minister considers that the authorization is no longer required.

(3) Notice of revocation — If the Minister revokes an authorization of a licensee, the Minister shall notify the licensee in writing of the revocation and its effective date.

156. Removal of special container — An alcohol licensee who has marked a special container of alcohol may remove the container from their excise warehouse to return it to the bulk alcohol inventory of the licensee if the marking on the container is removed by the licensee in the manner approved by the Minister.

157. Removal of packaged wine from excise warehouse — A wine licensee may remove non-duty-paid packaged wine from their excise warehouse to return it to the bulk wine inventory of the licensee.

158. Removal of packaged spirits from excise warehouse — A spirits licensee may remove non-duty-paid packaged spirits from their excise warehouse to return them to the bulk spirits inventory of the licensee.

PART 5

GENERAL PROVISIONS CONCERNING DUTY AND OTHER AMOUNTS PAYABLE

Fiscal Month

159.(1) Determination of fiscal months — The fiscal months of a person shall be determined in accordance with the following rules:

- (a) if fiscal months of the person have been determined under subsection 243(2) or (4) of the *Excise Tax Act* for the purposes of Part IX of that Act, each of those fiscal months is a fiscal month of the person for the purposes of this Act;
- (b) if fiscal months of the person have not been determined under subsection 243(2) or (4) of the *Excise Tax Act* for the purposes of Part IX of that Act, the person may select for the purposes of this Act fiscal months that meet the requirements set out in that subsection 243(2); and
- (c) if neither paragraph (a) nor paragraph (b) applies, each calendar month is a fiscal month of the person for the purposes of this Act.

(2) **Notification of Minister** — Every person who is required to file a return shall notify the Minister of their fiscal months in the prescribed form and manner.

Returns and Payment of Duty and Other Amounts

160.(1) Filing by licensee — Every person who is licensed under this Act shall, not later than the last day of the first month after each fiscal month of the person,

- (a) file a return with the Minister, in the prescribed form and manner, for that fiscal month;
- (b) calculate, in the return, the total amount of the duty payable, if any, by the person for that fiscal month; and
- (c) pay that amount to the Receiver General.

(2) **Exception - licensed tobacco dealers** — Subsection (1) does not apply to licensed tobacco dealers.

161. Filing by other persons — Every person who is not licensed under this Act and who is required to pay duty under this Act shall, not later than the last day of the first month after the fiscal month of the person in which the duty became payable,

- (a) file a return with the Minister, in the prescribed form and manner, for that fiscal month;
- (b) calculate, in the return, the total amount of the duty payable by the person for that fiscal month; and
- (c) pay that amount to the Receiver General.

162. Set-off of refunds — If, at any time, a person files a return in which the person reports an amount that is required to be paid under this Act by them and the person claims a refund payable to them at that time, in the return or in another return, or in a separate application filed under this Act with the return, the person is deemed to have paid at that time, and the Minister is deemed to have refunded at that time, an amount equal to the lesser of the amount required to be paid and the amount of the refund.

163. Large payments — Every person who is required under this Act to pay any duty, interest or other amount to the Receiver General shall, if the amount is \$50,000 or more, make the payment to the account of the Receiver General at

- (a) a bank;
- (b) an authorized foreign bank, as defined in section 2 of the *Bank Act*, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act;
- (c) a credit union;
- (d) a corporation authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public; or
- (e) a corporation authorized under the laws of Canada or a province to accept deposits from the public and that carries on the business of lending money on the security of real property or immovables or investing in mortgages on real property or hypothecs on immovables.

164.(1) Authority for separate returns — A licensee who engages in one or more activities in separate branches or divisions may file an application, in the prescribed form and manner, with the Minister for authority to file separate returns and applications for refunds under this Act in respect of a branch or division specified in the application.

(2) **Authorization by Minister** — On receipt of the application, the Minister may, in writing, authorize the licensee to file separate returns and applications for refunds in relation to the specified branch or division, subject to any conditions that the Minister may at any time impose, if the Minister is satisfied that

- (a) the branch or division can be separately identified by reference to the location of the branch or division or the nature of the activities engaged in by it; and
- (b) separate records, books of account and accounting systems are maintained in respect of the branch or division.

(3) **Revocation of authorization** — The Minister may revoke an authorization if

- (a) the licensee, in writing, requests the Minister to revoke the authorization;
- (b) the licensee fails to comply with any condition imposed in respect of the authorization or any provision of this Act;
- (c) the Minister is no longer satisfied that the requirements of subsection (2) in respect of the licensee are met; or
- (d) the Minister considers that the authorization is no longer required.

(4) **Notice of revocation** — If the Minister revokes an authorization, the Minister shall send a notice in writing of the revocation to the licensee and shall specify in the notice the effective date of the revocation.

165.(1) Small amounts owing — If, at any time, the total of all unpaid amounts owing by a person to the Receiver General under this Act does not exceed a prescribed amount, the amount owing by the person is deemed to be nil.

(2) **Small amounts payable** — If, at any time, the total of all amounts payable by the Minister to a person under this Act does not exceed a prescribed amount, the Minister is not required to pay any of the amounts payable. The Minister may apply those amounts against a liability of the person.

166.(1) Meaning of "electronic filing" — For the purposes of this section, "electronic filing" means using electronic media in a manner specified in writing by the Minister.

(2) **Filing of return by electronic filing** — A person who is required to file with the Minister a return under this Act, and who meets the criteria specified in writing by the Minister for the purposes of this section, may file the return by way of electronic filing.

(3) **Deemed filing** — For the purposes of this Act, if a person files a return by way of electronic filing, it is deemed to be a return in the prescribed form filed with the Minister on the day the Minister acknowledges acceptance of it.

167. Execution of returns, etc. — A return, other than a return filed by way of electronic filing under section 166, a certificate or other document made by a person, other than an individual, under this Act shall be signed on behalf of the person by an individual duly authorized to do so by the person or the governing body of the person. If the person is a corporation or an association or organization that has duly elected or appointed officers, the president, vice-president, secretary and treasurer, or other equivalent officers, of the corporation, association or organization, are deemed to be so duly authorized.

168.(1) Extension of time — At any time, the Minister may, in writing, extend the time limited under this Act for a person to file a return or provide information.

(2) **Effect of extension** — If the Minister extends the time under subsection (1),

(a) the return shall be filed, or the information shall be provided, within the time so extended;

(b) any duty payable that the person is required to report in the return shall be paid within the time so extended; and

(c) interest is payable under section 170 as if the time had not been extended.

169. Demand for return — The Minister may, on demand served personally or by registered or certified mail, require any person to file, within any reasonable time that may be stipulated in the demand, a return under this Act for any period that may be designated in the demand.

Interest

170.(1) Compound interest on amounts not paid when required — If a person fails to pay an amount to the Receiver General as and when required under this Act, the person shall pay to the Receiver General interest on the amount. The interest shall be compounded daily at the prescribed rate and computed for the period beginning on the first day after the day on which the amount was required to be paid and ending on the day the amount is paid.

(2) **Payment of interest that is compounded** — For the purposes of subsection (1), interest that is compounded on a particular day on an unpaid amount of a person is deemed to be required to be paid by the person to the Receiver General at the end of the particular day, and, if the person has not paid the interest so computed by the end of the day after the particular day, the interest shall be added to the unpaid amount at the end of the particular day.

(3) **Minister may issue notice** — The Minister may serve or send to a person who is required under this Act to pay an amount that may consist of principal and interest a notice specifying the amount owed by the person and a date by which the payment must be made.

(4) **Effect of notice** — If the person to whom a notice referred to in subsection (3) is served or sent pays in full the specified amount within the specified time, interest is not payable, despite subsection (1), on the amount for the period beginning on the date of the notice and ending on the day on which the amount is paid.

(5) **Minimal interest amounts** — If at any time a person has paid all amounts, other than interest, owed to Her Majesty under this Act and, immediately before that time, the total amount of interest owed by the person under this Act is less than the prescribed amount, the Minister may write off and cancel the interest owed.

171. Compound interest on amounts owed by Her Majesty — Interest shall be compounded daily at the prescribed rate on amounts owed by Her Majesty to a person and computed for the period beginning on the first day after the day on which the amount is required to be paid by Her Majesty and ending on the day on which the amount is paid or is applied against an amount owed by the person to Her Majesty.

172. Application of interest provisions if Act amended — For greater certainty, if a provision of an Act amends this Act and provides that the amendment comes into force on, or applies as of, a particular day that is before the day on which the provision is assented to, the

provisions of this Act that relate to the calculation and payment of interest apply in respect of the amendment as though the provision had been assented to on the particular day.

173. Waiving or reducing interest — The Minister may at any time waive or reduce any interest payable by a person under this Act.

Refunds

174. Statutory recovery rights — Except as specifically provided under this Act, the *Customs Act*, the *Customs Tariff* or the *Financial Administration Act*, no person has a right to recover any money paid to Her Majesty as or on account of, or that has been taken into account by Her Majesty as, duty, interest or other amount payable under this Act.

175.(1) Applications for refunds — An application for a refund under this Act shall be filed with the Minister in the prescribed form and manner.

(2) Single application — Only one application may be made under this Act for a refund with respect to any matter.

176.(1) Payment if error — If a person has paid an amount as or on account of, or that was taken into account as, duty, interest or other amount payable under this Act in circumstances in which the amount was not payable by the person, whether the amount was paid by mistake or otherwise, the Minister shall pay a refund of that amount to the person.

(2) Restriction — A refund in respect of an amount shall not be paid to a person to the extent that

- (a) the amount was taken into account as duty for a fiscal month of the person and the Minister has assessed the person for the month under section 188; or
- (b) the amount paid was duty, interest or other amount assessed under that section.

(3) Application for refund — A refund of an amount shall not be paid to a person unless the person files an application for the refund within two years after the person paid the amount.

177. Restriction on refunds, etc. — A refund or a payment of an amount under this Act shall not be paid to a person to the extent that it can reasonably be regarded that

- (a) the amount has previously been refunded, remitted, applied or paid to that person under this or any other Act of Parliament; or
- (b) the person has applied for a refund, payment or remission of the amount under any other Act of Parliament.

178. Restriction re trustees — If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt, a refund or any other payment under this Act that the bankrupt was entitled to claim before the appointment shall not be paid after the appointment unless all returns required under this Act to be filed for fiscal months of the bankrupt ending before the appointment have been filed and all amounts required under this Act to be paid by the bankrupt in respect of those fiscal months have been paid.

179.(1) Overpayment of refunds, etc. — If an amount is paid to, or applied to a liability of, a person as a refund or other payment under this Act and the person is not entitled to the amount or the amount paid or applied exceeds the refund or other payment to which the person is entitled, the person shall pay to the Receiver General an amount equal to the refund, payment or excess on the day the amount is paid to, or applied to a liability of, the person.

(2) Effect of reduction of refund, etc. — For the purposes of subsection (1), if a refund or other payment has been paid to a person in excess of the amount to which the person was entitled and the amount of the excess has, by reason of section 177, reduced the amount of any other refund or other payment to which the person would, but for the payment of the excess, be entitled, the person is deemed to have paid the amount of the reduction to the Receiver General.

180. No refund on exported tobacco products or alcohol — Subject to this Act, the duty paid on any tobacco product or alcohol entered into the duty-paid market shall not be refunded on the exportation of the tobacco product or alcohol.

181. Re-worked or destroyed tobacco products — The Minister may refund to a tobacco licensee the duty paid on a tobacco product that is re-worked or destroyed by the tobacco licensee in accordance with section 41 if the licensee applies for the refund within two years after the tobacco product is re-worked or destroyed.

182.(1) Refund of tax to importer if foreign taxes paid — The Minister may refund, to a person who has imported into a foreign country a tobacco product (as defined in section 55) that was manufactured in Canada and exported by the tobacco licensee who manufactured it to the foreign country in accordance with paragraph 50(4)(a), an amount determined in accordance with subsection (2) in respect of the product if

- (a) the person provides evidence satisfactory to the Minister that

- (i) all taxes and duties imposed on the product under the laws of the foreign country having national application have been paid, and
- (ii) the container containing the product has printed on it or affixed to it tobacco markings; and
- (b) the person applies to the Minister for the refund within two years after the product was exported to the foreign country.

(2) **Determination of refund** — The amount of the refund under subsection (1) is equal to the lesser of

- (a) the total of the taxes and duties referred to in subparagraph (1)(a)(i) that are paid in respect of the tobacco product, and
- (b) the amount of the special duty imposed under paragraph 56(1)(a) in respect of the product that is paid by the tobacco licensee who manufactured it.

(3) **Overpayment of refund or interest** — If an amount has been paid to a person as a refund in respect of a tobacco product exported by the tobacco licensee who manufactured it or as interest in respect of such a refund and a special duty under paragraph 56(1)(b) was imposed in respect of the product, the amount is deemed to be duty payable under this Act by the licensee that became payable during the fiscal month of the licensee in which the amount was paid to the person.

(4) **Refund of special duty to tobacco licensee if foreign taxes paid** — If a refund under subsection (1) has been paid in respect of an exported tobacco product, the Minister may refund to the tobacco licensee who manufactured the product the amount, if any, by which the special duty imposed under paragraph 56(1)(a) in respect of the product and paid by the licensee exceeds the amount of the refund under subsection (1) if the licensee applies to the Minister for the refund under this subsection within two years after the product was exported.

183.(1) Refund of special duty to duty free shop licensee — If a duty free shop licensee who holds a licence issued under section 22 sells, in accordance with the *Customs Act*, imported manufactured tobacco to an individual who is not a resident of Canada and who is about to depart Canada, the Minister may refund to the licensee the special duty paid under section 53 in respect of that portion of the total quantity of the tobacco exported by the individual on their departure that does not exceed

- (a) in the case of cigarettes, 200 cigarettes;
- (b) in the case of tobacco sticks, 200 sticks; and
- (c) in the case of manufactured tobacco other than cigarettes and tobacco sticks, 200 g.

(2) **Application** — No refund shall be paid to a duty free shop licensee in respect of a sale of imported manufactured tobacco unless the licensee applies to the Minister for the refund within two years after the sale.

184.(1) Payment if bad debt — If an ad valorem duty under section 43 has been paid by a tobacco licensee in respect of an arm's length sale of cigars and the licensee has established that any debt owing to the licensee in respect of the sale has become in whole or in part a bad debt and has accordingly written off all or part of the debt as a bad debt in the licensee's books of account, an amount equal to the proportion of the amount of that duty that the amount of the debt written off is of the price for which the cigars were sold may, subject to this Act, be paid to that licensee if the licensee applies for a refund of the amount within two years after the end of the licensee's fiscal month during which the debt was so written off.

(2) **Recovery of payment** — If a tobacco licensee recovers all or any part of a debt in respect of which an amount is paid to the licensee under subsection (1) (in this subsection referred to as the "refunded amount"), that licensee shall immediately pay to the Receiver General an amount equal to the proportion of the refunded amount that the amount of the debt so recovered is of the amount of the debt written off in respect of which the refunded amount was paid.

(3) **Definition of "arm's length sale"** — In this section, "arm's length sale" in respect of cigars means a sale of cigars by a tobacco licensee to a person with whom the licensee is dealing at arm's length at the time of the sale.

185.(1) Refund - imported bulk spirits — If imported bulk spirits on which special duty has been paid are returned by a licensed user to the spirits licensee who supplied them to the licensed user, the Minister may refund the duty to the spirits licensee who paid the duty if the licensee applies for the refund within two years after the spirits are returned.

(2) **Refund - packaged imported spirits** — If imported spirits that are packaged and on which special duty has been paid are returned under prescribed conditions by a licensed user to the excise warehouse of the excise warehouse licensee who supplied them to the licensed user, the Minister may refund the duty to the excise warehouse licensee who paid the duty if the excise warehouse licensee applies for the refund within two years after the spirits are returned.

186. Refund - alcohol returned to warehouse — If packaged alcohol that has been removed from the excise warehouse of an excise warehouse licensee for entry into the duty-paid market is returned in accordance with section 152 to the warehouse, the Minister may refund to the licensee the duty paid on the alcohol if the licensee applies for the refund within two years after the alcohol is returned.

187. Refund - alcohol in special container — If a marked special container of alcohol is returned to the excise warehouse licensee who paid duty on the alcohol, the Minister may refund to the licensee the duty on the alcohol remaining in the container when it is returned if the licensee

- (a) destroys the alcohol in the manner approved by the Minister; and
- (b) applies for the refund within two years after the container is returned.

Assessments

188.(1) Assessments — The Minister may assess

- (a) the duty payable by a person for a fiscal month of the person; and
- (b) subject to section 190, interest and any other amount payable by a person under this Act.

(2) Reassessment — The Minister may reassess or make an additional assessment of any duty, interest or other amount that may be assessed under subsection (1).

(3) Allowance of unclaimed amounts — If, in assessing the duty, interest or other amount payable by a person for a fiscal month of the person or other amount payable by a person under this Act, the Minister determines that

- (a) a refund would have been payable to the person if it had been claimed in an application under this Act filed on the particular day that is
 - (i) if the assessment is in respect of duty payable for the fiscal month, the day on which the return for the month was required to be filed, or
 - (ii) if the assessment is in respect of interest or other amount, the day on which the interest or other amount became payable by the person,
- (b) the refund was not claimed by the person in an application filed before the day on which notice of the assessment is sent to the person, and
- (c) the refund would be payable to the person if it were claimed in an application under this Act filed on the day on which notice of the assessment is sent to the person or would be disallowed if it were claimed in that application only because the period for claiming the refund expired before that day,

the Minister shall, unless otherwise requested by the person, apply all or part of the refund against that duty, interest or other amount that is payable as if the person had, on the particular day, paid the amount so applied on account of that duty, interest or other amount.

(4) Application of overpayment — If, in assessing the duty payable by a person for a fiscal month of the person, the Minister determines that there is an overpayment of duty payable for the month, unless the assessment is made in the circumstances described in paragraph 191(4)(a) or (b) after the time otherwise limited for the assessment under paragraph 191(1)(a), the Minister shall, unless otherwise requested by the person,

- (a) apply
 - (i) all or part of the overpaymentagainst
- (ii) any amount (in this paragraph referred to as the "outstanding amount") that, on the particular day on which the person was required to file a return for the month, the person defaulted in paying under this Act and that remains unpaid on the day on which notice of the assessment is sent to the person,

as if the person had, on the particular day, paid the amount so applied on account of the outstanding amount;

- (b) apply
 - (i) all or part of the overpayment that was not applied under paragraph (a) together with interest on the overpayment at the prescribed rate, computed for the period beginning on the day that is 30 days after the latest of
 - (A) the particular day,
 - (B) the day on which the return for the fiscal month was filed, and
 - (C) in the case of an overpayment that is attributable to a payment made on a day subsequent to the days referred to in clauses (A) and (B), that subsequent day,

and ending on the day on which the person defaulted in paying the outstanding amount referred to in subparagraph (ii) against

- (ii) any amount (in this paragraph referred to as the "outstanding amount") that, on a day (in this paragraph referred to as the "later day") after the particular day, the person defaulted in paying under this Act and that remains unpaid on the day on which notice of the assessment is sent to the person,

as if the person had, on the later day, paid the amount and interest so applied on account of the outstanding amount; and

(c) refund to the person the part of the overpayment that was not applied under paragraphs (a) and (b) together with interest on the refund at the prescribed rate, computed for the period beginning on the day that is 30 days after the latest of

(i) the particular day,

(ii) the day on which the return for the fiscal month was filed, and

(iii) in the case of an overpayment that is attributable to a payment made on a day subsequent to the days referred to in subparagraphs (i) and (ii), that subsequent day,

and ending on the day on which the refund is paid to the person.

(5) Application of payment — If, in assessing the duty payable by a person for a fiscal month of the person or an amount (in this subsection referred to as the "overdue amount") payable by a person under this Act, all or part of a refund is not applied under subsection (3) against that duty payable or overdue amount, except if the assessment is made in the circumstances described in paragraph 191(4)(a) or (b) after the time otherwise limited for the assessment under paragraph 191(1)(a), the Minister shall, unless otherwise requested by the person,

(a) apply

(i) all or part of the refund that was not applied under subsection (3)

against

(ii) any other amount (in this paragraph referred to as the "outstanding amount") that, on the particular day that is

(A) if the assessment is in respect of duty payable for the fiscal month, the day on which the return for the month was required to be filed, or

(B) if the assessment is in respect of an overdue amount, the day on which the overdue amount became payable by the person,

the person defaulted in paying under this Act and that remains unpaid on the day on which notice of the assessment is sent to the person,

as if the person had, on the particular day, paid the refund so applied on account of the outstanding amount;

(b) apply

(i) all or part of the refund that was not applied under subsection (3) or paragraph (a) together with interest on the refund at the prescribed rate, computed for the period beginning on the day that is 30 days after the later of

(A) the particular day, and

(B) if the assessment is in respect of duty payable for the fiscal month, the day on which the return for the month was filed,

and ending on the day on which the person defaulted in paying the outstanding amount referred to in subparagraph (ii)

against

(ii) any amount (in this paragraph referred to as the "outstanding amount") that, on a day (in this paragraph referred to as the "later day") after the particular day, the person defaulted in paying under this Act and that remains unpaid on the day on which notice of the assessment is sent to the person,

as if the person had, on the later day, paid the refund and interest so applied on account of the outstanding amount; and

(c) refund to the person the part of the refund that was not applied under any of subsection (3) and paragraphs (a) and (b) together with interest on the refund at the prescribed rate, computed for the period beginning on the day that is 30 days after the later of

(i) the particular day, and

(ii) if the assessment is in respect of duty payable for the fiscal month, the day on which the return for the month was filed,

and ending on the day on which the refund is paid to the person.

(6) Limitation on refunding overpayments — An overpayment of duty payable for a fiscal month of a person and interest on the overpayment shall not be applied under paragraph (4)(b) or refunded under paragraph (4)(c) unless the person has, before the day on which notice of the assessment is sent to the person, filed all returns or other records that the person was required to file with the Minister under this Act, the *Customs Act*, the *Excise Act*, the *Excise Tax Act* and the *Income Tax Act*.

(7) Limitation — A refund or a part of the refund that was not applied under subsection (3) and interest on the refund under paragraphs (5)(b) and (c)

(a) shall not be applied under paragraph (5)(b) against an amount (in this paragraph referred to as the "outstanding amount") that is payable by a person unless the refund would have been payable to the person as a refund if the person had claimed it in an application under this Act filed on the day on which the person defaulted in paying the outstanding amount and, in the case of a

payment under section 176, if that section allowed the person to claim the payment within four years after the person paid the amount in respect of which the payment would be so payable; and

(b) shall not be refunded under paragraph (5)(c) unless

(i) the refund would have been payable to the person as a refund if the person had claimed it in an application under this Act filed on the day on which notice of the assessment is sent to the person, and

(ii) the person has filed all returns or other records that the person was required to file with the Minister under this Act, the *Customs Act*, the *Excise Act*, the *Excise Tax Act* and the *Income Tax Act* before the day on which notice of the assessment is sent to the person.

(8) **Deemed claim or application** — If, in assessing any duty, interest or other amount payable by a person under this Act, the Minister applies or refunds an amount under subsection (3), (4) or (5),

(a) the person is deemed to have claimed the amount in a return or application filed under this Act; and

(b) to the extent that an amount is applied against any duty, interest or other amount payable by the person, the Minister is deemed to have refunded or paid the amount to the person and the person is deemed to have paid the duty, interest or other amount payable against which it was applied.

(9) **Refund on reassessment** — If a person has paid an amount on account of any duty, interest or other amount assessed under this section in respect of a fiscal month and the amount paid exceeds the amount determined on reassessment to have been payable by the person, the Minister may refund to the person the amount of the excess, together with interest on the excess amount at the prescribed rate for the period that

(a) begins on the day that is 30 days after the latest of

(i) the day on which the person was required to file a return for the month,

(ii) the day on which the person filed a return for the month, and

(iii) the day on which the amount was paid by the person; and

(b) ends on the day on which the refund is paid.

(10) **Meaning of "overpayment of duty payable"** — In this section, "overpayment of duty payable" of a person for a fiscal month of the person means the amount, if any, by which the total of all amounts paid by the person on account of duty payable for the month exceeds the total of

(a) the duty payable for the month, and

(b) all amounts paid to the person under this Act as a refund for the month.

189.(1) Assessment of refund — On receipt of an application made by a person for a refund under this Act, the Minister shall, without delay, consider the application and assess the amount of the refund, if any, payable to the person.

(2) **Reassessment** — The Minister may reassess or make an additional assessment of the amount of a refund despite any previous assessment of the amount of the refund.

(3) **Payment** — If on assessment under this section the Minister determines that a refund is payable to a person, the Minister shall pay the refund to the person.

(4) **Restriction** — A refund shall not be paid until the person has filed with the Minister all returns or other records that are required to be filed under this Act, the *Customs Act*, the *Excise Act*, the *Excise Tax Act* and the *Income Tax Act*.

(5) **Interest** — If a refund is paid to a person, the Minister shall pay interest at the prescribed rate to the person on the refund for the period beginning on the day that is 30 days after the day on which the application for the refund is filed with the Minister and ending on the day on which the refund is paid.

190. No assessment for penalty — No assessment shall be made for any penalty imposed under section 254.

191.(1) Limitation period for assessments — Subject to subsections (3) to (7), no assessment shall be made for any duty, interest or other amount payable under this Act

(a) in the case of an assessment of the duty payable for a fiscal month, more than four years after the later of the day on which the return for the month was required to be filed and the day on which the return was filed;

(b) in the case of an assessment for any other amount payable under this Act, more than four years after the amount became payable; or

(c) in the case of an assessment for an amount for which a trustee in bankruptcy became liable under section 212, after the earlier of

- (i) the day that is 90 days after the return on which the assessment is based is filed with, or other evidence of the facts on which the assessment is based comes to the attention of, the Minister, and
 - (ii) the expiry of the period referred to in paragraph (a) or
- (b), whichever applies in the circumstances.

(2) **Limitation re refund assessment** — Subject to subsections (3) to (7), an assessment of the amount of a refund or any other payment that may be obtained under this Act may be made at any time but a reassessment or additional assessment of an amount paid or applied as a refund under this Act or of an amount paid as interest in respect of an amount paid or applied as a refund under this Act shall not be made more than four years after the application for the amount was filed in accordance with this Act.

(3) **Exception** — Subsections (1) and (2) do not apply to a reassessment of a person made

- (a) to give effect to a decision on an objection or appeal; or
- (b) with the consent in writing of the person to dispose of an appeal.

(4) **No limitation on assessment if fraud, etc.** — An assessment in respect of any matter may be made at any time if the person to be assessed has, in respect of that matter,

- (a) made a misrepresentation that is attributable to their neglect, carelessness or wilful default;
- (b) committed fraud
 - (i) in making or filing a return under this Act,
 - (ii) in making or filing an application for a refund under this Act, or
 - (iii) in supplying or failing to supply any information under this Act; or
- (c) filed a waiver under subsection (8) that is in effect at that time.

(5) **No limitation if payment for another fiscal month** — If, in making an assessment, the Minister determines that a person has paid in respect of any matter an amount as or on account of duty payable for a fiscal month of the person that was payable for another fiscal month of the person, the Minister may at any time make an assessment for that other month in respect of that matter.

(6) **Reduction of duty - fiscal month** — If the result of a reassessment on an objection to, or a decision on an appeal from, an assessment is to reduce the amount of duty payable by a person and, by reason of the reduction, any refund or other payment claimed by the person for a fiscal month, or in an application for a refund or other payment, should be decreased, the Minister may at any time assess or reassess that fiscal month or that application only for the purpose of taking the reduction of duty into account in respect of the refund or other payment.

(7) **Alternative argument in support of assessment** — The Minister may advance an alternative argument in support of an assessment of a person at any time after the period otherwise limited by subsection (1) or (2) for making the assessment unless on an appeal under this Act

- (a) there is relevant evidence that the person is no longer able to adduce without the leave of the court; and
- (b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

(8) **Waiver** — Any person may, within the time otherwise limited by subsection (1) or (2) for an assessment, waive the application of subsection (1) or (2) by filing with the Minister a waiver in the prescribed form and manner specifying the matter in respect of which the person waives the application of that subsection.

(9) **Revoking waiver** — Any person who files a waiver under subsection (8) may revoke it on six months notice to the Minister by filing with the Minister a notice of revocation of the waiver in the prescribed form and manner.

192.(1) Minister not bound — The Minister is not bound by any return, application or information provided by or on behalf of a person and may make an assessment despite any return, application or information provided or not provided.

(2) **Liability not affected** — Liability to pay any duty, interest or other amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(3) **Binding effect - unincorporated body** — If a person (referred to in this subsection as the "body") that is not an individual or a corporation is assessed in respect of any matter,

- (a) the assessment is not invalid only because one or more other persons (each of which is referred to in this subsection as a "representative") who are liable for obligations of the body did not receive a notice of the assessment;
- (b) the assessment is binding on each representative of the body, subject to a reassessment of the body and the rights of the body to object to or appeal from the assessment under this Act; and
- (c) an assessment of a representative in respect of the same matter is binding on the representative, subject only to a reassessment of the representative and the rights of the representative to object to or appeal from the assessment of the representative under this Act on the grounds that the representative is not a person who is liable to pay an amount to which the assessment of the body

relates, the body has been reassessed in respect of that matter or the assessment of the body in respect of that matter has been vacated.

(4) **Assessment deemed valid** — Subject to being reassessed or vacated as a result of an objection or appeal under this Act, an assessment is deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding under this Act relating to it.

(5) **Irregularities** — An appeal from an assessment shall not be allowed by reason only of an irregularity, informality, omission or error on the part of any person in the observation of a directory provision of this Act.

193.(1) Notice of assessment — After making an assessment, the Minister shall send to the person assessed a notice of the assessment.

(2) **Scope of notice** — A notice of assessment may include assessments in respect of any number or combination of fiscal months, refunds or amounts payable under this Act.

194. Assessment payable — Any amount assessed by the Minister is payable by the person assessed as of the date of the assessment.

Objections to Assessment

195.(1) Objection to assessment — Any person who has been assessed and who objects to the assessment may, within 90 days after the date of the notice of the assessment, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

(2) **Issue to be decided** — A notice of objection shall

(a) reasonably describe each issue to be decided;

(b) specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and

(c) provide the facts and reasons relied on by the person in respect of each issue.

(3) **Late compliance** — Despite subsection (2), if a notice of objection does not include the information required under paragraph (2)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may, in writing, request the person to provide the information, and that paragraph is deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister.

(4) **Limitation on objections** — Despite subsection (1), if a person has filed a notice of objection to an assessment (in this subsection referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (8) as a result of the notice of objection, unless the earlier assessment was made in accordance with an order of a court vacating, varying or restoring an assessment or referring an assessment back to the Minister for reconsideration and reassessment, the person may object to the particular assessment in respect of an issue

(a) only if the person complied with subsection (2) in the notice with respect to that issue; and

(b) only with respect to the relief sought in respect of that issue as specified by the person in the notice.

(5) **Application of subsection (4)** — If a person has filed a notice of objection to an assessment (in this subsection referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (8) as a result of the notice of objection, subsection (4) does not limit the right of the person to object to the particular assessment in respect of an issue that was part of the particular assessment and not part of the earlier assessment.

(6) **Limitation on objections** — Despite subsection (1), no objection may be made by a person in respect of an issue for which the right of objection has been waived in writing by the person.

(7) **Acceptance of objection** — The Minister may accept a notice of objection even though it was not filed in the prescribed form and manner.

(8) **Consideration of objection** — On receipt of a notice of objection, the Minister shall, without delay, reconsider the assessment and vacate or confirm it or make a reassessment.

(9) **Waiving reconsideration** — If, in a notice of objection, a person who wishes to appeal directly to the Tax Court requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

(10) **Notice of decision** — After reconsidering an assessment under subsection (8) or confirming an assessment under subsection (9), the Minister shall send notice of the Minister's decision by registered or certified mail to the person objecting.

196.(1) Extension of time by Minister — If no objection to an assessment is filed under section 195 within the time limited under this Act, a person may make an application to the Minister to extend the time for filing a notice of objection and the Minister may grant the application.

(2) **Contents of application** — An application must set out the reasons why the notice of objection was not filed within the time limited under this Act for doing so.

(3) **How application made** — An application must be made by delivering or mailing to the Chief of Appeals in a Tax Services Office or Taxation Centre of the Agency the application accompanied by a copy of the notice of objection.

(4) **Defect in application** — The Minister may accept an application even though it was not made in accordance with subsection (3).

(5) **Duties of Minister** — On receipt of an application, the Minister shall, without delay, consider the application and grant or refuse it, and shall notify the person of the decision by registered or certified mail.

(6) **Date of objection if application granted** — If an application is granted, the notice of objection is deemed to have been filed on the day of the decision of the Minister.

(7) **Conditions - grant of application** — No application shall be granted under this section unless

(a) the application is made within one year after the expiry of the time limited under this Act for objecting; and

(b) the person demonstrates that

(i) within the time limited under this Act for objecting, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to object to the assessment,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted it to be made.

Appeal

197.(1) Extension of time by Tax Court — A person who has made an application under section 196 may apply to the Tax Court to have the application granted after either

(a) the Minister has refused the application; or

(b) 90 days have elapsed after the application was made and the Minister has not notified the person of the Minister's decision.

(2) **When application may not be made** — No application may be made after the expiry of 30 days after the decision referred to in subsection 196(5) was mailed to the person.

(3) **How application made** — An application must be made by filing in the Registry of the Tax Court, in accordance with the *Tax Court of Canada Act*, three copies of the documents delivered or mailed under subsection 196(3).

(4) **Copy to the Commissioner** — The Tax Court must send a copy of the application to the Commissioner.

(5) **Powers of Court** — The Tax Court may dispose of an application by dismissing or granting it and, in granting it, the Court may impose any terms that it considers just or order that the notice of objection be deemed to be a valid objection as of the date of the order.

(6) **When application to be granted** — No application shall be granted under this section unless

(a) the application under subsection 196(1) was made within one year after the expiry of the time limited under this Act for objecting; and

(b) the person demonstrates that

(i) within the time limited under this Act for objecting, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to object to the assessment,

(ii) given the reasons set out in the application under this section and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application under subsection 196(1) was made as soon as circumstances permitted it to be made.

198.(1) Court Appeal to Tax — Subject to subsection (2), a person who has filed a notice of objection to an assessment may appeal to the Tax Court to have the assessment vacated or a reassessment made after

(a) the Minister has confirmed the assessment or has reassessed; or

(b) 180 days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed.

(2) **No appeal** — No appeal under subsection (1) may be instituted after the expiry of 90 days after notice that the Minister has reassessed or confirmed the assessment is sent to the person under subsection 195(10).

(3) **Amendment of appeal** — The Tax Court may, on any terms that it sees fit, authorize a person who has instituted an appeal in respect of a matter to amend the appeal to include any further assessment in respect of the matter that the person is entitled under this section to appeal.

199.(1) Extension of time to appeal — If no appeal to the Tax Court under section 198 has been instituted within the time limited by that section for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose any terms that it considers just.

(2) **Contents of application** — An application must set out the reasons why the appeal was not instituted within the time limited under section 198 for doing so.

(3) **How application made** — An application must be made by filing in the Registry of the Tax Court, in accordance with the *Tax Court of Canada Act*, three copies of the application together with three copies of the notice of appeal.

(4) **Copy to Deputy Attorney General of Canada** — The Tax Court must send a copy of the application to the office of the Deputy Attorney General of Canada.

(5) **When order to be made** — No order shall be made under this section unless

(a) the application is made within one year after the expiry of the time limited under section 198 for appealing; and

(b) the person demonstrates that

(i) within the time limited under section 198 for appealing, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted it to be made, and

(iv) there are reasonable grounds for appealing from the assessment.

200.(1) Limitation on appeals to the Tax Court — Despite section 198, if a person has filed a notice of objection to an assessment, the person may appeal to the Tax Court to have the assessment vacated, or a reassessment made, only with respect to

(a) an issue in respect of which the person has complied with subsection 195(2) in the notice and only with respect to the relief sought in respect of the issue as specified by the person in the notice; or

(b) an issue described in subsection 195(5) if the person was not required to file a notice of objection to the assessment that gave rise to the issue.

(2) **No appeal if waiver** — Despite section 198, a person may not appeal to the Tax Court to have an assessment vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by the person.

201. Institution of appeals — An appeal to the Tax Court under this Act shall be instituted in accordance with the *Tax Court of Canada Act*.

202. Notice to the Commissioner — If an appeal is made to the Tax Court under section 18.3001 of the *Tax Court of Canada Act*, the Court shall immediately send a copy of the notice of appeal to the office of the Commissioner.

203. Disposition of appeal — The Tax Court may dispose of an appeal from an assessment by

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment, or

(ii) referring the assessment back to the Minister for reconsideration and reassessment.

204.(1) References to Tax Court — If the Minister and another person agree in writing that a question arising under this Act, in respect of any assessment or proposed assessment, should be determined by the Tax Court, that question shall be determined by that Court.

(2) Time during consideration not to count — For the purpose of making an assessment of a person who agreed in writing to the determination of a question, filing a notice of objection to an assessment or instituting an appeal from an assessment, the time between the day on which proceedings are instituted in the Tax Court to have a question determined and the day on which the question is finally determined shall not be counted in the computation of

- (a) the four-year periods referred to in section 191;
- (b) the period within which a notice of objection to an assessment may be filed under section 195; or
- (c) the period within which an appeal may be instituted under section 198.

205.(1) Reference of common questions to Tax Court — If the Minister is of the opinion that a question arising out of one and the same transaction or occurrence or series of transactions or occurrences is common to assessments or proposed assessments in respect of two or more persons, the Minister may apply to the Tax Court for a determination of the question.

(2) Contents of application — An application shall set out

- (a) the question in respect of which the Minister requests a determination;
- (b) the names of the persons that the Minister seeks to have bound by the determination of the question; and
- (c) the facts and reasons on which the Minister relies and on which the Minister based or intends to base assessments of each person named in the application.

(3) Service — A copy of the application shall be served by the Minister on each of the persons named in it and on any other person who, in the opinion of the Tax Court, is likely to be affected by the determination of the question.

(4) Determination by Tax Court of question — If the Tax Court is satisfied that a determination of a question set out in an application will affect assessments or proposed assessments in respect of two or more persons who have been served with a copy of the application and who are named in an order of the Tax Court under this subsection, it may

- (a) if none of the persons so named has appealed from such an assessment, proceed to determine the question in any manner that it considers appropriate; or
- (b) if one or more of the persons so named has or have appealed, make any order joining a party or parties to that or those appeals that it considers appropriate and proceed to determine the question.

(5) Determination final and conclusive — Subject to subsection (6), if a question set out in an application is determined by the Tax Court, the determination is final and conclusive for the purposes of any assessments of persons named by the Court under subsection (4).

(6) Appeal — If a question set out in an application is determined by the Tax Court, the Minister or any of the persons who have been served with a copy of the application and who are named in an order of the Court under subsection (4) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act* or the *Federal Court Act*, as they relate to appeals from or applications for judicial review of decisions of the Tax Court, appeal from the determination.

(7) Parties to appeal — The parties who are bound by a determination are parties to any appeal from the determination.

(8) Time during consideration not counted — For the purpose of making an assessment of the person, filing a notice of objection to an assessment or instituting an appeal from an assessment, the periods described in subsection (9) shall not be counted in the computation of

- (a) the four-year periods referred to in section 191;
- (b) the period within which a notice of objection to an assessment may be filed under section 195; or
- (c) the period within which an appeal may be instituted under section 198.

(9) Excluded periods — The period that is not to be counted in the computation of the periods described in paragraphs (8)(a) to (c) is the time between the day on which an application that is made under this section is served on a person under subsection (3) and

- (a) in the case of a person named in an order of the Tax Court under subsection (4), the day on which the determination becomes final and conclusive and not subject to any appeal; or
- (b) in the case of any other person, the day on which the person is served with notice that the person has not been named in an order of the Tax Court under subsection (4).

Records and Information

206.(1) Keeping records - general — The following persons shall keep all records that are necessary to determine whether they have complied with this Act:

- (a) every licensee or registrant;
- (b) every person who is required under this Act to file a return;
- (c) every person who makes an application for a refund that may be obtained under this Act; and
- (d) every person who transports non-duty-paid packaged alcohol or a tobacco product that is not stamped.

(2) **Keeping records - tobacco growers and provincial tobacco marketing boards** — Every tobacco grower and every body established under provincial law for the marketing of raw leaf tobacco grown in the province shall keep records that will enable the determination of the amount of raw leaf tobacco grown, received or disposed of by them.

(3) **Minister may specify information** — The Minister may specify in writing the form a record is to take and any information that the record must contain.

(4) **Language and location of record** — Unless otherwise authorized by the Minister, a record shall be kept in Canada in English or French.

(5) **Electronic records** — Every person required under this Act to keep a record who does so electronically shall ensure that all equipment and software necessary to make the record intelligible are available during the retention period required for the record.

(6) **Inadequate records** — If a person fails to keep adequate records for the purposes of this Act, the Minister may, in writing, require the person to keep any records that the Minister may specify and the person shall keep the records specified by the Minister.

(7) **Period for retention** — Every person who is required to keep records shall retain them until the expiry of six years after the end of the year to which they relate or for any other period that may be prescribed.

207.(1) Objection or appeal — If a person who is required under this Act to keep records serves a notice of objection or is a party to an appeal or reference under this Act, the person shall retain every record that pertains to the subject-matter of the objection, appeal or reference until the objection, appeal or reference is finally disposed of.

(2) **Demand by Minister** — If the Minister is of the opinion that it is necessary for the administration or enforcement of this Act, the Minister may, by a demand served personally or by registered or certified mail, require any person required under this Act to keep records to retain those records for any period that is specified in the demand and the person shall comply with the demand.

(3) **Permission for earlier disposal** — A person who is required under this Act to keep records may dispose of them before the expiry of the period in respect of which they are required to be kept if written permission for their disposal is given by the Minister.

208.(1) Requirement to provide records or information — Despite any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, by notice served personally or by registered or certified mail, require any person to provide the Minister, within any reasonable time that is stipulated in the notice, with

- (a) any information or additional information, including a return under this Act; or
- (b) any record.

(2) **Unnamed persons** — The Minister shall not impose on any person (in this section referred to as a "third party") a requirement to provide information or any record relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).

(3) **Judicial authorization** — On ex parte application by the Minister, a judge may, subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement relating to an unnamed person or more than one unnamed person (in this section referred to as the "group") if the judge is satisfied by information on oath that

- (a) the person or group is ascertainable; and
- (b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

(4) **Service of authorization** — If an authorization is granted, it shall be served together with the notice referred to in subsection (1).

(5) **Review of authorization** — If an authorization is granted, a third party on whom a notice is served may, within 15 days after the service of the notice, apply to the judge who granted the authorization or, if that judge is unable to act, to another judge of the same court for a review of the authorization.

(6) **Powers on review** — On hearing an application under subsection (5), a judge may

- (a) cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (3)(a) and (b) have been met; or
- (b) confirm or vary the authorization if the judge is satisfied that those conditions have been met.

209. Compliance order — (1) On summary application by the Minister, a judge may, despite section 224, order a person to provide any access, assistance, information or record sought by the Minister under section 208 or 260 if the judge is satisfied that

- (a) the person was required under section 208 or 260 to provide the access, assistance, information or record and did not do so; and
- (b) in the case of information or a record, the information or record is not protected from disclosure by solicitor-client privilege.

(2) **Notice required** — An application must not be heard before the end of five clear days from the time the notice of application is served on the person against whom the order is sought.

(3) **Judge may impose conditions** — The judge making an order may impose any conditions in respect of the order that the judge considers appropriate.

(4) **Contempt of court** — If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

(5) **Appeal** — An order by a judge may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

(6) **Scope of solicitor-privilege client** — For the purposes of paragraph (1)(b), an accounting record of a legal counsel and any invoice, voucher or cheque that relates to the record is deemed not to be protected from disclosure by solicitor-client privilege.

210.(1) Meaning of "foreign-based information or record" — In this section, "foreign-based information or record" means any information or record that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act.

(2) **Requirement to provide foreign-based information** — Despite any other provision of this Act, the Minister may, by notice served personally or by registered or certified mail, require a person resident in Canada or a non-resident person who carries on business in Canada to provide any foreign-based information or record.

(3) **Notice** — The notice shall set out

- (a) a reasonable period of not less than 90 days for the provision of the information or record;
- (b) a description of the information or record being sought; and
- (c) the consequences under subsection (8) to the person of the failure to provide the information or record being sought within the period set out in the notice.

(4) **Review of foreign information requirement** — The person on whom a notice of a requirement is served may, within 90 days after the service of the notice, apply to a judge for a review of the requirement.

(5) **Powers on review** — On hearing an application in respect of a requirement, a judge may

- (a) confirm the requirement;
- (b) vary the requirement if satisfied that it is appropriate in the circumstances; or
- (c) set aside the requirement if satisfied that it is unreasonable.

(6) **Requirement not unreasonable** — For the purposes of subsection (5), a requirement to provide information or a record shall not be considered to be unreasonable because the information or record is under the control of or available to a non-resident person that is not controlled by the person served with the notice of the requirement if that person is related to the non-resident person.

(7) **Time during consideration not to count** — The period between the day on which an application for the review of a requirement is made and the day on which the review is decided shall not be counted in the computation of

- (a) the period set out in the notice of the requirement; and
- (b) the period within which an assessment may be made under section 188 or 189.

(8) **Consequence of failure** — If a person fails to comply substantially with a notice served under subsection (2) and the notice is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on the motion of the Minister, prohibit the introduction by that person of any foreign-based information or record described in that notice.

211.(1) Definitions applicable to confidentiality provisions — The definitions in this subsection apply in this section.

"authorized person" means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty to assist in carrying out the provisions of this Act.

"business number" means the number (other than a Social Insurance Number) used by the Minister to identify

- (a) a licensee or a registrant for the purposes of this Act; or

(b) an applicant for a refund under this Act.

"confidential information" means information of any kind and in any form that relates to one or more persons and that is

- (a) obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) prepared from information referred to in paragraph (a).

It excludes information that does not directly or indirectly reveal the identity of the person to whom it relates.

"court of appeal" has the same meaning as in section 2 of the *Criminal Code*.

"official" means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, Her Majesty or Her Majesty in right of a province, or a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged.

(2) Provision of information — Except as authorized under this section, no official shall knowingly

- (a) provide, or allow to be provided, to any person any confidential information;
- (b) allow any person to have access to any confidential information; or
- (c) use any confidential information other than in the course of the administration or enforcement of this Act.

(3) Confidential information evidence not compellable — Despite any other Act of Parliament or other law, no official shall be required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

(4) Communications if proceedings have been commenced — Subsections (2) and (3) do not apply to

- (a) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament; or
- (b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Employment Insurance Act*, the *Unemployment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

(5) Authorized provision of information — The Minister may provide appropriate persons with any confidential information that may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual or to the environment in Canada or any other country.

(6) Disclosure of personal information — An official may

- (a) provide any confidential information to any person that may reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act, solely for that purpose;
- (b) provide a person with confidential information that can reasonably be regarded as necessary for the purposes of determining any liability or obligation of the person or any refund or other payment to which the person is or may become entitled under this Act;
- (c) provide, allow to be provided, or allow inspection of or access to any confidential information to or by any person, or any person within a class of persons, that the Minister may authorize, subject to any conditions that the Minister may specify;
- (d) provide any person who is legally entitled under an Act of Parliament to confidential information with, or access to, that information, solely for the purposes for which the person is entitled to the information;
- (e) provide confidential information
 - (i) to an official of the Department of Finance solely for the purpose of the formulation or evaluation of fiscal policy,
 - (ii) to an official solely for the purpose of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of the *Canada Pension Plan*, the *Employment Insurance Act*, the *Unemployment Insurance Act* or an Act of Parliament that provides for the imposition or collection of a tax or duty,
 - (iii) to an official solely for the purposes of the administration or enforcement of a law of a province that provides for the imposition or collection of a tax or duty,
 - (iv) to an official of the government of a province solely for the purpose of the formulation or evaluation of fiscal policy,
 - (v) to an official of a department or agency of the Government of Canada or of a province as to the name, address, occupation, size or type of business of a person, solely for the purpose of enabling the department or agency to obtain statistical data for research and analysis,
 - (vi) to an official solely for the purpose of setting off, against any sum of money that may be due or payable by Her Majesty, a debt due to
 - (A) Her Majesty, or
 - (B) Her Majesty in right of a province on account of taxes payable to the province, if an agreement exists between Canada and the province under which Canada is authorized to collect taxes on behalf of the province, or

- (vii) to an official solely for the purposes of section 7.1 of the *Federal-Provincial Fiscal Arrangements Act*;
- (f) provide confidential information solely for the purposes of sections 23 to 25 of the *Financial Administration Act*;
- (g) use confidential information to compile information in a form that does not directly or indirectly reveal the identity of the person to whom the information relates;
- (h) use, or provide any person with, confidential information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by Her Majesty in respect of a period during which the authorized person was employed by or engaged by or on behalf of Her Majesty to assist in the administration or enforcement of this Act, to the extent that the information is relevant for that purpose;
- (i) use confidential information relating to a person to provide that person with information;
- (j) provide the business number, name, address, telephone number and facsimile number of a holder of a business number to an official of a department or agency of the Government of Canada or of a province solely for the purposes of the administration or enforcement of an Act of Parliament or a law of a province, if the holder of the business number is required under that Act or that law to provide the information (other than the business number) to the department or agency; or
- (k) provide confidential information to a police officer (within the meaning assigned by subsection 462.48(17) of the *Criminal Code*) solely for the purpose of investigating whether an offence has been committed under the *Criminal Code*, or the laying of an information or the preferring of an indictment, if
 - (i) the information can reasonably be regarded as being relevant for the purpose of ascertaining the circumstances in which an offence under the *Criminal Code* may have been committed, or the identity of the person or persons who may have committed an offence, with respect to an official, or with respect to any person related to that official,
 - (ii) the official was or is engaged in the administration or enforcement of this Act, and
 - (iii) the offence can reasonably be considered to be related to that administration or enforcement.

(7) Measures to prevent unauthorized use or disclosure — The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order any measures that are necessary to ensure that confidential information is not used or provided to any person for any purpose not relating to that proceeding, including

- (a) holding a hearing *in camera*;
- (b) banning the publication of the information;
- (c) concealing the identity of the person to whom the information relates; and
- (d) sealing the records of the proceeding.

(8) Disclosure to person or on consent — An official may provide confidential information relating to a person

- (a) to that person; and
- (b) with the consent of that person, to any other person.

(9) Appeal from order or direction — An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed immediately by the Minister or by the person against whom it is made to

- (a) the court of appeal of the province in which it is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or
- (b) the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

(10) Disposition of appeal — The court to which an appeal is taken may allow the appeal and quash the order or direction appealed from or may dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts shall apply, with any modifications that the circumstances require, in respect of the appeal.

(11) Stay — An appeal shall stay the operation of the order or direction appealed from until judgment is pronounced.

Bankruptcies and Corporate Reorganizations

212.(1) Definitions — The definitions in this subsection apply in this section.

"bankrupt" has the same meaning as in subsection 2(1) of the *Bankruptcy and Insolvency Act*.

"business" includes a part of a business.

"receiver" means a person who

- (a) under the authority of a debenture, bond or other debt security, of a court order or of an Act of Parliament or of the legislature of a province, is empowered to operate or manage a business or a property of another person;
- (b) is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or a property of the debtor under the debt security;
- (c) is appointed by a bank or an authorized foreign bank, within the meaning of section 2 of the *Bank Act*, to act as an agent of the bank in the exercise of the authority of the bank under subsection 426(3) of that Act in respect of property of another person;
- (d) is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation; or
- (e) is appointed as a committee, guardian or curator with the authority to manage and care for the affairs and assets of an individual who is incapable of managing those affairs and assets.

It includes a person who is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, but, if a person is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, it does not include that creditor.

"relevant assets" of a receiver means

- (a) if the receiver's authority relates to all the properties, businesses, affairs and assets of a person, all those properties, businesses, affairs and assets; and
- (b) if the receiver's authority relates to only part of the properties, businesses, affairs or assets of a person, that part of the properties, businesses, affairs or assets.

"representative" means a person, other than a trustee in bankruptcy or a receiver, who is administering, winding up, controlling or otherwise dealing with any property, business or estate.

(2) Trustee's obligations — For the purposes of this Act, if on a particular day a person becomes a bankrupt,

- (a) the trustee in bankruptcy, and not the person, is liable for the payment of any duty, interest or other amount (other than an amount that relates solely to activities in which the person begins to engage on or after the particular day and to which the bankruptcy does not relate) that becomes payable by the person under this Act during the period beginning on the day immediately after the day on which the trustee became the trustee in bankruptcy of the person and ending on the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*, except that
 - (i) the trustee is liable for the payment of any duty, interest or other amount that became payable by the person after the particular day in respect of fiscal months that ended on or before the particular day, or of any duty, interest or other amount that became payable by the person after the particular day, only to the extent of the property of the person in possession of the trustee available to satisfy the liability,
 - (ii) the trustee is not liable for the payment of any duty, interest or other amount for which a receiver is liable under subsection (3), and
 - (iii) the payment by the person of an amount in respect of the liability shall discharge the liability of the trustee to the extent of that amount;
- (b) if, on the particular day the person is licensed or registered under this Act, the licence or registration continues in relation to the activities of the person to which the bankruptcy relates as though the trustee in bankruptcy were the licensee or registrant in respect of those activities and ceases to apply to the activities of the person in which the person begins to engage on or after the particular day and to which the bankruptcy does not relate;
- (c) the fiscal month of the person begins and ends on the day on which it would have begun and ended if the bankruptcy had not occurred, except that
 - (i) the fiscal month of the person during which the person becomes a bankrupt shall end on the particular day and a new fiscal month of the person in relation to the activities of the person to which the bankruptcy relates shall begin on the day immediately after the particular day, and
 - (ii) the fiscal month of the person, in relation to the activities of the person to which the bankruptcy relates, during which the trustee in bankruptcy is discharged under the *Bankruptcy and Insolvency Act* shall end on the day on which the discharge is granted;
- (d) subject to paragraph (f), the trustee in bankruptcy shall file with the Minister in the prescribed form and manner all returns in respect of the activities of the person to which the bankruptcy relates for the fiscal months of the person ending in the period beginning on the day immediately after the particular day and ending on the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act* and that are required under this Act to be filed by the person, as if those activities were the only activities of the person;
- (e) subject to paragraph (f), if the person has not on or before the particular day filed a return required under this Act to be filed by the person for a fiscal month of the person ending on or before the particular day, the trustee in bankruptcy shall, unless the Minister waives in writing the requirement for the trustee to file the return, file with the Minister in the prescribed form and manner a return for that fiscal month of the person; and

(f) if there is a receiver with authority in respect of any business, property, affairs or assets of the person, the trustee in bankruptcy is not required to include in any return any information that the receiver is required under subsection (3) to include in a return.

(3) Receiver's obligations — For the purposes of this Act, if on a particular day a receiver is vested with authority to manage, operate, liquidate or wind up any business or property, or to manage and care for the affairs and assets, of a person,

(a) if the relevant assets of the receiver are a part and not all of the person's businesses, properties, affairs or assets, the relevant assets of the receiver shall be deemed to be, throughout the period during which the receiver is acting as receiver of the person, separate from the remainder of the businesses, properties, affairs or assets of the person as though the relevant assets were businesses, properties, affairs or assets, as the case may be, of a separate person;

(b) the person and the receiver are jointly and severally or solidarily liable for the payment of any duty, interest or other amount that becomes payable by the person under this Act before or during the period during which the receiver is acting as receiver of the person to the extent that the duty, interest or other amount can reasonably be considered to relate to the relevant assets of the receiver or to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person at the time the duty, interest or other amount became payable except that

(i) the receiver is liable for the payment of any duty, interest or other amount that became payable before that period only to the extent of the property of the person in possession or under the control and management of the receiver after

(A) satisfying the claims of creditors whose claims ranked, on the particular day, in priority to the claim of the Crown in respect of the duty, interest or other amount, and

(B) paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person,

(ii) the person is not liable for the payment of any duty, interest or other amount payable by the receiver, and

(iii) the payment by the person or the receiver of an amount in respect of the duty, interest or other amount shall discharge the joint and several or solidary liability to the extent of that amount;

(c) the fiscal month of the person begins and ends on the day on which it would have begun and ended if the vesting had not occurred, except that

(i) the fiscal month of the person, in relation to the relevant assets of the receiver, during which the receiver begins to act as receiver of the person, shall end on the particular day and a new fiscal month of the person in relation to the relevant assets shall begin on the day immediately after the particular day, and

(ii) the fiscal month of the person, in relation to the relevant assets, during which the receiver ceases to act as receiver of the person, shall end on the day on which the receiver ceases to act as receiver of the person;

(d) the receiver shall file with the Minister in the prescribed form and manner all returns in respect of the relevant assets of the receiver for fiscal months ending in the period during which the receiver is acting as receiver and that are required under this Act to be made by the person, as if the relevant assets were the only businesses, properties, affairs and assets of the person; and

(e) if the person has not on or before the particular day filed a return required under this Act to be filed by the person for a fiscal month of the person ending on or before the particular day, the receiver shall, unless the Minister waives in writing the requirement for the receiver to file the return, file with the Minister in the prescribed form and manner a return for that fiscal month that relates to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person during that fiscal month.

(4) Certificates for receivers and representatives — Every receiver and representative who controls property of another person who is required to pay any duty, interest or other amount under this Act shall, before distributing the property to any person, obtain a certificate from the Minister certifying that the following amounts have been paid or that security for the payment of them has, in accordance with this Act, been accepted by the Minister:

(a) all duty, interest and other amounts that are payable by the other person under this Act in respect of the fiscal month during which the distribution is made, or any previous fiscal month; and

(b) all duty, interest and other amounts that are, or can reasonably be expected to become, payable under this Act by the representative or receiver in that capacity in respect of the fiscal month during which the distribution is made, or any previous fiscal month.

(5) Liability for failure to obtain certificate — Any receiver or representative who distributes property without obtaining a certificate in respect of the duty, interest or other amounts referred to in subsection (4) is personally liable for the payment of those amounts to the extent of the value of the property so distributed.

213. Amalgamations — If two or more corporations (each of which is referred to in this section as a "predecessor") are merged or amalgamated to form one corporation (in this section referred to as the "new corporation"), the new corporation is deemed to be a separate person from each of the predecessors for the purposes of this Act except that, for prescribed purposes, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor.

PART 6

ENFORCEMENT

Offences and Punishment

214. Unlawful production, sale, etc., of tobacco or alcohol — Every person who contravenes section 25, 27, 29, 60 or 62 is guilty of an offence and liable

- (a) on conviction on indictment, to a fine of not less than \$50,000 and not more than \$1,000,000 or to imprisonment for a term of not more than five years, or to both; or
- (b) on summary conviction, to a fine of not less than \$10,000 and not more than \$500,000 or to imprisonment for a term of not more than 18 months, or to both.

215.(1) Punishment - section 30 — Every person who contravenes section 30 is guilty of an offence and liable

- (a) on conviction on indictment, to a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3) or to imprisonment for a term of not more than five years, or to both; or
- (b) on summary conviction, to a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$100,000 and the amount determined under subsection (3) or to imprisonment for a term of not more than 18 months, or to both.

(2) Minimum amount — The amount determined under this subsection for an offence under subsection (1) is the greater of

- (a) \$3.144 multiplied by the number of kilograms of raw leaf tobacco to which the offence relates, and
- (b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

(3) Maximum amount — The amount determined under this subsection for an offence under subsection (1) is the greater of

- (a) \$4.716 multiplied by the number of kilograms of raw leaf tobacco to which the offence relates, and
- (b) \$2,000 in the case of an indictable offence and \$1,000 in the case of an offence punishable on summary conviction.

216.(1) Punishment - section 32 — Every person who contravenes section 32 is guilty of an offence and liable

- (a) on conviction on indictment, to a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3) or to imprisonment for a term of not more than five years, or to both; or
- (b) on summary conviction, to a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$500,000 and the amount determined under subsection (3) or to imprisonment for a term of not more than 18 months, or to both.

(2) Minimum amount — The amount determined under this subsection for an offence under subsection (1) is the greater of

- (a) the total of
 - (i) \$0.16 multiplied by the number of cigarettes to which the offence relates,
 - (ii) \$0.11 multiplied by the number of tobacco sticks to which the offence relates,
 - (iii) \$0.11 multiplied by the number of grams of manufactured tobacco other than cigarettes or tobacco sticks to which the offence relates, and
 - (iv) \$0.21 multiplied by the number of cigars to which the offence relates, and
- (b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

(3) Maximum amount — The amount determined under this subsection for an offence under subsection (1) is the greater of

- (a) the total of
 - (i) \$0.24 multiplied by the number of cigarettes to which the offence relates,
 - (ii) \$0.16 multiplied by the number of tobacco sticks to which the offence relates,
 - (iii) \$0.16 multiplied by the number of grams of manufactured tobacco other than cigarettes or tobacco sticks to which the offence relates, and
 - (iv) \$0.65 multiplied by the number of cigars to which the offence relates, and
- (b) \$2,000 in the case of an indictable offence and \$1,000 in the case of an offence punishable on summary conviction.

217.(1) Punishment for certain alcohol offences — Every person who contravenes section 63 or 73, subsection 78(1) or 83(1) or section 90 or 96 is guilty of an offence and liable

- (a) on conviction on indictment, to a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3) or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$100,000 and the amount determined under subsection (3) or to imprisonment for a term of not more than 18 months, or to both.

(2) **Minimum amount** — The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the total of

- (i) \$11.066 multiplied by the number of litres of absolute ethyl alcohol in the spirits to which the offence relates,
- (ii) \$0.5122 multiplied by the number of litres of wine to which the offence relates, and
- (iii) \$10 multiplied by the number of litres of denatured alcohol or specially denatured alcohol to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

(3) **Maximum amount** — The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the total of

- (i) \$22.132 multiplied by the number of litres of absolute ethyl alcohol in the spirits to which the offence relates,
- (ii) \$1.0244 multiplied by the number of litres of wine to which the offence relates, and
- (iii) \$20 multiplied by the number of litres of denatured alcohol or specially denatured alcohol to which the offence relates, and

(b) \$2,000 in the case of an indictable offence and \$1,000 in the case of an offence punishable on summary conviction.

218.(1) Punishment for more serious alcohol offences — Every person who contravenes any of sections 67, 69 to 72, 74, or 88 or subsection 101(1) or (2) is guilty of an offence and liable

(a) on conviction on indictment, to a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3) or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$500,000 and the amount determined under subsection (3) or to imprisonment for a term of not more than 18 months, or to both.

(2) **Minimum amount** — The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the total of

- (i) \$22.132 multiplied by the number of litres of absolute ethyl alcohol in the spirits to which the offence relates, and
- (ii) \$1.0244 multiplied by the number of litres of wine to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

(3) **Maximum amount** — The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the total of

- (i) \$33.198 multiplied by the number of litres of absolute ethyl alcohol in the spirits to which the offence relates, and
- (ii) \$1.5366 multiplied by the number of litres of wine to which the offence relates, and

(b) \$2,000 in the case of an indictable offence and \$1,000 in the case of an offence punishable on summary conviction.

219.(1) Falsifying or destroying records — Every person commits an offence who

(a) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a return, application, certificate, record or answer filed or made as required under this Act;

(b) for the purpose of evading payment of any duty or obtaining a refund to which the person is not entitled under this Act

(i) destroys, alters, mutilates, conceals or otherwise disposes of any records of a person, or

(ii) makes, or assents to or acquiesces in the making of, a false or deceptive entry, or omits, or assents to or acquiesces in the omission, to enter a material particular in the records of a person;

(c) wilfully, in any manner, evades or attempts to evade compliance with this Act or payment of duty, interest or other amount imposed under this Act;

(d) wilfully, in any manner, obtains or attempts to obtain a refund to which the person is not entitled under this Act; or

(e) conspires with any person to commit an offence described in any of paragraphs (a) to (d).

(2) **Punishment** — Every person who commits an offence under subsection (1) is guilty of

(a) an indictable offence and is liable to

(i) a fine of not less than \$1,000 plus 200%, and not more than \$10,000 plus 300%, of the total amount of duty, interest or other amount that was sought to be evaded, or of the refund sought, or, if that total amount cannot be ascertained, a fine of not less than \$10,000 and not more than \$100,000,

(ii) imprisonment for a term of not more than five years, or

(iii) both a fine referred to in subparagraph (i) and imprisonment referred to in subparagraph (ii); or

(b) an offence punishable on summary conviction and liable to

(i) a fine of not less than \$100 plus 200%, and not more than \$1,000 plus 300%, of the total amount of duty, interest or other amount that was sought to be evaded, or of the refund sought, or, if that total amount cannot be ascertained, a fine of not less than \$1,000 and not more than \$25,000,

(ii) imprisonment for a term of not more than 18 months, or

(iii) both a fine referred to in subparagraph (i) and imprisonment referred to in subparagraph (ii).

(3) **Stay of appeal** — If, in any appeal under Part 5, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court and, on doing so, the proceedings before the Tax Court are stayed pending final determination of the outcome of the prosecution.

220.(1) Obstruction of officer — No person shall, physically or otherwise, do or attempt to do any of the following:

(a) interfere with, hinder or molest any officer doing anything the officer is authorized to do under this Act; or

(b) prevent any officer from doing anything the officer is authorized to do under this Act.

(2) **Failure to comply** — Every person shall do everything the person is required to do under any of sections 208 to 210 or 260.

(3) **Punishment** — Every person who contravenes subsection (1) or (2) is guilty of an offence punishable on summary conviction and liable to a fine of not less than \$1,000 and not more than \$25,000 or to imprisonment for a term of not more than 12 months, or to both.

221.(1) Offence - confidential information — Every person who

(a) contravenes subsection 211(2), or

(b) knowingly contravenes an order made under subsection 211(7)

is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than 12 months, or to both.

(2) **confidential information** — Every person

(a) to whom confidential information has been provided for a purpose pursuant to paragraph 211(6)(b), (d), or (h), or

(b) who is an official to whom confidential information has been provided for a purpose pursuant to paragraph 211(6)(a), (e) or (f),

and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than 12 months, or to both.

(3) **Definitions** — In this section, "confidential information" and "official" have the same meaning as in subsection 211(1).

222. Other contraventions — Every person who contravenes a provision of this Act or the regulations for which no other offence is specified in this Act is guilty of an offence and is liable on summary conviction to a fine of not more than \$100,000 or to imprisonment for a term of not more than 12 months, or to both.

223. Defence of due diligence — No person shall be convicted of an offence under this Act if the person establishes that they exercised all due diligence to prevent the commission of the offence.

224. Compliance orders — If a person has been convicted by a court of an offence for a failure to comply with a provision of this Act, the court may make any order that it considers proper in order to enforce compliance with the provision.

225. No penalty unless imposed before laying of information — A person who is convicted of failing to comply with a provision of this Act is not liable to pay a penalty under any of sections 233 to 253 for the same failure unless the penalty was imposed under section 254 before the information or complaint giving rise to the conviction was laid or made.

226. Officers of corporations, etc. — If a person other than an individual commits an offence under this Act, every officer, director or agent of the person who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence, whether or not the person has been prosecuted or convicted.

227. Offences by employees or agents — In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised all due diligence to prevent its commission.

228. Power to decrease punishment — Despite the *Criminal Code* or any other law, the court has, in any prosecution or proceeding under this Act, neither the power to impose less than the minimum fine fixed under this Act nor the power to suspend sentence.

229.(1) Information or complaint — An information or complaint under this Act may be laid or made by any officer. If an information or complaint is purported to have been laid or made under this Act, it is deemed to have been laid or made by an officer and shall not be called into question for lack of authority of the officer except by the Minister or a person acting for the Minister or for Her Majesty.

(2) **Two or more offences** — An information or complaint in respect of an offence under this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(3) **Limitation of prosecutions** — Despite subsection 786(2) of the *Criminal Code*, an information or complaint in respect of an offence under this Act that is to be prosecuted by way of summary conviction proceedings may be laid or made within two years after the day on which the matter of the information or complaint arose.

Proceeds of Crime

230.(1) Property obtained from offences — No person shall possess any property or any proceeds of any property knowing that all or any part of it was obtained or derived directly or indirectly as a result of

- (a) the commission of an offence under section 214 or subsection 216(1), 218(1) or 231(1); or
- (b) a conspiracy or an attempt to commit, being a party to, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a).

(2) **Punishment** — Every person who contravenes subsection (1)

- (a) is guilty of an indictable offence and liable to a fine of not more than \$500,000 or to imprisonment for a term of not more than five years, or to both; or
- (b) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than 18 months, or to both.

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person possesses property or the proceeds of property mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

231.(1) Laundering proceeds of certain offences — No person shall use, transfer the possession of, send or deliver to any person or place, transport, transmit, alter, dispose of or otherwise deal with, in any manner or by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing that all or part of that property or those proceeds were obtained or derived directly or indirectly as a result of

- (a) the commission of an offence under section 214 or subsection 216(1) or 218(1); or
- (b) a conspiracy or an attempt to commit, being a party to, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a).

(2) **Punishment** — Every person who contravenes subsection (1)

- (a) is guilty of an indictable offence and liable to a fine of not more than \$500,000 or to imprisonment for a term of not more than five years, or to both; or
- (b) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than 18 months, or to both.

(3) **Exception** — A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person does any of the things mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

Exception

232.(1) Part XII.2 of Criminal Code applicable — Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings for an offence under section 214, subsection 216(1) or 218(1) or section 230 or 231.

(2) Reference to enterprise crime offence — For the purpose of subsection (1), the references in sections 462.37 and 462.38 and subsection 462.41(2) of the *Criminal Code* to an enterprise crime offence are deemed to include references to the offences referred to in subsection (1).

Penalties

233. Contravention of section 34 or 37 — Every tobacco licensee who contravenes section 34 or 37 is liable to a penalty equal to 200% of the duty that was imposed on the tobacco product to which the contravention relates.

234. Contravention of section 38, 40, 41, 49, 61, 99, 149 or 151 — Every person who contravenes section 38, 40, 41, 49, 61, 99, 149 or 151 is liable to a penalty of not more than \$25,000.

235. Penalty for unauthorized export of raw leaf tobacco — Every tobacco grower who exports raw leaf tobacco without the written approval of the Minister or who fails to comply with a condition imposed by the Minister in respect of the export is liable to a penalty of not more than \$25,000.

236.(1) Diversion of black stock tobacco — Every tobacco licensee is liable to a penalty if manufactured tobacco on which duty was imposed under section 42 at a rate set out in paragraph 1(a), 2(a) or 3(a) of Schedule 1 is

(a) delivered by the licensee other than to a duty free shop or customs bonded warehouse or to a person for use as ships' stores in accordance with the *Ships' Stores Regulations*; or

(b) exported by the licensee other than for delivery to a foreign duty free shop or as foreign ships' stores.

(2) Amount of penalty — The amount of the penalty is equal to 200% of the total of

(a) the amount by which

(i) the duty that would have been imposed under section 42 on the tobacco if the applicable rate of duty had been the rate set out in paragraph 1(b), 2(b) or 3(b) of Schedule 1

exceeds

(ii) the duty that was imposed under section 42 on the tobacco; and

(b) the amount, if any, of special duty that was payable under paragraph 56(1)(b) in respect of the tobacco.

237.(1) Diversion of non-duty-paid alcohol — Every excise warehouse licensee is liable to a penalty equal to 200% of the duty imposed on packaged alcohol that was removed from the warehouse of the licensee for a purpose described in section 147 if the alcohol is not delivered or exported, as the case may be, for that purpose.

(2) Diversion of duty-free tobacco — Every tobacco licensee is liable to a penalty equal to 200% of the duty that was imposed on a tobacco product manufactured in Canada that was removed from the excise warehouse of the licensee for a purpose described in subsection 50(4), (7) or (8) if the product is not delivered or exported, as the case may be, for that purpose.

(3) Diversion of duty-free cigars — Every excise warehouse licensee is liable to a penalty equal to 200% of the duty that was imposed on cigars manufactured in Canada that were removed from the excise warehouse of the licensee for a purpose described in subsection 50(9) if the cigars are not delivered for that purpose.

(4) Diversion of duty-free tobacco in special excise warehouse — Every special excise warehouse licensee is liable to a penalty equal to 200% of the duty that was imposed on a tobacco product manufactured in Canada that was removed from the special excise warehouse of the licensee for a purpose described in subsection 50(11) if the product is not delivered for that purpose.

(5) Diversion of imported tobacco — Every excise warehouse licensee is liable to a penalty equal to 200% of the duty that was imposed on an imported tobacco product that was removed from the excise warehouse of the licensee for a purpose described in subsection 51(2) if the product is not delivered or exported, as the case may be, for that purpose.

(6) Exception — A licensee who would otherwise be liable to a penalty under this section is not liable if the licensee proves to the satisfaction of the Minister that the alcohol or tobacco product that was removed from their excise warehouse or special excise warehouse was returned to that warehouse.

238. Penalty in respect of unaccounted tobacco — Every excise warehouse licensee and every special excise warehouse licensee is liable to a penalty equal to 200% of the duty that was imposed on a tobacco product entered into their excise warehouse or special excise warehouse, as the case may be, if the licensee cannot account for the product

(a) as being in the warehouse;

(b) as having been removed from the warehouse in accordance with this Act; or

(c) as having been destroyed by fire while kept in the warehouse.

239. Other diversions — Unless section 237 applies, every person is liable to a penalty equal to 200% of the duty that was imposed on packaged alcohol or a tobacco product if

(a) it was acquired by the person and duty was not payable because of the purpose for which the person acquired it or because of its destination; and

(b) it is sold or used for a purpose or sent to a destination in circumstances in which duty would have been payable if it had originally been acquired for that purpose or sent to that destination.

240. Contravention of subsection 50(5) — Every tobacco licensee who contravenes subsection 50(5) is liable to a penalty equal to the total of

(a) \$0.25995 per cigarette that was removed in contravention of that subsection,

(b) \$0.159966 per tobacco stick that was removed in contravention of that subsection, and

(c) \$149.966 per kilogram of manufactured tobacco, other than cigarettes and tobacco sticks, that was removed in contravention of that subsection.

241. Contravention of section 71 — Every person who contravenes section 71 is liable to a penalty equal to 200% of the duty that was imposed on the bulk spirits to which the contravention relates.

242. Contravention of section 72 — Every person who contravenes section 72 is liable to a penalty equal to \$1.0244 per litre of wine to which the contravention relates.

243. Contravention of section 73, etc. — Every person who contravenes any of sections 73, 76 or 89 to 91 is liable to a penalty equal to

(a) if the contravention relates to spirits, the duty that was imposed on the spirits; or

(b) if the contravention relates to wine, \$0.5122 per litre of that wine.

244. Spirits improperly used as DA or SDA — Every person who is required to export, return, dispose of or destroy an amount of spirits under paragraph 101(1)(a) or (b) or (2)(a) or (b) but is unable to do so because the amount has been used in the production of another product is liable to a penalty equal to the duty imposed under section 122 or levied under section 21.1 or subsection 21.2(1) of the *Customs Tariff* on the amount.

245. Contravention of section 78, 83 or 94 — Every person who contravenes section 78, 83 or 94 is liable to a penalty equal to 100% of the duty that was imposed on the alcohol to which the contravention relates.

246. Contravention of section 81, 86, 92 or 93 — Every person who contravenes section 81, 86, 92 or 93 is liable to a penalty equal to 50% of the duty that was imposed on the alcohol to which the contravention relates.

247. Unauthorized possession, etc., of SDA — Every person who contravenes any of sections 96 to 98, 100, 102 or 103 is liable to a penalty of \$10 per litre of specially denatured alcohol to which the contravention relates.

248. Unauthorized removal of marked special container — Every excise warehouse licensee who removes a marked special container of alcohol from their excise warehouse for entry into the duty-paid market is liable to a penalty equal to 50% of the duty that was imposed on the alcohol in the container unless the container is marked for delivery to and use at a bottle-your-own premises and it is delivered to a bottle-your-own premises.

249. Contravention of section 154 — Every excise warehouse licensee who contravenes section 154 is liable to a penalty equal to the total of

(a) \$1,000, and

(b) 50% of the duty that was imposed on the alcohol supplied in contravention of that section.

250. Failure to comply — Every person is liable to a penalty of not more than \$25,000 if the person fails to comply with

(a) section 206 or 207;

(b) a requirement in a notice referred to in section 208 or 210;

(c) a condition or requirement of a licence or registration issued to the person under this Act;

(d) a condition or restriction imposed under section 143; or

(e) the regulations.

251. Failure to file return — Every person who does not file a return as and when required under a demand issued under section 169 is liable to a penalty equal to the greater of

(a) \$250, and

(b) 5% of the amount of duty payable by the person for the period designated in the demand that was unpaid on the day that the return was due.

252. Failure to provide information — Every person who fails to provide any information or record as and when required under this Act is liable to a penalty of \$100 for every failure unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information.

253. False statements or omissions — Every person who knowingly, or under circumstances amounting to gross negligence, makes, or participates in, assents to or acquiesces in the making of, a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") made in respect of a fiscal month or activity is liable to a penalty equal to the greater of \$250 and 25% of the total of

(a) if the false statement or omission is relevant to the determination of an amount of duty payable by the person, the amount, if any, by which

(i) that duty payable

exceeds

(ii) the amount that would be the duty payable by the person if the duty were determined on the basis of the information provided in the return; and

(b) if the false statement or omission is relevant to the determination of a refund or any other payment that may be obtained under this Act, the amount, if any, by which

(i) the amount that would be the refund or other payment payable to the person if the refund or other payment were determined on the basis of the information provided in the return

exceeds

(ii) the amount of the refund or other payment payable to the person.

Penalty Imposition

254.(1) Notice of imposed penalty — A penalty that a person is liable to pay under any of sections 233 to 253 may be imposed by the Minister by serving on the person a written notice of the imposed penalty or by sending the notice by registered or certified mail to the person's last known address.

(2) Penalty is in addition to other sanction — A penalty may be imposed in addition to a seizure or forfeiture of a thing or the suspension or cancellation of a licence or registration under this Act that arises from the same event as the contravention in respect of which the penalty is imposed.

255. When penalty becomes payable — The amount of a penalty imposed on a person under section 254 is payable by the person to the Receiver General at the time it is imposed.

256. Interest on penalty during review period — Despite subsection 170(1), if a request is made under subsection 271(1) for a decision of the Minister in respect of a penalty imposed under section 254, no interest is payable in respect of the penalty for the period beginning on the day on which the request is made and ending on the day on which the Minister gives notice of the decision under subsection 273(2) or, if the decision is appealed to the Federal Court under section 276, the day on which the appeal is resolved.

257. Review of imposed penalty — The debt due to Her Majesty as a result of a penalty imposed under section 254 is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided under this Act.

Search Warrants

258. Information for search warrant — (1) A judge may at any time issue a warrant signed by the judge authorizing an officer to search a building, receptacle or place for a thing and to seize it if the judge is satisfied by information on oath that there are reasonable grounds to believe that there will be found in the building, receptacle or place anything that there are reasonable grounds to believe will afford evidence in respect of a contravention under this Act.

(2) Form of search warrant — A warrant must refer to the contravention for which it is issued, identify the building, receptacle or place to be searched and be reasonably specific as to the thing to be searched for and seized.

(3) Endorsement of search warrant — If the building, receptacle or place is in a territorial division other than that in which the judge has jurisdiction, the judge may issue the warrant and the warrant may be executed in the other territorial division after it has been endorsed by a judge having jurisdiction in that territorial division.

(4) Effect of endorsement — An endorsement that is made on a warrant as provided for in subsection (3) is sufficient authority to the officers to whom it was originally directed, and to all officers within the jurisdiction of the judge by whom it is endorsed, to execute the warrant and to deal with the things seized in accordance with section 489.1 of the *Criminal Code* or as otherwise provided by law.

(5) Seizure of things not specified — An officer who executes a warrant may seize, in addition to the things mentioned in the warrant,

- (a) anything by means of or in relation to which the officer believes on reasonable grounds that a provision of this Act has been contravened; or
 - (b) anything that the officer believes on reasonable grounds will afford evidence in respect of a contravention under this Act.
- (6) **Execution of search warrant** — A warrant shall be executed during the period between 6:00 a.m. and 9:00 p.m. unless
- (a) the judge is satisfied that there are reasonable grounds for it to be executed outside of that period;
 - (b) the reasonable grounds are included in the information; and
 - (c) the warrant authorizes that it be executed outside of that period.
- (7) **Operation of computer system and copying equipment** — An officer authorized under this section to search a computer system for data may
- (a) use or cause to be used any computer system at the building or place to search any data contained in or available to the computer system;
 - (b) use or cause to be used any equipment at the building or place to make a copy of the data and to render it in any form; and
 - (c) seize a copy or rendering made under paragraph (b) that may afford evidence in respect of a contravention under this Act.
- (8) **Duty of person in possession or control** — Every person who is in possession or control of any building or place in respect of which a search described by subsection (7) is carried out shall, on presentation of the warrant, provide to the officer carrying out the search all assistance that is necessary to carry out the search.
- (9) **Application of section 490 of *Criminal Code*** — Section 490 of the *Criminal Code* applies in respect of anything seized under this section.
- (10) **Extended meaning of "judge"** — In this section and paragraph 262(2)(b), "judge" also means a justice who is authorized under the *Criminal Code* to issue a search warrant.
- 259. Warrant not necessary in exigent circumstances** — An officer may exercise any of the powers referred to in subsection 258(1) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would not be practical to obtain one.

Inspections

- 260.(1) By whom** — An officer may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, inspect, audit or examine the records, processes, property or premises of a person in order to determine whether that or any other person is in compliance with this Act.
- (2) **Powers of officer** — For the purposes of an inspection, audit or examination, the officer may
- (a) subject to subsection (3), enter any place in which the officer reasonably believes the person keeps records or carries on any activity to which this Act applies;
 - (b) stop a conveyance or direct that it be moved to a place where the inspection or examination may be performed;
 - (c) require any individual to be present during the inspection, audit or examination and require that individual to answer all proper questions and to give to the officer all reasonable assistance;
 - (d) open or cause to be opened any receptacle that the officer reasonably believes contains anything to which this Act applies;
 - (e) take samples of anything free of charge; and
 - (f) seize anything by means of or in relation to which the officer reasonably believes this Act has been contravened.
- (3) **Prior authorization** — If any place referred to in paragraph (2)(a) is a dwelling-house, the officer may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (4).
- (4) **Warrant to enter dwelling-house** — A judge may issue a warrant authorizing an officer to enter a dwelling-house subject to the conditions specified in the warrant if, on ex parte application by the Minister, a judge is satisfied by information on oath that
- (a) there are reasonable grounds to believe that the dwelling-house is a place referred to in paragraph (2)(a);
 - (b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act; and
 - (c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused.
- (5) **Orders if entry not authorized** — If the judge is not satisfied that entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Act, the judge may, to the extent that access was or may be expected to be refused and that a record or property is or may be expected to be kept in the dwelling-house,
- (a) order the occupant of the dwelling-house to provide an officer with reasonable access to any record or property that is or should be kept in the dwelling-house; and

(b) make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

(6) Definition of "dwelling-house" — In this section, "dwelling-house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes

(a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

261.(1) Custody of seized things — An officer who seizes a thing under section 260 may retain custody of the thing or transfer custody of it to any person that the officer may designate.

(2) Retention of seized things — An officer may order that a thing seized under section 260 be retained or stored at the place from where it was seized and no person shall use, remove or dispose of the thing without the consent of the officer or other authorized person.

262.(1) Copies of records — A person who seizes, inspects, audits, examines or is provided a record under section 260 may make, or cause to be made, one or more copies of the record.

(2) Retention of records seized — No records that have been seized as evidence under section 260 shall be retained for a period of more than three months after the time of seizure unless, before the expiry of that period,

(a) the person from whom they were seized agrees to their further retention for a specified period;

(b) a judge is satisfied on application that, having regard to the circumstances, their further retention for a specified period is warranted and so orders; or

(c) judicial proceedings are instituted in which they may be required.

263. Officer must give notification of seizure — An officer who seizes a thing under section 260 shall, without delay,

(a) report the circumstances of the seizure to the Commissioner; and

(b) if the officer has evidence that a person may be entitled to make an application under section 278 in respect of the thing, take all reasonable measures to ensure that notification of the seizure is sent to that person at their last known address.

Return or Disposal of Things Seized

264. Certain things not to be returned — Despite this Act, any alcohol, specially denatured alcohol, raw leaf tobacco or tobacco product that is seized under section 260 must not be returned to the person from whom it was seized or any other person unless it was seized in error.

265. Return if security provided — The Minister may, subject to this or any other Act of Parliament, return anything that has been seized under section 260 to the person from whom it was seized, or to any person authorized by that person, on receipt of security with a value equal to

(a) the value of the thing at the time of its seizure as determined by the Minister; or

(b) a lesser amount satisfactory to the Minister.

266.(1) Dealing with things seized — The Minister may sell, destroy or otherwise deal with anything seized under section 260.

(2) Restriction — Subject to the regulations, the Minister may sell

(a) seized spirits or specially denatured alcohol only to a spirits licensee;

(b) seized wine only to a wine licensee; and

(c) seized raw leaf tobacco or a seized tobacco product only to a tobacco licensee.

(3) Payment of compensation — If a person would be entitled to the return of a thing if it were available to be returned, but it is not possible to return it, the person shall be paid

(a) if the thing was sold, the proceeds from the sale; and

(b) in any other case, the value of the thing at the time of its seizure as determined by the Minister.

Forfeitures

267. Forfeiture from time of contravention — Subject to the reviews and appeals provided for under this Act, anything by means of or in relation to which a contravention under this Act was committed is forfeit to Her Majesty from the time of the contravention.

268. Thing no longer forfeit — A thing in respect of which security is received under section 265 ceases to be forfeit from the time the security is received and the security shall be held as forfeit instead of the thing.

269. Review of forfeiture — The forfeiture of a thing under section 267 or any security held as forfeit instead of the thing is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided under this Act.

Review of Imposed Penalty or Seizure

270.(1) Penalty imposed or seizure made in error — If the Minister determines that a penalty was imposed in error under section 254 or a thing was seized in error under section 260, the Minister may

- (a) cancel the penalty and authorize the return of any amount of money paid with respect to the penalty; and
- (b) authorize the release of the thing or the return of any security received in respect of the seizure.

(2) Non-application if request made — Subsection (1) does not apply if a request under section 271 has been made in respect of the imposition of the penalty or the seizure.

271.(1) Request for Minister's decision — Any person on whom a penalty is imposed under section 254 or from whom a thing is seized under section 260 may request that the Minister review the imposition of the penalty or the seizure and make a decision under section 273.

(2) Time limit for making request — A request must be made within 90 days after

- (a) the date of the service or sending of the notice of the imposed penalty; or
- (b) in the case of a thing, the date on which the seizure of the thing was brought to the notice of the person from whom the thing was seized.

(3) How request made — A request must be made in writing

- (a) if the request is in respect of a penalty imposed, to the office of the Agency from which the notice of the imposed penalty is issued; or
- (b) if the request is in respect of a seizure of a thing, to the officer who seized the thing.

(4) Burden of proof — The burden of proving that a request was made lies on the person claiming that it was made.

(5) Commissioner to provide reasons — On receipt of a request, the Commissioner shall without delay provide to the person making the request written reasons for the seizure or the imposition of the penalty.

(6) Evidence — The person making a request may submit any evidence that the person wishes the Minister to consider for the purposes of making the decision within 30 days after the date on which the written reasons were sent.

(7) Form of evidence — Evidence may be given by affidavit sworn before a commissioner for taking oaths or any other person authorized to take affidavits.

272.(1) Extension of time by Minister — If no request for a decision under section 271 is made within the time limited by that section, a person may make a written application to the Minister to extend the time for making a request.

(2) Conditions - grant of application — The Minister may extend the time for making a request under section 271 if an application under subsection (1) is made within one year after the time limit for a request and the Minister is satisfied that

- (a) the applicant had a bona fide intention to make the request before the expiration of the time limit but was unable to do so and was unable to instruct another person to do so on the applicant's behalf;
- (b) the application was made as soon as circumstances permitted it to be made; and
- (c) having regard to any reasons provided by the applicant and to the circumstances of the case, it would be just and equitable to extend the time.

(3) Notification of decision — The Minister shall notify the applicant of the Minister's decision regarding the application by registered or certified mail.

(4) If application granted — If the Minister decides to extend the time, the request under section 271 is deemed to have been made on the day of the decision of the Minister regarding the application.

(5) Decision final — A decision of the Minister under this section is final and binding and, despite any other Act of Parliament, no appeal lies from it.

273.(1) Decision of the Minister — As soon after the receipt of a request under section 271 as is reasonably possible, the Minister shall review the circumstances giving rise to the imposition of the penalty or the seizure and decide whether the contravention on which the penalty or the seizure is based occurred and what action is to be taken under section 274 or 275.

(2) **Notification of decision** — The Minister shall notify the person who requested the decision of the decision by registered or certified mail.

(3) **Judicial review** — The Minister's decision is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided under subsection 276(1).

274.(1) If no contravention occurred — Subject to this or any other Act of Parliament, if the Minister decides under subsection 273(1) that the contravention on which a penalty or seizure is based did not occur, the Minister shall without delay

(a) in the case of a penalty, cancel the penalty and authorize the return of any money paid on account of it and any interest that was paid in respect of it; or

(b) in the case of a seizure, authorize the release of the seized thing or the return of any security taken in respect of it.

(2) **Interest on money returned** — If any money is authorized to be returned to a person, there shall be paid to the person, in addition to the money returned, interest at the prescribed rate computed for the period beginning on the day after the money was paid and ending on the day on which the money is returned.

275.(1) If contravention occurred - penalty — If the Minister decides under subsection 273(1) that the contravention on which a penalty is based did occur, the Minister may

(a) confirm the penalty;

(b) if the Minister believes that the penalty imposed is insufficient under the circumstances relating to the contravention, demand from the person any additional amount of money that the Minister considers sufficient to increase the penalty to an amount of not more than the maximum amount for which the person is liable for the contravention, and the additional amount is payable immediately; or

(c) if the Minister believes that the penalty imposed should be reduced or waived under the circumstances relating to the contravention, reduce or waive the penalty.

(2) **If contravention occurred - seizure** — If the Minister decides under subsection 273(1) that the contravention on which a seizure is based did occur, the Minister may, subject to any terms and conditions that the Minister may determine,

(a) confirm the seizure;

(b) return the seized thing on receipt by the Minister of an amount of money equal

(i) to the value of the thing at the time of the seizure, as determined by the Minister, or

(ii) to a lesser amount satisfactory to the Minister;

(c) return any portion of any security taken in respect of the thing; or

(d) if the Minister considers that insufficient security was taken or if no security was received, demand any amount of money that the Minister considers sufficient in the circumstances, and the amount is payable immediately.

(3) **Amounts demanded by the Minister** — Any amount of money demanded under paragraph (1)(b) or (2)(d), from and after the date of the notice provided under subsection 273(2), constitutes a debt due to Her Majesty from the person who requested the decision and that person is in default unless, within 90 days after that date, the person

(a) pays the amount so demanded; or

(b) if the person appeals the decision of the Minister under section 276, gives security satisfactory to the Minister.

(4) **Interest on penalty during appeal period** — Despite subsection 170(1), if the decision of the Minister is appealed to the Federal Court under section 276, no interest is payable in respect of an amount demanded under paragraph (1)(b) or (2)(d) for any period before the day on which the appeal is resolved.

(5) **Forfeiture ceases** — If the Minister returns a seized thing or security taken in respect of a seized thing under subsection (2), the thing or the security ceases to be forfeit.

276.(1) Court Federal — A person who requests a decision of the Minister under section 271 may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.

(2) Ordinary action — The Federal Court Act and the rules made under it that are applicable to ordinary actions apply to actions instituted under subsection (1), except as varied by special rules made in respect of those actions.

277. Restoration of things seized pending appeal — If an appeal is taken by the Crown from a judgment that orders the Crown to give or return to a person anything that has been seized under section 260, the execution of the judgment shall not be suspended if the person to whom the thing is ordered given or returned gives any security to the Crown that the court that rendered the judgment considers sufficient to ensure delivery of the thing or the full value of the thing to the Crown if the judgment so appealed is reversed.

Third Party Claims

278.(1) Third party may claim interest in seized or forfeited thing — On application by a person, other than a person who is entitled to make a request under section 271, who is an owner of, or who holds a security or property interest in, a thing seized under section 260 or forfeited under section 267, the Minister may declare

- (a) that the applicant's interest in the thing is not affected by the seizure or forfeiture of the thing; and
- (b) the nature and extent of that interest at the time of the contravention on which the seizure or forfeiture is based.

(2) Conditions for declaration — A declaration referred to in subsection (1) shall not be made unless

- (a) a request under section 271 has not been made in respect of the seizure of the thing or, if a request was made, the seizure has been confirmed by the Minister under paragraph 275(2)(a); and
- (b) the Minister is satisfied that the applicant
 - (i) acquired in good faith the interest in the seized thing before the contravention occurred,
 - (ii) is innocent of any complicity and of any collusion in respect of the contravention, and
 - (iii) exercised all reasonable care to satisfy themselves that any person likely to have possession of the thing was not likely to use it in connection with a contravention of this Act.

(3) Manner and time limit for making application — An application must be submitted in writing,

- (a) in the case of a seizure, within 90 days after the date of the seizure of the thing, to the officer who made the seizure; or
- (b) in any other case, within 90 days after the date on which the person became aware of the contravention on which the forfeiture is based, to the Minister.

(4) Burden of proof — The burden of proving that an application was submitted lies on the person claiming that it was submitted.

(5) Evidence — An applicant may submit any evidence that they wish the Minister to consider for the purposes of the application within 30 days after the date of the request.

(6) Form of evidence — Evidence may be given by affidavit sworn before a commissioner for taking oaths or any other person authorized to take affidavits.

(7) Notification of decision — The Minister shall notify the applicant of the Minister's decision regarding the application under subsection (1) by registered or certified mail.

279.(1) Extension of time by Minister — If no application for a declaration under section 278 is made within the time limited by that section, a person may apply in writing to the Minister to extend the time for making an application under that section.

(2) Conditions - grant of application — The Minister may extend the time for making an application under section 278 if an application under subsection (1) is made within one year after the time limit for the application under section 278 and the Minister is satisfied that

- (a) the applicant had a bona fide intention to apply under section 278 before the expiration of the time limit but was unable to do so and was unable to instruct another person to do so on the applicant's behalf;
- (b) the application under subsection (1) was made as soon as circumstances permitted it to be made; and
- (c) having regard to any reasons provided by the applicant and to the circumstances of the case, it would be just and equitable to extend the time.

(3) Notification of decision — The Minister shall notify the applicant of the Minister's decision regarding the application under subsection (1) by registered or certified mail.

(4) If application granted — If the Minister decides to extend the time, the application under section 278 is deemed to have been made on the day of the decision of the Minister regarding the application under subsection (1).

(5) **Decision final** — A decision of the Minister under this section is final and binding and, despite any other Act of Parliament, no appeal lies from it.

280.(1) Application to court — If the Minister decides not to make a declaration under subsection 278(1) or the applicant is not satisfied with the declaration made, the applicant may, within 90 days after the date of the decision or declaration, apply by notice in writing to a superior court of competent jurisdiction for an order under section 281.

(2) **Date of hearing** — The court to which an application is made under this section shall fix a day for the hearing of the application that is not less than 30 days after the date of the filing of the application.

(3) **Notice to Commissioner** — An applicant shall serve notice of the application and of the hearing on the Commissioner, or an officer designated by the Commissioner for the purposes of this section, not later than 15 days after the day on which the date for the hearing of the application is fixed.

(4) **Service of notice** — The service of a notice is sufficient if it is sent by registered or certified mail addressed to the Commissioner.

281. Order — An applicant under section 280 is entitled to an order declaring that their interest in a seized or forfeited thing is not affected by the seizure or forfeiture and declaring the nature and extent of that interest at the time of the contravention on which the seizure or forfeiture is based if, on the hearing of an application made under section 280, the court is satisfied that the applicant

- (a) acquired in good faith the interest in the thing before the contravention occurred;
- (b) is innocent of any complicity and of any collusion in respect of the contravention; and
- (c) exercised all reasonable care to satisfy themselves that any person likely to have possession of the thing was not likely to use it in connection with a contravention of this Act.

282. Appeal — An applicant or the Crown may appeal an order made under section 281 to a court having appellate jurisdiction in other cases decided by the court that made the order and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the appellate court.

283.(1) Delivery to applicant — If an applicant's interest in a seized thing is established under section 278, 281 or 282, the Minister shall, on the request of the applicant, direct that

- (a) the thing be given to the applicant; or
- (b) an amount calculated on the basis of the interest of the applicant in the thing as established be paid to the applicant.

(2) **Limit on amount paid** — The total amount paid under paragraph (1)(b) in respect of a thing shall, if it was sold or otherwise disposed of under this Act, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the thing and, if there are no proceeds of a disposition of a thing under this Act, no payment shall be made under that paragraph in respect of the thing.

Collection

284.(1) Debts to Her Majesty — Any duty, interest or other amount payable under this Act is a debt due to Her Majesty and is recoverable in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Act.

(2) **Limitation** — No proceedings for the recovery of an amount of duty, interest or other amount payable by a person under this Act shall be commenced in a court

- (a) in the case of an amount that may be assessed under this Act, unless at the time the action is commenced the person has been or may be assessed for that amount; and
- (b) in any other case, more than four years after the person became liable to pay the amount.

(3) **Interest on judgments** — If a judgment is obtained for any duty, interest or other amount payable under this Act, including a certificate registered under section 288, the provisions of this Act by which interest is payable for failure to pay an amount apply, with any modifications that the circumstances require, to the failure to pay the judgment debt, and the interest is recoverable in like manner as the judgment debt.

(4) **Litigation costs** — If an amount is payable by a person to Her Majesty because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, sections 285 and 288 to 294 apply to the amount as if the amount were owing by the person on account of duty payable by the person under this Act.

285.(1) Security — The Minister may, if the Minister considers it advisable, accept security in an amount and a form satisfactory to the Minister for payment of any amount that is or may become payable under this Act.

(2) **Surrender of excess security** — If a person who has furnished security, or on whose behalf security has been furnished, under this section requests in writing that the Minister surrender the security or any part of it, the Minister must surrender the security to the extent that its value exceeds the amount, at the time the request is received by the Minister, of any duty, interest or other amount for the payment of which it was furnished.

286.(1) Collection restrictions — If a person is liable for the payment of an amount under this Act, the Minister shall not, for the purpose of collecting the amount, take any of the following actions until the end of 90 days after the date of a notice of assessment under this Act or a notice of penalty under section 254 is issued in respect of the amount:

- (a) commence legal proceedings in a court;
- (b) certify the amount under section 288;
- (c) require a person to make a payment under subsection 289(1);
- (d) require an institution or a person to make a payment under subsection 289(2);
- (e) require the retention of the amount by way of deduction or set-off under section 290;
- (f) require a person to turn over moneys under subsection 292(1); or
- (g) give a notice, issue a certificate or make a direction under subsection 293(1).

(2) **No action after service of notice of objection** — If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) until the end of 90 days after the date of the notice to the person that the Minister has confirmed or varied the assessment.

(3) **No action after request for decision** — If a person has requested a decision of the Minister under section 271 in respect of a penalty imposed under section 254, the Minister shall not, for the purpose of collecting the penalty, take any of the actions described in subsection (1) until the end of 90 days after the date of the decision.

(4) **No action after making appeal to Tax Court** — If a person has appealed to the Tax Court from an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) before the day on which a copy of the decision of the Court is mailed to the person or the day on which the person discontinues the appeal, whichever is the earlier.

(5) **No action after making appeal to Federal Court** — If a person has appealed to the Federal Court from a decision of the Minister under section 273 in respect of a penalty imposed under section 254, the Minister shall not, for the purpose of collecting the penalty, take any of the actions described in subsection (1) before the day on which a copy of the decision of the Court is mailed to the person or the day on which the person discontinues the appeal, whichever is the earlier.

(6) **No action pending determination by court** — If a person has agreed under subsection 204(1) that a question should be determined by the Tax Court, or if a person is served with a copy of an application made under subsection 205(1) to that Court for the determination of a question, the Minister shall not take any of the actions described in subsection (1) for the purpose of collecting that part of an amount assessed, the liability for payment of which will be affected by the determination of the question, before the day on which the question is determined by the Court.

(7) **Action after judgment** — Despite any other provision in this section, if a person has served a notice of objection under this Act to an assessment or has appealed to the Tax Court from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same as that raised in the objection or appeal of the person, the Minister may take any of the actions described in subsection (1) for the purpose of collecting the amount assessed, or a part of it, determined in a manner consistent with the judgment of the Court in the other action at any time after the Minister notifies the person in writing that the judgment has been given by the Court in the other action.

(8) **No restriction on collection of large amounts** — Despite subsections (1) to (7), if, at any time, the total of all amounts that a person has been assessed under this Act and that remain unpaid exceeds \$1,000,000, the Minister may collect up to 50% of the total.

287.(1) Authorization to proceed without delay — Despite section 286, if, on ex parte application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a person would be jeopardized by a delay in the collection of the amount, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take without delay any of the actions described in subsection 286(1) with respect to the amount.

(2) **Notice of assessment not sent** — An authorization under subsection (1) in respect of an amount assessed may be granted by a judge even though a notice of assessment in respect of that amount has not been sent to the person at or before the time the application is made

if the judge is satisfied that the receipt of the notice of assessment by the person would likely further jeopardize the collection of the amount, and for the purposes of sections 284, 288 to 290, 292 and 293, the amount in respect of which an authorization is so granted is deemed to be an amount payable under this Act.

(3) **Affidavits** — Statements contained in an affidavit of a person filed in the context of an application under this section may be based on the belief of the person.

(4) **Service of authorization and of notice of assessment** — An authorization granted under this section in respect of a person shall be served by the Minister on the person within 72 hours after it is granted unless the judge orders the authorization to be served at some other time specified in the authorization. If a notice of assessment has not been sent to the person at or before the time of the application, the notice of assessment shall be served together with the authorization.

(5) **How service effected** — For the purposes of subsection (4), service on a person shall be effected by

- (a) personal service on the person; or
- (b) service in accordance with the directions, if any, of a judge.

(6) **Application to judge for direction** — If service on a person cannot reasonably be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

(7) **Review of authorization** — If a judge of a court has granted an authorization under this section in respect of a person, the person may, on six clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

(8) **Limitation period for review application** — An application under subsection (7) shall be made

- (a) within 30 days after the authorization was served on the person in accordance with this section; or
- (b) within such further time as a judge may allow, on being satisfied that the application was made as soon as practicable.

(9) **Hearing in camera** — An application under subsection (7) may, on the application of the person, be heard in camera, if the person establishes to the satisfaction of the judge that the circumstances of the case justify in camera proceedings.

(10) **Disposition of application** — On an application under subsection (7), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make any other order the judge considers appropriate.

(11) **Directions** — If any question arises as to the course to be followed in connection with anything done or being done under this section and there is no direction in this section with respect to it, a judge may give any direction the judge considers appropriate.

(12) **No appeal from review order** — No appeal lies from an order of a judge made under subsection (10).

288.(1) Certificates — Any duty, interest or other amount payable by a person (in this section referred to as the "debtor") under this Act, or any part of the duty, interest or amount, that has not been paid as and when required under this Act may be certified by the Minister as an amount payable by the debtor.

(2) **Registration in court** — On production to the Federal Court, a certificate in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such.

(3) **Costs** — All reasonable costs and charges incurred or paid for the registration in the Court of a certificate or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

(4) **Charge on property** — A document issued by the Federal Court evidencing a registered certificate in respect of a debtor, a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor, in the same manner as a document evidencing

- (a) a judgment of the superior court of the province against a person for a debt owing by the person, or
- (b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

(5) **Creation of charge** — If a memorial has been filed, registered or otherwise recorded under subsection (4),

- (a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in such property, held by the debtor, or
- (b) such property or interest in the property is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), and the charge, lien, priority or binding interest created shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

(6) Proceedings in respect of memorial — If a memorial is filed, registered or otherwise recorded in a province under subsection (4), proceedings may be taken in the province in respect of the memorial, including proceedings

- (a) to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of
 - (i) the filing, registration or other recording of the memorial, and
 - (ii) proceedings taken to collect the amount,
- (b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,
- (c) to cancel or withdraw the memorial wholly or in respect of any of the property or interests affected by the memorial, or
- (d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property or interest affected by the memorial,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), except that, if in any such proceeding or as a condition precedent to any such proceeding, any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or by a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or by a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or by a judge or official of the court.

(7) Presentation of documents — If

- (a) a memorial is presented for filing, registration or other recording under subsection (4), or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (6), to any official of a property registry system of a province, or
- (b) access is sought to any person, place or thing in a province to make the filing, registration or other recording,

the memorial or document shall be accepted for filing, registration or other recording or the access shall be granted, as the case may be, in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b) for the purpose of a like proceeding, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

(8) Sale, etc. — Despite any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest on the amount or costs, but if that consent is subsequently given, any property that would have been affected by such a process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be.

(9) Completion of notices, etc. — If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, because of subsection (8), be so set out without the written consent of the Minister, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when that consent of the Minister is given, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person, having complied with this subsection, is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

(10) Application for an order — A sheriff or other person who is unable, because of subsection (8) or (9), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an ex parte application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

(11) Deemed security — If a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial under subsection (4) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

- (a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and
- (b) to also be a claim referred to in paragraph 86(2)(a) of that Act.

(12) **Details in certificates and memorials** — Despite any law of Canada or of the legislature of a province, in any certificate in respect of a debtor, any memorial evidencing a certificate or any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

(a) to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total; and

(b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the prescribed rate under this Act applicable from time to time on amounts payable to the Receiver General, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any period.

289.(1) Garnishment — If the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to pay an amount under this Act (in this section referred to as a "debtor"), the Minister may, by notice in writing, require the person to pay without delay, if the money is immediately payable, and in any other case, as and when the money becomes payable, the money otherwise payable to the debtor in whole or in part to the Receiver General on account of the debtor's liability under this Act.

(2) **Garnishment of loans or advances** — Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

(a) a bank, credit union, trust company or other similar person (in this section referred to as the "institution") will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or

(b) a person, other than an institution, will loan or advance money to, or make a payment on behalf of, a debtor who the Minister knows or suspects

(i) is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or

(ii) if that person is a corporation, is not dealing at arm's length with that person,

the Minister may, by notice in writing, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the debtor's liability under this Act the money that would otherwise be so loaned, advanced or paid.

(3) **Effect of receipt** — A receipt issued by the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

(4) **Effect of requirement** — If the Minister has, under this section, required a person to pay to the Receiver General on account of the liability under this Act of a debtor money otherwise payable by the person to the debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the debtor until the liability under this Act is satisfied, and operates to require payments to the Receiver General out of each such payment of any amount that is stipulated by the Minister in a notice in writing.

(5) **Failure to comply** — Every person who fails to comply with a requirement under subsection (1) or (4) is liable to pay to Her Majesty an amount equal to the amount that the person was required under that subsection to pay to the Receiver General.

(6) **Other failures to comply** — Every institution or person that fails to comply with a requirement under subsection (2) with respect to money to be loaned, advanced or paid is liable to pay to Her Majesty an amount equal to the lesser of

(a) the total of money so loaned, advanced or paid, and

(b) the amount that the institution or person was required under that subsection to pay to the Receiver General.

(7) **Assessment** — The Minister may assess any person for any amount payable under this section by the person to the Receiver General and, if the Minister sends a notice of assessment, sections 188 to 205 apply with any modifications that the circumstances require.

(8) **Time limit** — An assessment of an amount payable under this section by a person to the Receiver General shall not be made more than four years after the notice from the Minister requiring the payment was received by the person.

(9) **Effect of payment as required** — If an amount that would otherwise have been advanced, loaned or paid to or on behalf of the debtor is paid by a person to the Receiver General in accordance with a notice from the Minister issued under this section or with an assessment under subsection (7), the person is deemed for all purposes to have advanced, loaned or paid the amount to or on behalf of the debtor.

290. Recovery by deduction or set-off — If a person is indebted to Her Majesty under this Act, the Minister may require the retention by way of deduction or set-off of any amount that the Minister may specify out of any amount that may be or become payable to that person by Her Majesty.

291. Acquisition of debtor's property — For the purpose of collecting debts owed by a person to Her Majesty under this Act, the Minister may purchase or otherwise acquire any interest in the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and may dispose of any interest so acquired in any manner that the Minister considers reasonable.

292.(1) Money seized from debtor — If the Minister has knowledge or suspects that a person is holding money that was seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person who is liable to pay any duty, interest or other amount under this Act (in this section referred to as the "debtor") and that is restorable to the debtor, the Minister may in writing require the person to turn over the money otherwise restorable to the debtor, in whole or in part, to the Receiver General on account of the debtor's liability under this Act.

(2) **Receipt of Minister** — A receipt issued by the Minister for money turned over is a good and sufficient discharge of the requirement to restore the money to the debtor to the extent of the amount so turned over.

293.(1) Seizure - failure to pay duty, etc. — If a person fails to pay duty, interest or other amount as required under this Act, the Minister may in writing give 30 days notice to the person, addressed to their last known address, of the Minister's intention to direct that the person's things be seized and disposed of. If the person fails to make the payment before the expiry of the 30 days, the Minister may issue a certificate of the failure and direct that the person's things be seized.

(2) **Disposition** — Things that have been seized under subsection (1) shall be kept for 10 days at the expense and risk of the owner. If the owner does not pay the amount due together with all expenses within the 10 days, the Minister may dispose of the things in a manner the Minister considers appropriate in the circumstances.

(3) **Proceeds of disposition** — Any surplus resulting from a disposition, after deduction of the amount owing and all expenses, shall be paid or returned to the owner of the things seized.

(4) **Exemptions from seizure** — Anything of any person in default that would be exempt from seizure under a writ of execution issued by a superior court of the province in which the seizure is made is exempt from seizure under this section.

294.(1) Person leaving Canada or defaulting — If the Minister suspects that a person has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice to the person served personally or sent by registered or certified mail addressed to their last known address, demand payment of any amount for which the person is liable under this Act or would be so liable if the time for payment had arrived, and the amount shall be paid without delay despite any other provision of this Act.

(2) **Seizure** — If a person fails to pay an amount required under subsection (1), the Minister may direct that things of the person be seized, and subsections 293(2) to (4) apply, with any modifications that the circumstances require.

295.(1) Liability of directors — If a corporation fails to pay any duty or interest as and when required under this Act, the directors of the corporation at the time it was required to pay the duty or interest are jointly and severally or solidarily liable, together with the corporation, to pay the duty or interest and any interest that is payable on the duty or interest under this Act.

(2) **Limitations** — A director of a corporation is not liable unless

(a) a certificate for the amount of the corporation's liability has been registered in the Federal Court under section 288 and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or

(c) 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 of the corporation's liability has been proved within six months after the date of the assignment or receiving order.

(3) **Diligence** — A director of a corporation is not liable for a failure under subsection (1) if the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) **Assessment** — The Minister may assess any person for any amount of duty or interest payable by the person under this section and, if the Minister sends a notice of assessment, sections 188 to 205 apply with any modifications that the circumstances require.

(5) **Time limit** — An assessment of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person ceased to be a director of the corporation.

(6) **Amount recoverable** — If execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(7) **Preference** — If a director of a corporation pays an amount in respect of the corporation's liability that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference to which Her Majesty would have been entitled had the amount not been so paid, and if a certificate that relates to the amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is empowered to make.

(8) **Contribution** — A director who satisfies a claim under this section is entitled to contribution from the other directors who were liable for the claim.

296.(1) Compliance by unincorporated bodies — If any duty, interest or other amount is required to be paid or any other thing is required to be done under this Act by a person (in this section referred to as the "body") that is not an individual, a corporation or a partnership, it shall be the joint and several or solidary liability and responsibility of

- (a) every member of the body holding office as president, chairperson, treasurer, secretary or similar officer of the body,
- (b) if there are no such officers of the body, every member of any committee having management of the affairs of the body, and
- (c) if there are no such officers of the body and no such committee, every member of the body,

to pay that amount of duty, interest or other amount or to comply with the requirement, and if the amount is paid or the requirement is fulfilled by an officer of the body, a member of such a committee or a member of the body, it shall be considered as compliance with the requirement.

(2) **Assessment** — The Minister may assess any person for any amount for which the person is liable under this section and, if the Minister sends a notice of assessment, sections 188 to 205 apply with any modifications that the circumstances require.

(3) **Limitation** — An assessment of a person shall not

- (a) include any amount that the body was liable to pay before the person became jointly and severally or solidarily liable;
- (b) include any amount that the body became liable to pay after the person ceased to be jointly and severally or solidarily liable; or
- (c) be made more than two years after the person ceased to be jointly and severally or solidarily liable unless the person was grossly negligent in the carrying out of any duty or obligation imposed on the body by or under this Act or made, or participated in, assented to or acquiesced in the making of, a false statement or omission in a return, application, form, certificate, statement, invoice or answer made by the body.

297.(1) Liability re transfers not at arm's length — If at any time a person transfers property, either directly or indirectly, by a trust or any other means, to

- (a) their spouse or common-law partner or an individual who has since become their spouse or common-law partner,
- (b) an individual who was under 18 years of age, or
- (c) another person with whom the transferor was not dealing at arm's length,

the transferee and transferor are jointly and severally or solidarily liable to pay an amount equal to the lesser of

- (d) the amount determined by the formula

$$A - B$$

where

A is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property, and

B is the amount, if any, by which the total of all amounts, if any, the transferee was assessed under subsection 160(2) of the *Income Tax Act* or subsection 325(2) of the *Excise Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amounts so assessed, and

- (e) the total of all amounts each of which is

- (i) an amount that the transferor is liable to pay under this Act in respect of the fiscal month in which the property was transferred or any preceding fiscal month, or
- (ii) interest for which the transferor is liable as of that time.

However, nothing in this subsection limits the liability of the transferor under any other provision of this Act.

(2) **Fair market value of undivided interest** — For the purposes of this section, the fair market value at any time of an undivided interest in a property, expressed as a proportionate interest in the property, is, subject to subsection (5), deemed to be equal to the same proportion of the fair market value of the property at that time.

(3) **Assessment** — The Minister may at any time assess a transferee in respect of any amount payable by reason of this section, and, if the Minister sends a notice of assessment, sections 188 to 205 apply with any modifications that the circumstances require.

(4) **Rules applicable** — If a transferor and transferee have, by reason of subsection (1), become jointly and severally or solidarily liable in respect of all or part of the liability of the transferor under this Act, the following rules apply:

(a) a payment by the transferee on account of the transferee's liability shall, to the extent of the payment, discharge the joint liability; and

(b) a payment by the transferor on account of the transferor's liability only discharges the transferee's liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, under subsection (1), made jointly and severally or solidarily liable.

(5) **Special transfers to spouse or common-law partner** — Despite subsection (1), if at any time an individual transfers property to their spouse or common-law partner under a decree, order or judgment of a competent tribunal or under a written separation agreement and, at that time, the individual and their spouse or common-law partner were separated and living apart as a result of a breakdown of their marriage or common-law partnership, for the purposes of paragraph (1)(d), the fair market value at that time of the property so transferred is deemed to be nil. However, nothing in this subsection limits the liability of the individual under any other provision of this Act.

(6) **Definitions** — The following definitions apply in this section.

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year.

"common-law partnership" means the relationship between two persons who are common-law partners of each other.

Evidence and Procedure

298. Venue — A prosecution for an offence under this Act may be instituted, heard and determined in the place where the offence was committed or the subject-matter of the prosecution arose, where the accused was apprehended or where the accused happens to be, or is carrying on business.

299.(1) Service — If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that

(a) is a partnership, the notice or document may be addressed to the name of the partnership;

(b) is a society, club, association, organization or other body, the notice or document may be addressed to the name of the body; and

(c) carries on business under a name or style other than the name of the person, the notice or document may be addressed to the name or style under which the person carries on business.

(2) **Personal service** — If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that carries on a business, the notice or document is deemed to have been validly served, issued or sent if it is

(a) in the case of a person that is a partnership, served personally on one of the partners or left with an adult person employed at the place of business of the partnership; or

(b) in any other case, left with an adult person employed at the place of business of the person.

300.(1) Sending by mail — For the purposes of this Act and subject to subsection (2), anything sent by registered, certified or first class mail is deemed to have been received by the person to whom it was sent on the day it was mailed.

(2) **Paying by mail** — A person who is required under this Act to pay an amount is deemed not to have paid it until it is received by the Receiver General.

301.(1) Proof of service by mail — If, under this Act, provision is made for sending by mail a request for information, a notice or a demand, an affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the request, notice or demand if the affidavit sets out that

(a) the officer has knowledge of the facts in the particular case;

(b) such a request, notice or demand was sent by registered or certified mail on a specified day to a specified person and address; and

(c) the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion of the certificate and a true copy of the request, notice or demand.

(2) **Proof of personal service** — If, under this Act, provision is made for personal service of a request for information, a notice or a demand, an affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the personal service and of the request, notice or demand if the affidavit sets out that

(a) the officer has knowledge of the facts in the particular case;

(b) such a request, notice or demand was served personally on a named day on the person to whom it was directed; and

(c) the officer identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand.

(3) **Proof of failure to comply** — If, under this Act, a person is required to make a return, an application, a statement, an answer or a certificate, an affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after a careful examination and search of the records the officer has been unable to find in a given case that the return, application, statement, answer or certificate has been made by that person, is evidence that in that case the person did not make the return, application, statement, answer or certificate.

(4) **Proof of time of compliance** — If, under this Act, a person is required to make a return, an application, a statement, an answer or a certificate, an affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after careful examination of the records the officer has found that the return, application, statement, answer or certificate was filed or made on a particular day, is evidence that it was filed or made on that day.

(5) **Proof of documents** — An affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document attached to the affidavit is a document or true copy of a document made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

(6) **Proof of no appeal** — An affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Agency and that an examination of the records shows that a notice of assessment was mailed or otherwise sent to a person on a particular day under this Act and that, after careful examination and search of the records, the officer has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed for an objection or appeal to be filed under this Act, is evidence of the statements contained in the affidavit.

(7) **Presumption** — If evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Agency, it is not necessary to prove the signature of the person or that the person is such an officer, nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

(8) **Proof of documents** — Every document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister, the Commissioner or an officer authorized to exercise the powers or perform the duties of the Minister under this Act is deemed to be a document signed, made and issued by the Minister, the Commissioner or the officer, unless it has been called into question by the Minister or a person acting for the Minister or for Her Majesty.

(9) **Mailing** — If a notice or demand that the Minister is required or authorized under this Act to send or mail to a person is mailed to the person, the day of mailing is deemed to be the date of the notice or demand.

(10) **Date when assessment made** — If a notice of assessment has been sent by the Minister as required under this Act, the assessment is deemed to have been made on the day of mailing of the notice of assessment.

(11) **Proof of return** — In a prosecution for an offence under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by or on behalf of that person, is evidence that the return, application, certificate, statement or answer was filed or delivered by or on behalf of that person or was made or signed by or on behalf of that person.

(12) **Proof of return - print-outs** — For the purposes of this Act, a document presented by the Minister purporting to be a print-out of the information in respect of a person received under section 166 by the Minister shall be received as evidence and, in the absence of evidence to the contrary, is proof of the return filed by the person under that section.

(13) **Proof of return - production of returns, etc.** — In a proceeding under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed, delivered, made or signed by or on behalf of a person, is evidence that the return, application, certificate, statement or answer was filed, delivered, made or signed by or on behalf of that person.

(14) **Evidence** — In a prosecution for an offence under this Act, an affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be paid to the Receiver General on account of duty, interest or other amount has not been received by the Receiver General, is evidence of the statements contained in the affidavit.

(15) **Probative force of copy** — Any copy of an original record made under section 262 that is purported to be certified by the Minister or an officer to be a copy of the original record is evidence of the nature and content of the original record and has the same probative force as the original record would have if it were proven in the ordinary way.

302. Certificate of analysis — An analyst who has analysed or examined a thing or a sample of it under this Act may issue a certificate or report setting out the results of the analysis or examination.

303.(1) Certificate or report of analyst as proof — Subject to subsections (2) and (3), a certificate or report purporting to be signed by an analyst stating that the analyst has analysed or examined anything to which this Act applies and stating the results of the analysis or examination is admissible in evidence in a prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.

(2) **Notice** — The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate or report.

(3) **Attendance of analyst** — The party against whom the certificate or report is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination.

PART 7

REGULATIONS

304.(1) Regulations - Governor in Council — The Governor in Council may make regulations

- (a) respecting any requirements and conditions that must be met by a person to be issued or to hold a licence or a registration;
- (b) respecting the activities that a licensee or registrant may carry on and the premises where those activities may be carried on;
- (c) respecting the types of security that are acceptable for the purposes of paragraph 23(3)(b) and the manner by which the amount of the security is to be determined but that amount must not be less than \$5,000;
- (d) respecting the duration, amendment, suspension, renewal, cancellation or reinstatement of licences and registrations;
- (e) prescribing facilities, equipment and personnel that must be provided by a licensee or registrant at the premises specified by the Minister under subsection 23(3);
- (f) respecting the information to be provided on tobacco products and packaged alcohol and containers of tobacco products and packaged alcohol;
- (g) designating certain classes of goods as ships' stores for use on board a conveyance of a prescribed class, including a class based on
 - (i) the physical attributes, functions or legal descriptions of conveyances,
 - (ii) areas within which conveyances voyage,
 - (iii) requirements, or limitations, related to voyages of conveyances, or
 - (iv) any combination of the bases mentioned in subparagraphs (i) to (iii);
- (h) limiting the quantity of goods referred to in paragraph (g) that may be used as described in that paragraph during any prescribed period or periods;
- (i) respecting the entry and removal of tobacco products or alcohol from an excise warehouse or a special excise warehouse;
- (j) prescribing the fees to be paid for the examination or re-examination of instruments under section 148 and for any other service or anything provided by the Minister in relation to that section;
- (k) prescribing the fees or the manner of determining any fees to be paid for a licence or registration;
- (l) requiring any class of persons to make returns respecting any class of information required in connection with the administration or enforcement of this Act;
- (m) requiring any person to provide the Minister with the person's Social Insurance Number;
- (n) respecting the sale under section 266 of alcohol, tobacco products, raw leaf tobacco or specially denatured alcohol seized under section 260;
- (o) prescribing any matter or thing that by this Act is to be or may be prescribed; and
- (p) generally to carry out the purposes and provisions of this Act.

(2) **Effect** — A regulation made under this Act has effect from the day it is published in the *Canada Gazette* or at any later time that may be specified in the regulation, unless it provides otherwise and

- (a) has a relieving effect only;
- (b) corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act;
- (c) is consequential on an amendment to this Act that is applicable before the day on which the regulation is published in the *Canada Gazette*; or
- (d) gives effect to a budgetary or other public announcement, in which case the regulation shall not, unless paragraph (a), (b) or (c) applies, have effect before the day on which the announcement was made.

PART 8

TRANSITIONAL PROVISIONS AND CONSEQUENTIAL, RELATED AND COORDINATING AMENDMENTS

Transitional Provisions

305. Meaning of "implementation date" — In sections 306 to 320, "implementation date" means the day on which Parts 3 and 4 come into force.

306. Transitional treatment of duties on packaged spirits — The following rules apply to packaged spirits on which a duty, at a rate determined by the application of section 1 of Part I of the schedule to the *Excise Act*, was imposed under that Act or levied under the *Customs Tariff* but that had not become payable before the implementation date:

- (a) as of that day, the duty is relieved;
- (b) as of that day, the *Excise Act* ceases to apply in respect of the spirits;
- (c) in the case of imported packaged spirits that have not been released under the *Customs Act*, this Act, the *Customs Act* and the *Customs Tariff* apply in respect of them as though they were imported on that day; and
- (d) in the case of any other packaged spirits, this Act applies in respect of them as though
 - (i) they were produced and packaged in Canada on that day by the person having possession of them immediately before that day and the person were permitted under this Act to produce and package them, and
 - (ii) if the spirits are in the possession of a duty free shop or an accredited representative or delivered as ships' stores in accordance with the *Ships' Stores Regulations*, they had been entered into an excise warehouse and then removed from the warehouse in accordance with paragraph 147(1)(a) on that day.

307.(1) Transitional treatment of duties on bulk spirits — The following rules apply to bulk spirits on which a duty, at a rate determined by the application of section 1 of Part I of the schedule to the *Excise Act*, was imposed under that Act or levied under the *Customs Tariff* but that had not become payable before the implementation date:

- (a) as of that day, the duty is relieved;
- (b) as of that day, the *Excise Act* ceases to apply in respect of the spirits;
- (c) in the case of imported bulk spirits that have not been released under the *Customs Act*, this Act, the *Customs Act* and the *Customs Tariff* apply in respect of them as though they were imported on that day; and
- (d) in the case of any other bulk spirits, this Act applies in respect of them as though they were produced in Canada on that day by the person having possession of them immediately before that day.

(2) Transitional treatment of bulk spirits imported for bottling or blending — The following rules apply to bulk spirits on which a duty, at a rate determined by the application of section 1 of Part I of the schedule to the *Excise Act*, was levied under the *Customs Tariff* and remitted under the *Distilled Spirits for Bottling in Bond Remission Order* or the *Imported Spirits for Blending Remission Order* before the implementation date:

- (a) as of that day, the duty imposed on the spirits under subsection 135(1) of the *Excise Act* when they were entered into a distillery is relieved;
- (b) as of that day, the *Excise Act* ceases to apply in respect of the spirits; and
- (c) this Act applies in respect of them as though they were produced in Canada on that day by the person having possession of them immediately before that day.

308. Transitional treatment of excise taxes on wine — The following rules apply to wine on which tax was imposed under section 27 of the *Excise Tax Act* but had not become payable before the implementation date:

- (a) as of that day, the tax is relieved;
- (b) as of that day, Parts III, VI, and VII of the *Excise Tax Act* cease to apply in respect of the wine;
- (c) in the case of imported wine that has not been released under the *Customs Act*, this Act, the *Customs Act* and the *Customs Tariff* apply in respect of the wine as though it were imported on that day;
- (d) in the case of bulk wine to which paragraph (c) does not apply, this Act applies in respect of it as though it were produced in Canada on that day
 - (i) if the wine is located in a ferment-on-premises facility or at the residence of an individual, by the individual who owned the wine immediately before that day, or
 - (ii) in any other case, by the person having possession of it immediately before that day; and
- (e) in the case of wine to which neither paragraph (c) nor (d) apply, this Act applies in respect of it as though
 - (i) it were produced and packaged in Canada on that day by the person having possession of it immediately before that day and the person were permitted under this Act to produce and package it, and

(ii) in the case of wine in the possession of a duty free shop or an accredited representative or delivered as ships' stores in accordance with the *Ships' Stores Regulations*, it had been entered into an excise warehouse and then removed from the warehouse in accordance with paragraph 147(1)(a) on that day.

309.(1) Transitional treatment of packaged wine in inventory of small manufacturers — If tax under Part IV of the *Excise Tax Act* is not payable in respect of packaged wine because it was produced by a person who is exempt from payment of excise tax under the *Small Manufacturers or Producers Exemption Regulations*, subsection 135(1) does not apply to the wine if it was packaged before the implementation date.

(2) Determination of sales for transitional purposes — For the period beginning on the implementation date and ending on the day that is one year after that day, the words "products subject to duty under subsection (1), or would have been so subject to duty in the absence of this subsection," in paragraph 135(2)(b) shall be read as "goods referred to in paragraph 2(1)(a) of the *Small Manufacturers or Producers Exemption Regulations*".

310.(1) Application of Act to tax-paid packaged wine — If packaged wine on which tax imposed under section 27 of the *Excise Tax Act* became payable before the implementation date is entered into the excise warehouse of an excise warehouse licensee on or before the end of six months after that day, this Act applies in respect of the wine as though it were produced and packaged in Canada by the licensee and the licensee were permitted under this Act to produce and package it on the day it is entered into the warehouse.

(2) Refund of excise tax paid on packaged wine — If the tax imposed under section 27 of the *Excise Tax Act* in respect of the wine entered into the warehouse has been paid, the licensee may apply to the Minister for a refund of the tax.

(3) Limitation — No refund shall be paid under this section unless the application for the refund is filed with the Minister in the prescribed form and manner within one year after the implementation date.

311.(1) Application of Act to tax-paid bulk wine — If bulk wine on which tax imposed under section 27 of the *Excise Tax Act* became payable before the implementation date is entered into the specified premises of a licensed user on that day, this Act applies in respect of the wine as though it were produced in Canada on that day by the user and the user were permitted to produce the wine.

(2) Refund of excise tax paid on bulk wine — If the tax imposed under section 27 of the *Excise Tax Act* in respect of the wine entered into the specified premises of a licensed user has been paid, the user may apply to the Minister for a refund of the tax.

(3) Limitation — No refund shall be paid under this section unless the application for the refund is filed with the Minister in the prescribed form and manner within one year after the implementation date.

312.(1) Definitions — The definitions in this subsection apply in this section.

"bonded manufacturer" means a person who holds, before the implementation date, a licence under subsection 182(1) of the *Excise Act*.

"licensed pharmacist" means a person who holds, before the implementation date, a licence under subsection 136(2) of the *Excise Act*.

(2) Application of Act to spirits in possession of bonded manufacturer or licensed pharmacist — If, on the implementation date, a bonded manufacturer or a licensed pharmacist possesses, in accordance with their licence, spirits that were produced before that day, the following rules apply:

(a) as of that day, the *Excise Act* ceases to apply in respect of the spirits; and

(b) this Act applies in respect of them as though

(i) in the case of bulk spirits, the spirits were produced in Canada on that day by the manufacturer or the pharmacist and, if they are a licensed user, they were permitted to produce the spirits, or

(ii) in the case of packaged spirits, the spirits were produced and packaged in Canada on that day by the manufacturer or the pharmacist and they were permitted to produce and package the spirits.

(3) Refund of duty paid by bonded manufacturer or licensed pharmacist — If, on the implementation date, a bonded manufacturer or licensed pharmacist possesses spirits on which duty at a rate determined by the application of subsection 1(2) or (3) of Part I of the schedule to the *Excise Act* was paid, the manufacturer or pharmacist may apply to the Minister for a refund of the duty.

(4) Limitation — No refund shall be paid under this section unless the application for the refund is filed with the Minister in the prescribed form and manner within one year after the implementation date.

313. Application of Act to spirits to be used for scientific purposes — If a person described by any of paragraphs 135(2)(a) to (d) of the *Excise Act* possesses, on the implementation date, spirits in respect of which a drawback under subsection 135(2) of that Act is granted at any time, the following rules apply:

- (a) as of that day, the *Excise Act* ceases to apply in respect of the spirits;
- (b) this Act applies in respect of them as though
 - (i) in the case of bulk spirits, the spirits were produced in Canada on that day by the person and, if the person is a registered user, the person were permitted to produce the spirits, or
 - (ii) in the case of packaged spirits,
 - (A) the spirits were produced and packaged in Canada on that day by the person,
 - (B) the person were permitted to produce and package the spirits, and
 - (C) if the person is a registered user, the spirits were, on that day, entered into an excise warehouse and then removed from the warehouse in accordance with subparagraph 147(1)(a)(iii); and
- (c) if the spirits are contained in a special container and the person is a registered user
 - (i) the person shall, despite subsection 78(1), mark the container on that day, and
 - (ii) the container is deemed to have been entered into an excise warehouse and then removed from the warehouse in accordance with paragraph 147(2)(a) on that day.

Limitation

314. Application of Act to alcohol in bottle-your-own premises — The following rules apply to alcohol contained in a special container located on a person's bottle-your-own premises on the implementation date:

- (a) the person shall, despite subsections 78(1) and 83(1), mark the container on that day;
- (b) in the case of spirits, this Act applies in respect of them as though the duty, at a rate determined by the application of section 1 of Part I of the schedule to the *Excise Act*, that had become payable before that day in respect of them were imposed and, if the duty is paid, paid under this Act; and
- (c) in the case of wine,
 - (i) for the purposes of subsection 135(1), section 82 does not apply to the marking of the container under paragraph (a), and
 - (ii) this Act applies in respect of the wine as though the tax under section 27 of the *Excise Tax Act* that had become payable before that day in respect of it were a duty that was imposed and, if the tax is paid, paid under this Act.

315.(1) Removal of alcohol from customs bonded warehouse — If packaged alcohol is located in a customs bonded warehouse on the implementation date,

- (a) the alcohol shall be removed from the warehouse; and
- (b) any duty on the alcohol that is imposed under this Act or levied under section 21.2 of the *Customs Tariff* as a result of the operation of section 306 or 308 is payable on that day unless the alcohol is without delay entered into an excise warehouse.

(2) Exception — Subsection (1) does not apply if the alcohol in the customs bonded warehouse is to be

- (a) exported in accordance with this Act; or
- (b) delivered
 - (i) to an accredited representative for their personal or official use,
 - (ii) to a duty free shop for sale in accordance with the *Customs Act*,
 - (iii) as ships' stores in accordance with the *Ships' Stores Regulations*, or
 - (iv) to an air carrier that is licensed under section 69 or 73 of the *Canada Transportation Act* to operate an international air service.

316.(1) Transitional treatment of Canadian manufactured tobacco products — The following rules apply to a tobacco product manufactured in Canada before the implementation date:

- (a) if tax on the product imposed under section 23 of the *Excise Tax Act* had not become payable before that day,
 - (i) the tax is relieved,
 - (ii) if duty on the product imposed under the *Excise Act* had not become payable before that day, the duty is relieved, and

(iii) this Act applies in respect of the product as though it were manufactured in Canada on that day by the manufacturer to the same extent that the product was manufactured immediately before that day;

(b) if the product was stamped or marked under the *Excise Act*, the product is deemed to be stamped or marked, as the case may be, under this Act; and

(c) the *Excise Act* and Parts III, VI and VII of the *Excise Tax Act* cease to apply in respect of the product.

(2) **Refund of duty paid** — If duty imposed under the *Excise Act* on a tobacco product manufactured in Canada before the implementation date had become payable before that day but tax under section 23 of the *Excise Tax Act* had not become payable before that day, the manufacturer of the product may apply to the Minister for a refund of the duty.

(3) **Limitation** — No refund shall be paid under this section unless the application for the refund is filed with the Minister in the prescribed form and manner within one year after the implementation date.

317. Transitional treatment of imported tobacco products — The following rules apply to an imported tobacco product:

(a) if duty levied under section 21 of the *Customs Tariff* and tax imposed under section 23 of the *Excise Tax Act* on the product had not become payable before the implementation date,

(i) the duty and tax are relieved, and

(ii) this Act and the *Customs Act* apply in respect of the product as though it were imported into Canada on that day by the importer;

(b) if the product was stamped or marked under the *Excise Act*, the product is deemed to be stamped or marked, as the case may be, under this Act; and

(c) the *Excise Act* and Parts III, VI and VII of the *Excise Tax Act* cease to apply in respect of the product.

318. Transitional treatment of imported raw leaf tobacco — If, on the implementation date, a person possesses raw leaf tobacco that was imported before that day, this Act applies as though the person imported the tobacco on that day.

319. Removal of cigars from customs bonded warehouse — If cigars manufactured in Canada are located in a customs bonded warehouse on the implementation date, they shall be removed from the warehouse and entered into an excise warehouse on that day.

320.(1) Removal of tobacco products from bonding warehouse of manufacturer — If a tobacco product manufactured in Canada is, on the implementation date, located in a bonding warehouse of a person who is licensed under subsection 196(1) of the *Excise Act*, the product shall be removed from the warehouse and entered into an excise warehouse on that day.

(2) **Removal of tobacco products from bonding warehouse of authorized distributor** — If a tobacco product manufactured in Canada is, on the implementation date, located in a bonding warehouse of a person who is licensed under paragraph 50(1)(c) of the *Excise Act*, the product shall, on that day, be removed from the warehouse and

(a) entered into the person's special excise warehouse, if the person is a special excise warehouse licensee and the product is one that the person is permitted under this Act to distribute; or

(b) returned to the excise warehouse of the tobacco licensee who manufactured the product.

Consequential and Related Amendments

2000, c. 14

Budget Implementation Act, 2000

321.(1) The definition "tobacco product" in subsection 23(1) of the *Budget Implementation Act, 2000* is replaced by the following:

"tobacco product" has the meaning assigned by section 2 of the *Excise Act, 2001*.

(2) Paragraph (c) of the definition "alcoholic beverage" in subsection 23(1) of the Act is replaced by the following:

(c) wine, within the meaning assigned by section 2 of the *Excise Act, 2001*;

1999, c. 17

Canada Customs and Revenue Agency Act

322. Paragraph (a) of the definition "program legislation" in section 2 of the *Canada Customs and Revenue Agency Act* is replaced by the following:

(a) that the Governor in Council or Parliament authorizes the Minister, the Agency, the Commissioner or an employee of the Agency to administer or enforce, including the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Income Tax Act* and the *Special Import Measures Act*; or

323. Section 7 of the Act is replaced the following:

7. Designation of officers — The Minister may designate any person, or person within a class of persons, as an officer as defined in subsection 2(1) of the *Customs Act*, section 2 of the *Excise Act* or section 2 of the *Excise Act, 2001* to exercise any powers or perform any duties and functions of an officer under those Acts that the Minister may specify.

R.S., c. C-46

Criminal Code

R.S., c. 1 (2nd Supp.), s. 213(2) (Sch. II, s. 324 3(1))(F), s. 213(4) (Sch. IV, s. 1)(E)

324. Paragraph (d) of the definition "peace officer" in section 2 of the *Criminal Code* is replaced by the following:

(d) an officer or a person having the powers of a customs or excise officer when performing any duty in the administration of the *Customs Act*, the *Excise Act* or the *Excise Act, 2001*,

R.S., c. 1 (2nd Supp.), s. 325 213(3) (Sch. III, s. 1)

325. Subsection 78(2) of the Act is replaced by the following:

(2) **Definition of "civil aircraft"** — For the purposes of this section, "civil aircraft" means all aircraft other than aircraft operated by the Canadian Forces, a police force in Canada or persons engaged in the administration or enforcement of the *Customs Act*, the *Excise Act* or the *Excise Act, 2001*.

1993, c. 25, par. 94(b)

326. The reference to "section 126.1 (possession of property obtained by excise offences), 126.2 (laundering proceeds of excise offences), 158 (unlawful distillation of spirits) or 163 (unlawful selling of spirits) or subsection 233(1) (unlawful packaging or stamping) or 240(1) (unlawful possession or sale of manufactured tobacco or cigars) of the *Excise Act*" in the definition "offence" in section 183 of the Act is replaced by a reference to "section 214 (unlawful production, sale, etc., of tobacco or alcohol), 216 (unlawful possession of tobacco product), 218 (unlawful possession, sale, etc., of alcohol), 219 (falsifying or destroying records), 230 (possession of property obtained by excise offences) or 231 (laundering proceeds of excise offences) of the *Excise Act, 2001*".

1999, c. 5, s. 52

327. Paragraph (b.1) of the definition "enterprise crime offence" in section 462.3 of the Act is replaced by the following:

(b.1) an offence against section 214, 216, 218, 230 or 231 of the *Excise Act, 2001*, section 153, 159, 163.1 or 163.2 of the *Customs Act* or subsection 52.1(9) of the *Competition Act*, or

R.S., c. 1 (2nd Supp.)

Customs Act

1993, c. 25, s. 68

328.(1) The definitions "cigar" and "manufactured tobacco" in subsection 2(1) of the *Customs Act* are repealed.

1993, c. 25, s. 68; 1997, c. 36, s. 147(1)

(2) The definitions "duties" and "tobacco product" in subsection 2(1) of the Act are replaced by the following:

"duties" means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament, but, for the purposes of subsection 3(1), paragraphs 59(3) (b) and 65(1)(b), sections 69 and 73 and subsections 74(1), 75(2) and 76(1), does not include taxes imposed under Part IX of the *Excise Tax Act*;

"tobacco product" has the same meaning as in section 2 of the *Excise Act, 2001*;

1995, c. 41, s. 1(2)

(3) Paragraph (a) of the definition "designated goods" in subsection 2(1) of the Act is repealed.

(4) The definition "designated goods" in subsection 2(1) of the Act is amended by adding the following after paragraph (i):

(i.1) spirits,

(5) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:

"raw leaf tobacco" has the same meaning as in section 2 of the *Excise Act, 2001*;

"specially denatured alcohol" has the same meaning as in section 2 of the *Excise Act, 2001*;

"spirits" has the same meaning as in section 2 of the *Excise Act, 2001*;

"spirits licensee" has the same meaning as in section 2 of the *Excise Act, 2001*;

"tobacco licensee" has the same meaning as in section 2 of the *Excise Act, 2001*;

"wine" has the same meaning as in section 2 of the *Excise Act, 2001*;

"wine licensee" has the same meaning as in section 2 of *The Excise Act, 2001*.

1995, c. 41, s. 1(3)

(6) The definitions " "alcohol", "ethyl alcohol" and "spirits" " and "wine" in subsection 2(1.1) of the Act are repealed.

329. Subsection 3(1) of the Act is replaced by the following:

3. (1) Duties binding on Her Majesty — All duties or taxes levied on imported goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other law relating to customs are binding on Her Majesty in right of Canada or a province in respect of any goods imported by or on behalf of Her Majesty.

2001, c. 16, s. 2(1)

330. Paragraph 24(1)(c) of the Act is replaced by the following:

(c) as a duty free shop for the sale of goods free of certain duties or taxes levied on goods under the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other law relating to customs, to persons who are about to leave Canada

1993, c. 25, s. 71

331. Subsection 26(2) of the Act is replaced by the following:

(2) Definition — In subsection (1), "duties" means duties or taxes levied under the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other law relating to customs.

1995, c. 39, s. 168

332.(1) The portion of subsection 28(1) of the Act before paragraph (a) is replaced by the following:

28.(1) Liability of operator — The operator of a sufferance warehouse, bonded warehouse or duty free shop is liable for all duties or taxes levied under the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other law relating to customs on goods that have been received in the warehouse or duty free shop unless the operator proves that the goods

1993, c. 25, s. 72(1)

(2) Subsections 28(1.1) and (1.2) of the Act are repealed.

(3) The portion of subsection 28(2) of the Act before paragraph (a) is replaced by the following:

(2) The rates of duties or taxes payable on goods under subsection (1) shall

1993, c. 25, s. 72(2)

(4) Subsection 28(3) of the Act is replaced by the following:

(3) Definition of "duties" not to apply — The definition "duties" in subsection 2(1) does not apply for the purposes of subsections (1) and (2).

1997, c. 36, s. 152

333. Subsection 32.2(8) of the Act is replaced by the following:

(8) Duties — If a declaration of tariff classification is rendered incorrect by a failure referred to in subsection (6), for the purposes of paragraph (2)(b), duties do not include duties or taxes levied under the *Excise Act, 2001*, the *Excise Tax Act* or the *Special Import Measures Act*.

1992, c. 28, s. 6(1)

334. Section 33 of the Act is replaced by the following:

33.(1) Release prior to payment of duties — In prescribed circumstances, goods may be released prior to the payment of duties levied on them.

(2) Payment of duties — If goods are released under this section, the person who accounted for the goods under subsection 32(2) or (3) shall pay the duties levied on them within the prescribed time.

(3) Meaning of duties — In subsection (2), "duties" does not include the duties levied under

(a) subsection 21.1(1) of the *Customs Tariff*, if they are paid and collected in accordance with subsection 21.1(2) of that Act; or

(b) subsections 21.2(1) and (2) of the *Customs Tariff*, if they are paid and collected in accordance with subsection 21.2(3) of that Act.

335. Section 44 of the Act is replaced by the following:

44. *Ad valorem* rates of duty — If duties, other than duties or taxes levied under the *Excise Act, 2001* or the *Excise Tax Act*, are imposed on goods at a percentage rate, such duties shall be calculated by applying the rate to a value determined in accordance with sections 45 to 55.

336. Clause 48(5)(b)(ii)(B) of the Act is replaced by the following:

(B) any duties and taxes paid or payable by reason of the importation of the goods or sale of the goods in Canada, including, without limiting the generality of the foregoing, any duties or taxes levied on the goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other law relating to customs; and

1997, c. 36, s. 175(3)

337. Subsection 74(1.2) of the Act is replaced by the following:

(1.2) **Duties** — The duties that may be refunded under paragraph (1)(f) do not include duties or taxes levied under the *Excise Act, 2001*, the *Excise Tax Act* or the *Special Import Measures Act*.

338. Section 117 of the Act is renumbered as subsection 117(1) and is amended by adding the following:

(2) **No return of certain goods** — Despite subsection (1), if spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.

339. Section 119.1 of the Act is amended by adding the following after subsection (1):

(1.1) **Restriction** — Subject to the regulations, the sale under subsection (1) of

- (a) spirits or specially denatured alcohol may only be to a spirits licensee;
- (b) wine may only be to a wine licensee; and
- (c) raw leaf tobacco or a tobacco product may only be to a tobacco licensee.

340. The portion of subsection 142(1) of the Act before paragraph (a) is replaced by the following:

142.(1) Disposal of things abandoned or forfeit — Unless the thing is spirits, specially denatured alcohol, wine, raw leaf tobacco or a tobacco product, anything that has been abandoned to Her Majesty in right of Canada under this Act and anything the forfeiture of which is final under this Act shall

341. The Act is amended by adding the following after section 142:

142.1(1) Dealing with abandoned or forfeited alcohol, etc. — If spirits, specially denatured alcohol, wine, raw leaf tobacco or a tobacco product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it.

(2) **Restriction** — Subject to the regulations, the sale under subsection (1) of

- (a) spirits or specially denatured alcohol may only be to a spirits licensee;
- (b) wine may only be to a wine licensee; and
- (c) raw leaf tobacco or a tobacco product may only be to a tobacco licensee.

1993, c. 25, s. 89

342. Paragraph 163.1(1)(a) of the Act is replaced by the following:

- (a) the commission of an offence contrary to section 153 or under section 159, in relation to spirits, wine or tobacco products, or under section 163.2; or

1993, c. 25, s. 89

343. Paragraph 163.2(1)(a) of the Act is replaced by the following:

- (a) the commission of an offence contrary to section 153 or under section 159, in relation to spirits, wine or tobacco products; or

1993, c. 25, s. 89

344. Subsection 163.3(1) of the Act is replaced by the following:

163.3(1) Part XII.2 of *Criminal Code* applicable — Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings for an offence contrary to section 153 or under section 159, in relation to spirits, wine or tobacco products, or under section 163.1 or 163.2.

R.S., c. C-53

Customs and Excise Offshore Application Act

R.S., c. 1 (2nd Supp.), s. 345 213(3) (Sch. III, s. 2)

345. The portion of the definition "federal customs laws" in subsection 2(1) of the *Customs and Excise Offshore Application Act* after paragraph (c) is replaced by the following:

that relate to customs or excise, whether those Acts, regulations or rules come into force before or after June 30, 1983 and, for greater certainty but without restricting the generality of the foregoing, includes the following Acts, namely, the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Export and Import Permits Act*, the *Importation of Intoxicating Liquors Act* and the *Special Import Measures Act*;

1997, c. 36

Customs Tariff

2001, c. 16, s. 3(1)

346. Section 21 of the *Customs Tariff* is replaced by the following:

21. Definitions — The definitions in this section apply in sections 21.1 to

"beer" or "malt liquor" means beer or malt liquor, within the meaning of section 4 of the *Excise Act*, of tariff item No. 2202.90.10, heading No. 22.03 or tariff item No. 2206.00.80 or 2206.00.91, that is classified under that heading or tariff item or with the container in which it is imported.

"bulk" has the same meaning as in section 2 of the *Excise Act, 2001*.

"excise warehouse" has the same meaning as in section 2 of the *Excise Act, 2001*.

"excise warehouse licensee" has the same meaning as in section 2 of the *Excise Act, 2001*.

"licensed user" has the same meaning as in section 2 of the *Excise Act, 2001*.

"packaged" has the same meaning as in section 2 of the *Excise Act, 2001*.

"specified premises" has the same meaning as in section 2 of the *Excise Act, 2001*.

"spirits" means spirits, as defined in section 2 of the *Excise Act, 2001*,

(a) of an alcoholic strength by volume exceeding 22.9%, of tariff item No. 2204.10.90, 2204.21.32, 2204.21.49, 2204.29.32, 2204.29.49, 2204.30.90, 2205.10.30, 2205.90.30, 2206.00.19, 2206.00.22, 2206.00.39, 2206.00.49, 2206.00.72 or 2206.00.93, that are classified under that tariff item or with the container in which they are imported; or

(b) of heading No. 22.07 or 22.08, other than of tariff item No. 2207.20.11, 2207.20.12, 2207.20.90 or 2208.90.30, that are classified under that heading or with the container in which they are imported.

"wine" means wine, as defined in section 2 of the *Excise Act, 2001*, of heading No. 22.04, 22.05 or 22.06, other than of tariff item No. 2204.10.90, 2204.21.32, 2204.21.49, 2204.29.32, 2204.29.49, 2204.30.90, 2205.10.30, 2205.90.30, 2206.00.19, 2206.00.22, 2206.00.39, 2206.00.49, 2206.00.72, 2206.00.80, 2206.00.91 or 2206.00.93, that is classified under that heading or with the container in which it is imported.

21.1(1) Additional duty on bulk spirits — In addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there is levied on bulk spirits, at the time they are imported, an additional duty equal to the duty that would be imposed on the spirits under section 122 of the *Excise Act, 2001* if the spirits had been produced in Canada.

(2) **Duty payable under *Excise Act, 2001*** — The duty levied on bulk spirits shall be paid and collected under the *Excise Act, 2001*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duty were duty imposed on the spirits under that Act, and, for those purposes, that Act applies with any modifications that the circumstances require.

(3) **Limitation** — Despite subsection (2) and the *Excise Act, 2001*, the person who is liable for duty imposed under subsection (1) in respect of bulk spirits that have not been released under the *Customs Act* is the person who is liable to pay duties under the *Customs Act*.

21.2(1) Additional duty on packaged spirits — In addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there is levied on packaged spirits, at the time they are imported, and paid in accordance with the *Customs Act*, an additional duty equal to the duty that would be imposed on them under section 122 or 123 of the *Excise Act, 2001* if they had been produced and packaged in Canada.

(2) **Additional duty on packaged wine** — In addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there is levied on packaged wine, at the time it is imported, and paid in accordance with the *Customs Act*, an additional duty equal to the duty that would be imposed on it under section 135 of the *Excise Act, 2001* if it had been packaged in Canada.

(3) **Goods entered into warehouse or premises** — If, immediately after being released under the *Customs Act*, packaged spirits or wine is entered into the excise warehouse of the excise warehouse licensee or the specified premises of the licensed user who imported the spirits or wine, the duty levied on the spirits or wine under subsection (1) or (2) shall be paid and collected under the *Excise Act, 2001*. Interest and penalties shall be imposed, calculated, paid and collected under the *Excise Act, 2001* as if the duty were imposed under that Act, and, for those purposes, that Act applies with any modifications that the circumstances require.

21.3 Additional duty on beer — In addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there is levied on beer or malt liquor, at the time it is imported, and paid in

347. The definition "duties" in section 80 of the Act is replaced by the following:

"duties", other than for the purposes of section 106, means duties or taxes levied or imposed on imported goods under Part 2, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament relating to customs, but for the purposes of sections 89 and 113 does not include the goods and services tax.

2001, c. 16, s. 4(1)

348. Paragraph 83(a) of the Act is replaced by the following:

(a) in the case of goods that would have been classified under tariff item No. 9804.10.00 or 9804.20.00, the value for duty of the goods shall be reduced by an amount equal to that maximum specified value and, in the case of alcoholic beverages and tobacco, the quantity of those goods shall, for the purposes of assessing duties other than a duty under section 54 of the *Excise Act, 2001*, be reduced by the quantity of alcoholic beverages and tobacco up to the maximum quantities specified in tariff item No. 9804.10.00 or 9804.20.00, as the case may be;

349. Subsection 89(2) of the Act is replaced by the following:

(2) **Exception for tobacco products or designated goods** — Relief of the duties or taxes levied or imposed under sections 21.1 to 21.3, the *Excise Act, 2001* or the *Excise Tax Act* may not be granted under subsection (1) on tobacco products or designated goods.

2001, c. 16, s. 5(1)

350. Subsection 92(3) of the Act is replaced by the following:

(3) **Non-application to Canadian manufactured tobacco** — This section does not apply to any duty imposed under the *Excise Act, 2001* in respect of manufactured tobacco that is manufactured in Canada.

351. Section 94 of the Act is replaced by the following:

94.(1) Definition of "customs duties" — In sections 95 and 96, "customs duties" means customs duties imposed under Part 2, other than

- (a) additional customs duties levied under sections 21.1 to 21.3;
- (b) surtaxes imposed under section 53, 55, 60, 63, 68 or 78; or
- (c) temporary duties imposed under any of sections 69 to 76.

(2) **For greater certainty** — For greater certainty, in sections 95 and 96, "customs duties" does not include any duties or taxes levied or imposed on imported goods under the *Excise Act, 2001*, the *Excise Tax Act* or the *Special Import Measures Act*.

352. Subparagraph 99(a)(iii) of the Act is replaced by the following:

(iii) the circumstances in which, and the classes of goods in respect of which, relief of duties levied under sections 21.1 to 21.3 or under the *Special Import Measures Act*, a surtax imposed under section 53, 55, 60, 63, 68 or 78, a temporary duty imposed under any of sections 69 to 76, a tax levied under the *Excise Tax Act* or a duty imposed under the *Excise Act, 2001* may not be granted,

353. Subsection 106(1) of the Act is replaced by the following:

160.(1) Temporary relief of certain duties and taxes — If an application for relief is made in the prescribed circumstances by a person of a prescribed class and in the prescribed form and manner, accompanied by prescribed documents and by security of a prescribed nature in an amount fixed by the Minister of National Revenue, relief shall be granted from the payment of the whole or the prescribed portion, as the case may be, of any duty imposed under sections 21.1 to 21.3 or the *Excise Act, 2001* or of any excise taxes that, but for this section, would be payable in respect of prescribed goods that are imported and subsequently exported after being used in Canada only for a prescribed purpose.

354.(1) Subsection 113(2) of the Act is replaced by the following:

(2) **No refund or drawback in respect of tobacco products** — No refund or drawback of the duties imposed on tobacco products under the *Excise Act, 2001* shall be granted under subsection (1), except if a refund of the whole or the portion of the duties is required to be granted under Division 3.

(2) Paragraph 113(4)(a) of the Act is replaced by the following:

(a) the circumstances in which, and the classes of goods in respect of which, a refund or drawback of duties levied under sections 21.1 to 21.3 or the *Special Import Measures Act*, a surtax levied under section 53, 55, 60, 63, 68 or 78, a temporary duty levied under any of sections 69 to 76, a tax levied under the *Excise Tax Act* or a duty levied under the *Excise Act, 2001* may not be granted under subsection (1);

(3) Subsection 113(5) of the Act is replaced by the following:

(5) **Designated goods** — Despite the exception in subsection 89(2), a refund or drawback of duties or taxes levied or imposed under sections 21.1 to 21.3, the *Excise Act, 2001* or the *Excise Tax Act* shall be granted under paragraph (1)(a) on designated goods.

355. Tariff item Nos. 2204.10.00, 2204.21.40, 2204.29.40, 2204.30.00, 2206.00.30, 2206.00.40, 2206.00.91, 2206.00.92 and 2208.90.91 in the List of Tariff Provisions set out in the schedule to the Act are repealed.

356. The Description of Goods of tariff item No. 2206.00.11 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to "Sparkling" with a reference to "Sparkling, of an alcoholic strength by volume not exceeding

357. The Description of Goods of tariff item No. 2207.20.11 in the List of Tariff Provisions set out in the schedule to the Act is replaced by the following:

---- Specially denatured alcohol, within the meaning of the *Excise Act, 2001*

358. The Description of Goods of tariff item No. 2208.90.98 in the List of Tariff Provisions set out in the schedule to the Act is replaced by the following:

---- Other, packaged, of an alcoholic strength by volume not exceeding 7%

359. The Description of Goods of tariff item No. 2208.90.99 in the List of Tariff Provisions set out in the schedule to the Act is replaced by the following:

---- Other

360. Note 4 to Chapter 98 of the List of Tariff Provisions set out in the schedule to the Act is replaced by the following:

4. For the purpose of this Chapter, "duties" means duties or taxes levied or imposed on imported goods under Part 2 of this Act, the *Excise Act, 2001* (other than section 54), the *Excise Tax Act*, the Special Import Measures Act or any other Act of Parliament relating to customs.

361. The Description of Goods of heading No. 98.26 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to "sections 21 and 22 of this Act" with a reference to "sections 21.1 to 22 of this Act".

362. The List of Tariff Provisions set out in the schedule to the Act is amended by adding, in numerical order, the tariff provisions set out in Schedule 7 to this Act.

R.S., c. E-14

Excise Act

363. The *Excise Act* is amended by adding the following after section 1:

APPLICATION

1.1(1) Non-application of Act — Despite anything in this Act, on the coming into force of Parts 3 and 4 of the *Excise Act, 2001*, this Act ceases to apply in respect of

(a) the manufacture of any goods or substance other than beer, malt liquor and any product manufactured in accordance with subsection 169(2); and

(b) the handling of, or the dealing with, anything that is or relates to any goods or substance other than beer, malt liquor and any product manufactured in accordance with subsection 169(2), to the extent that the *Excise Act, 2001* applies to that handling or dealing.

(2) **Meaning of "beer" and "malt liquor"** — In subsection (1), "beer" and "malt liquor" have the meaning assigned by section 4.

364. The definition " "beer" or "malt liquor" " in section 4 of the Act is replaced by the following:

"beer" or "malt liquor" means all fermented liquor brewed in whole or in part from malt, grain or any saccharine matter without any process of distillation, but does not include wine as defined in section 2 of the *Excise Act, 2001*;

365. Section 176 of the Act is amended by adding the following after subsection (2):

(3) **Exception** — Subsection (1) does not apply to a person who is licensed as a spirits licensee under section 14 of the *Excise Act, 2001* and who produces beer solely for the purpose of distilling the beer.

R.S., c. E-15

Excise Tax Act

1993, c. 25, s. 54; 1994, c. 29, s. 1(1)

366. The definitions "accredited representative", "cigar", "cigarette", "manufactured tobacco" and "tobacco stick" in subsection 2(1) of the *Excise Tax Act* are repealed.

2001, c. 16, s. 17(1)

367.(1) Subsection 23(1) of the Act is replaced by the following:

23.(1) Tax on various articles at schedule rates — Subject to subsections (6) to (8), whenever goods mentioned in Schedule I are imported or are manufactured or produced in Canada and delivered to a purchaser of those goods, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other law, an excise tax in respect of the goods at the

applicable rate set out in the applicable section of that Schedule, computed, if that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.

R.S., c. 15 (1st Supp.), s. 12(1)

(2) Subsection 23(3.1) of the Act is replaced by the following:

(3.1) **Deemed sale** — For the purposes of this Part, a person who, under a contract for labour, manufactures or produces goods mentioned in Schedule I from any article or material supplied by another person, other than a manufacturer licensed for the purposes of this Part, for delivery to that other person is deemed to have sold the goods, at a sale price equal to the charge made under the contract in respect of the goods, at the time they are delivered to that other person.

2001, c. 16, s. 17(2)

(3) Subsection 23(5) of the Act is repealed.

2001, c. 15, s. 2(1)

(4) Subsection 23(7) of the Act is replaced by the following:

(7) **When tax not payable** — The tax imposed under subsection (1) is not payable in the case of

(a) goods that are purchased or imported by a manufacturer licensed for the purposes of this Part and that are to be incorporated into and form a constituent or component part of an article or product that is subject to excise tax under this Act, if the tax on the article or product has not yet been levied under this section; or

(b) the sale of a new motor vehicle designed for highway use, or a chassis for such a vehicle, to a person described in paragraph (h) of the definition "manufacturer or producer" in subsection 2(1) who is a manufacturer licensed for the purposes of this Part.

1990, c. 45, s. 5(1)

(5) The portion of subsection 23(8) of the Act before paragraph (a) is replaced by the following:

(8) **Tax not payable** — The tax imposed under subsection (1) is not payable in the case of

1993, c. 25, s. 55(3); 1995, c. 41, s. 113; 2001, c. 16, s. 17(4)

(6) Subsections 23(8.1) to (8.3) of the Act are repealed.

1993, c. 25, s. 55(4)

(7) Subsections 23(9.2) and (9.3) of the Act are repealed.

R.S., c. 12 (4th Supp.), s. 12(3)

(8) The portion of subsection 23(10) of the Act before paragraph (a) is replaced by the following:

(10) **Appropriation by manufacturer or producer** — If goods of any class mentioned in Schedule I that were manufactured or produced in Canada are appropriated by the manufacturer or producer for their own use, for the purposes of this Part,

1993, c. 25, s. 56; 1994, c. 29, s. 5(1); 1997, c. 26, s. 59(1); 2001, c. 16, ss. 18(1), 21(1)

368. Sections 23.1 to 23.3 of the Act are repealed.

369. Section 24 of the Act is replaced by the following:

24. Security that true returns rendered — For the purposes of this Part, the Minister may require every manufacturer or producer to give security that they will render true returns of their sales as required by section 78 or by any regulations made under it and pay any tax imposed by this Act on the sales. The security shall be in an amount of not more than two hundred and fifty thousand dollars and not less than one thousand dollars and shall be by bond of a guarantee company authorized to do business in Canada, acceptable to the Government of Canada, or by deposit of Government of Canada bonds.

R.S., c. 1 (2nd Supp.), s. 189, c. 7 (2nd Supp.), s. 11(1); 1990, c. 45, s. 7(1); 1991, c. 42, s. 1; 1993, c. 25, 370 s. 57; 2000, c. 30, s. 9(F)

370. Parts IV and V of the Act are repealed.

R.S., c. 12 (4th Supp.), s. 14(1)

371. Subparagraph 48(4)(a)(ii) of the Act is replaced by the following:

(ii) for the purposes of Part III, goods described in paragraph 23(7)(a); and

372. Subsection 50(9) of the Act is repealed.

1990, c. 45, s. 8(1)

373. Subsection 56(3) of the Act is replaced by the following:

(3) **Tax on cancellation** — On the cancellation under subsection (1) of the licence granted to any licensed wholesaler, or if the licence is cancelled at the request of the licensee, or if any such licence expires and is not renewed by the licensee, all taxes imposed by this Act are forthwith payable on all goods then in the possession of the licensee that have been purchased free of tax by virtue of the licence, which

taxes shall be paid at the rate in force when the licence is cancelled or expires and is not renewed and shall be computed in accordance with paragraph 50(1)(c) and Part III.

R.S., c. 12 (4th Supp.), s. 22(1)

374. Subsection 64(1) of the Act is replaced by the following:

64.(1) Application for licence — Every person who is required under Part III to pay taxes shall, from time to time as required under the regulations, apply for a licence in respect of that Part.

1993, c. 25, s. 59; 2000, c. 30, s. 11(1)

375. Sections 66 and 66.1 of the Act are replaced by the following:

66. Exemption on exported goods — The tax imposed under this Act is not payable if evidence satisfactory to the Minister is produced to establish

(a) that the goods in respect of which it is imposed have been exported from Canada by the manufacturer, producer or licensed wholesaler by whom the tax would otherwise be payable in accordance with any regulations made under this Act that are applicable to the goods; or

(b) that the goods in respect of which it is imposed have been sold by the operator of a duty free shop and have been exported from Canada by the purchaser of the goods, in accordance with the regulations made under the *Customs Act*.

376. The portion of section 67 of the Act before paragraph (a) is replaced by the following:

67. Taxes on goods imported by Crown — The tax imposed under Part III is applicable

2000, c. 30, s. 12(1)

377. Subsection 68.1(1) of the Act is renumbered as section 68.1 and subsection 68.1(2) of the Act is repealed.

1993, c. 25, s. 61; 2001, c. 16, s. 28(1)

378. Sections 68.17 to 68.172 of the Act are replaced by the following:

68.17 Payment where use as ships' stores — If tax under Part III has been paid in respect of any goods and a manufacturer, producer, wholesaler, jobber or other dealer has sold the goods for use as ships' stores, an amount equal to the amount of that tax shall, subject to this Part, be paid to that dealer if that dealer applies for it within two years after that sale of the goods.

R.S., c. 7 (2nd Supp.), s. 34(1); 2001, c. 16, s. 29(1)

379. Subsections 68.18(1) to (3.1) of the Act are replaced by the following:

68.18(1) Payment where goods in inventory — If tax under Part III has been paid in respect of any goods and a person holds the goods in an unused condition in inventory on the day a licence is granted to that person under section 54 or 64 and could thereafter have obtained the goods exempt from tax under subsection 23(7), an amount equal to the amount of that tax shall, subject to this Part, be paid to that person if that person applies for it within two years after the licence was granted.

(2) **Payment where goods in inventory** — If tax under Part III has been paid in respect of any goods and a person holds the goods in an unused condition in inventory on the day a licence is granted to that person under section 55 and could thereafter have obtained the goods exempt from tax under subsection 23(6), (7) or (8), an amount equal to the lesser of the amount of that tax and the amount of tax under Part III that would be payable if the goods were acquired in a taxable transaction by that person on that day shall, subject to this Part, be paid to that person if that person applies for it within two years after the licence was granted.

(3) **Exception** — No amount equal to the amount of tax under Part III shall be paid under subsection (2) to a person in respect of any goods that are not subject to tax under that Part on the day a licence is granted to that person under section 55.

1991, c. 42, s. 3

380. The portion of subsection 68.19(1) of the Act before paragraph (a) is replaced by the following:

68.19(1) Payment where use by province — If tax under Part III has been paid in respect of any goods and Her Majesty in right of a province has purchased or imported the goods for any purpose other than

1993, c. 25, s. 62(1)

381.(1) The portion of subsection 70(1) of the Act before paragraph (a) is replaced by the following:

70.(1) Drawback on certain goods — On application, the Minister may, under regulations of the Governor in Council, grant a drawback of the tax imposed under Part III and paid on or in respect of

1995, c. 41, s. 114

(2) Subsection 70(2.1) of the Act is replaced by the following:

(2.1) **Drawback on imported goods** — On application, the Minister may, under section 100 of the *Customs Tariff*, grant a drawback of the tax imposed under Part III and paid on or in respect of goods imported into Canada.

1993, c. 25, s. 62(2)

(3) Subsection 70(5) of the Act is repealed.

2001, c. 16, s. 32(1)

382.(1) Subsections 78(1) and (2) of the Act are replaced by the following:

78.(1) Monthly returns — Every person who is required to pay tax under Part III shall make each month a return in the prescribed form containing prescribed information of all amounts that became payable by the person on account of that tax in the preceding month.

(2) Nil returns — Every person who holds a licence granted under or in respect of Part III and whose tax payable under that Part in the preceding month is nil shall make a return as required under subsection (1) reporting that fact.

R.S., c. 12 (4th Supp.), s. 31(1); 2001, c. 16, s. 32(2)

(2) Paragraphs 78(3)(b) and (c) of the Act are replaced by the following:

(b) authorize any person to make a return in respect of any period longer than one month but not longer than six months, if the tax payable by that person under Part III for the last preceding calendar year did not exceed four thousand eight hundred dollars; or

(c) authorize any person whose activities that give rise to tax payable by the person under Part III are predominantly limited to a seasonal period of operation to make a return in respect of any period longer than one month but not longer than six months, if the tax payable by that person under that Part for the equivalent period in the last preceding calendar year did not exceed an average of four hundred dollars per month throughout that equivalent period.

R.S., c. 12 (4th Supp.), s. 32(1)

383. Subsection 79(1.1) of the Act is replaced by the following:

(1.1) Minimum penalty and interest — No penalty or interest is payable under subsection (1) if the person liable to pay the tax pays all amounts of tax payable by them under Part III and, at the time of the payment, the total penalty and interest payable in respect of those amounts of tax is less than ten dollars.

R.S., c. 12 (4th Supp.), s. 33(1)

384.(1) Clause 79.1(1)(a)(i)(A) of the Act is replaced by the following:

(A) the tax payable under Part III, other than tax payable in accordance with the *Customs Act*, by that person in that month, and

R.S., c. 12 (4th Supp.), s. 33(1)

(2) Clause 79.1(1)(a)(ii)(A) of the Act is replaced by the following:

(A) the tax payable under Part III, other than tax payable in accordance with the *Customs Act*, by that person in that accounting period, and

R. S., c. 12 (4th Supp.), s. 33(1)

(3) Clause 79.1(1)(a)(iii)(A) of the Act is replaced by the following:

(A) the tax payable under Part III, other than tax payable in accordance with the *Customs Act*, by that person in that period, and

R.S., c. 12 (4th Supp.), s. 33(1); 1999, c. 31, par. 247(b)(F)

(4) Subparagraphs 79.1(1)(b)(i) and (ii) of the Act are replaced by the following:

(i) the aggregate amount of tax payable under Part III, other than tax payable in accordance with the *Customs Act*, by that person in the last preceding calendar year ending at least ninety days, or ninety-one days if that time falls in a leap year, before that time exceeded twelve million dollars, or

(ii) the person

(A) was, at any time in the last preceding calendar year ending at least ninety days, or ninety-one days if that time falls in a leap year, before that time, a member of a group of associated corporations (within the meaning of section 256 of the *Income Tax Act*) and the aggregate amount of tax payable under Part III, other than tax payable in accordance with the *Customs Act*, by the group in that year exceeded twelve million dollars, and

(B) is not, at that time, authorized to make a return in accordance with a regulation made under paragraph 78(3)(b) or (c).

R.S., c. 12 (4th Supp.), s. 33(1)

(5) Subsection 79.1(6) of the Act is replaced by the following:

(6) **Minimum penalty and interest** — No penalty or interest is payable under subsection (4) or (5) if the large taxpayer or other person liable to pay the instalment pays all amounts of tax payable by the taxpayer or other person under Part III and, at the time of the payment, the total penalty and interest payable in respect of the instalment is less than five dollars and in respect of those amounts of tax is less than ten dollars.

1990, c. 45, s. 11(1)

385. Subsection 80(1) of the Act is replaced by the following:

80.(1) Report by licence holders — Every person holding a licence in respect of Part III shall submit to the Minister each year, within six months after the end of that person's fiscal year, a report in the prescribed form containing details of that person's sales, taxes paid under this Act and deductions under subsection 69(2) in the fiscal year and any other prescribed information.

2001, c. 16, s. 39(1)

386. Subsection 100(5) of the Act is repealed.

1990, c. 45, s. 12(1)

387. The definition "excisable goods" in subsection 123(1) of the Act is replaced by the following:

"excisable goods" means beer or malt liquor (within the meaning assigned by section 4 of the *Excise Act*) and spirits, wine and tobacco products (within the meaning assigned by section 2 of the *Excise Act, 2001*);

1996, c. 23, s. 170

388. Subparagraph 238.1(2)(c)(iii) of the Act is replaced by the following:

(iii) all amounts required under this Act (other than this Part), the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Income Tax Act*, sections 21 and 33 of the *Canada Pension Plan* and section 82 and Part VII of the *Employment Insurance Act* to be remitted or paid before that time by the registrant have been remitted or paid, and

1993, c. 27, s. 107(1); 1997,

389. Paragraph 252(1)(b) of the Act is repealed.

1994, c. 29, s. 14(1); 1997, c. 26, s. 74(1); 2001, c. 16, ss. 40(1), (2), 41(1)

390. Schedule II to the Act is repealed.

1990, c. 45, s. 18

391. Section 3 of Part V of Schedule VI to the Act is replaced by the following:

3. A supply of an excisable good if the recipient exports the good without the payment of duty in accordance with the *Excise Act* or the *Excise Act, 2001*.

2001, c. 16, s. 42(1)

392. Section 1.1 of Schedule VII to the Act is replaced by the following:

1.1 For the purposes of section 1, "duty" does not include a special duty imposed under section 54 of the *Excise Act, 2001*.

R.S., c. E-18

Export Act

R.S., c. 1 (2nd Supp.), s. 213(3) (Sch. III, s. 5)

393. Paragraph 6(1)(a) of the *Export Act* is replaced by the following:

(a) no intoxicating liquor held in accordance with the *Customs Act*, the *Excise Act* or the *Excise Act, 2001* shall be released or removed from any warehouse or other building or place in which the liquor is stored in any case in which the liquor proposed to be removed is destined for delivery in any country into which the importation of the liquor is prohibited by law;

R.S., c. I-3

Importation of Intoxicating Liquors Act

394. Section 2 of the *Importation of Intoxicating Liquors Act* is amended by adding the following in alphabetical order:

"beer" has the same meaning as in section 4 of the *Excise Act*;

"bulk" has the same meaning as in section 2 of the *Excise Act, 2001*;

"denature" has the same meaning as in section 2 of the *Excise Act, 2001*;

"excise warehouse" has the same meaning as in section 2 of the *Excise Act, 2001*;

"licensed distiller" means a person who holds a spirits licence under section 14 of the *Excise Act, 2001*;

"packaged" has the same meaning as in section 2 of the *Excise Act, 2001*;

"spirits" has the same meaning as in section 2 of the *Excise Act, 2001*;

"wine" has the same meaning as in section 2 of the *Excise Act, 2001*.

1993, c. 44, s. 160(1)

395.(1) Subsection 3(1.1) of the Act is replaced by the following:

(1.1) **Suspension of paragraph (2)(e)** — The operation of paragraph (2)(e) is suspended during the period in which paragraph (2)(c) is in force.

1997, c. 36, s. 211; 1999, c. 17, s. 163

(2) Paragraphs 3(2)(a) to (c) of the Act are replaced by the following:

(a) the carriage or transportation of intoxicating liquor into and through a province by the producer of the liquor or by a common carrier, if, during the time that the intoxicating liquor is being so carried or transported, its container is not opened or broken or any of the liquor drunk or used;

(b) the importation of intoxicating liquor into a province by any person who is a licensed distiller or who is duly licensed by the Government of Canada to carry on the business or trade of a brewer if the liquor

(i) is imported solely for the purpose of being used for blending with or flavouring the products of the business or trade of a distiller or brewer carried on by the person in the province, and

(ii) is kept while in the province

(A) in the case of spirits or wine, in accordance with the *Excise Act, 2001* and the laws of the province, and

(B) in the case of beer, by the person in a place or warehouse that conforms in all respects to the requirements of the law governing those places or warehouses;

(c) the importation of bulk spirits into a province from a NAFTA country by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

(i) are entitled to the United States Tariff, the Mexico Tariff or the Mexico-United States Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and

(ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

(d) the importation of bulk spirits into a province from Chile by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

(i) are entitled to the benefit of the Chile Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and

(ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

(e) the importation of bulk spirits into a province from the United States by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

(i) are entitled to the United States Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and

(ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province; or

(f) the transfer by a licensed distiller of any spirits produced or packaged in accordance with the *Excise Act, 2001* that is permitted by any Act or regulation or by special permit of the *Canada Customs and Revenue Agency*, if the spirits

(i) in the case of packaged spirits, are kept in an excise warehouse of a licensed distiller and in accordance with the laws of the province in which they are kept, and

(ii) in the case of bulk spirits, are kept in accordance with the *Excise Act, 2001* and the laws of the province in which they are kept.

1997, c. 14, s. 81(2)

(3) Subsection 3(3) of the Act is repealed.

1992, c. 17

Special Economic Measures Act

396. Subsection 9(1) of the *Special Economic Measures Act* is replaced by the following:

9. Peace officers for the purposes of this Act — (1) A person having the powers of an officer under the *Customs Act*, the *Excise Act* or the *Excise Act, 2001* is deemed to be a peace officer for the purposes of this Act and sections 487 to 490, 491.1 and 491.2 of the *Criminal Code*.

R.S., c. T-2

Tax Court of Canada Act

1990, c. 45, s. 55

397. Subsection 2.2(2) of the *Tax Court of Canada Act* is replaced by the following:

(2) Definition of "amount in dispute" — For the purposes of this Act, the "amount in dispute" in an appeal means

(a) in the case of an appeal under the *Excise Act, 2001*,

(i) the amount of duty, refund or relief that is in issue in the appeal,

(ii) any interest under that Act that is in issue in the appeal, and

(iii) any amount of duty, refund or relief under that Act that is likely to be affected by the appeal in any other appeal, assessment or proposed assessment of the person who has brought the appeal; and

(b) in the case of an appeal under Part IX of the *Excise Tax Act*,

(i) the amount of tax, net tax and rebate, within the meaning of that Part, that is in issue in the appeal,

(ii) any interest or penalty under that Part that is in issue in the appeal, and

(iii) any amount of tax, net tax or rebate, within the meaning of that Part, that is likely to be affected by the appeal in any other appeal, assessment or proposed assessment of the person who has brought the appeal.

1996, c. 23, s. 188

398.(1) Subsection 12(1) of the Act is replaced by the following:

12.(1) Jurisdiction — The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, the *Employment Insurance Act*, the *Excise Act, 2001*, Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Old Age Security Act* and the *Petroleum and Gas Revenue Tax Act*, where references or appeals to the Court are provided for in those Acts.

1990, c. 45, s. 57(2); 1998, c. 19, s. 290

(2) Subsections 12(3) and (4) of the Act are replaced by the following:

(3) Further jurisdiction — The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 173 or 174 of the *Income Tax Act*, section 204 or 205 of the *Excise Act, 2001* or section 310 or 311 of the *Excise Tax Act*.

(4) Extensions of time — The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under section 166.2 or 167 of the *Income Tax Act*, subsection 103(1) of the *Employment Insurance Act*, section 197 or 199 of the *Excise Act, 2001*, section 304 or 305 of the *Excise Tax Act*, subsection 28(1) of the *Canada Pension Plan* or section 33.2 of the *Cultural Property Export and Import Act*.

1990, c. 45, s. 58

399. Subsection 18.18(2) of the Act is replaced by the following:

(2) Calculation of time limits — For the purpose of calculating a time limit for the purposes of section 18.3003 or 18.3005, the following periods shall be excluded:

(a) the period beginning on December 21 in any year and ending on January 7 of the next year; and

(b) the period during which proceedings are stayed in accordance with subsection 219(3) of the *Excise Act, 2001* or subsection 327(4) of the *Excise Tax Act*.

2000, c. 30, s. 178

400. Subsection 18.29(3) of the Act is replaced by the following:

(3) Extensions of time — The provisions referred to in subsection (1) also apply, with any modifications that the circumstances require, in respect of applications for extensions of time under section 166.2 or 167 of the *Income Tax Act*, section 197 or 199 of the *Excise Act, 2001*, section 304 or 305 of the *Excise Tax Act*, subsection 103(1) of the *Employment Insurance Act*, subsection 28(1) of the *Canada Pension Plan* or section 33.2 of the *Cultural Property Export and Import Act*.

1998, c. 19, s. 296

401. Section 18.3001 of the Act is replaced by the following:

18.3001 Application - *Excise Act, 2001* and *Excise Tax Act* — Subject to section 18.3002, this section and sections 18.3003 to 18.301 apply, with any modifications that the circumstances require, to an appeal under

(a) the *Excise Act, 2001* if

(i) a person has so elected in the notice of appeal for an appeal under that Act or at any later time that may be provided in the rules of Court, and

(ii) the amount in dispute does not exceed \$25,000; and

(b) Part IX of the *Excise Tax Act* if a person has so elected in the notice of appeal for an appeal under that Act or at any later time that may be provided in the rules of Court.

1990, c. 45, s. 61

402. Subsection 18.3002(3) of the Act is replaced by the following:

(3) **Costs** — The Court shall, on making an order under subsection (1), order that all reasonable and proper costs of the person who has brought the appeal be borne by Her Majesty in right of Canada where

(a) in the case of an appeal under the *Excise Act, 2001*, the total of sales by the person for the prior calendar year did not exceed \$1,000,000; and

(b) in the case of an appeal under Part IX of the *Excise Tax Act*, the amount in dispute does not exceed \$7,000 and the aggregate of supplies for the prior fiscal year of the person did not exceed \$1,000,000.

1990, c. 45, s. 61

403. Subsection 18.3007(1) of the Act is replaced by the following:

18.3007(1) Costs — The Court may, if the circumstances so warrant, make no order as to costs or order that the person who brought the appeal be awarded costs, notwithstanding that under the rules of Court costs would be adjudged to Her Majesty in right of Canada, or make an order that person be awarded costs, notwithstanding that under the rules of Court no order as to costs would be made, if

(a) an order has been made under subsection 18.3002(1) in respect of the appeal;

(b) the appeal is not an appeal referred to in subsection 18.3002(3); and

(c) in the case of an appeal

(i) under the *Excise Act, 2001*, the amount in dispute in the appeal does not exceed \$50,000 and the aggregate of sales by the person for the prior calendar year did not exceed \$6,000,000, or

(ii) under Part IX of the *Excise Tax Act*, the amount in dispute in the appeal does not exceed \$50,000 and the aggregate of supplies for the prior fiscal year of the person did not exceed \$6,000,000.

1990, c. 45, s. 61

404. Paragraphs 18.3008(a) and (b) of the Act are replaced by the following:

(a) in the case of an appeal under the *Excise Act, 2001*, the amount in dispute does not exceed \$25,000 and the aggregate of sales by the person for the prior calendar year did not exceed \$1,000,000; and

(b) in the case of an appeal under Part IX of the *Excise Tax Act*, the amount in dispute does not exceed \$7,000 and the aggregate of supplies for the prior fiscal year of the person did not exceed \$1,000,000.

1998, c. 19, s. 298

405. Subsection 18.3009(1) of the Act is replaced by the following:

18.3009(1) Costs - appeal under *Excise Act, 2001* or *Excise Tax Act* — If an appeal referred to in section 18.3001 is allowed, the Court shall reimburse to the person who brought the appeal the filing fee paid by that person under paragraph 18.15(3)(b). The Court may, in accordance with the rules of Court, award costs to that person if the judgement reduces the amount in dispute by more than one half and

(a) in the case of an appeal under the *Excise Act, 2001*

(i) the amount in dispute does not exceed \$25,000, and

(ii) the total of sales by the person for the prior calendar year did not exceed \$1,000,000; and

(b) in the case of an appeal under Part IX of the *Excise Tax Act*,

(i) the amount in dispute does not exceed \$7,000, and

(ii) the aggregate of supplies for the prior fiscal year of the person did not exceed \$1,000,000.

1990, c. 45, s. 62

406. Subsection 18.31(2) of the Act is replaced by the following:

(2) **Determination of a question** — If it is agreed under section 204 of the *Excise Act, 2001* or section 310 of the *Excise Tax Act* that a question should be determined by the Court, sections 17.1, 17.2 and 17.4 to 17.8 apply, with any modifications that the circumstances require, in respect of the determination of the question.

1990, c. 45, s. 63

407. Subsection 18.32(2) of the Act is replaced by the following:

(2) **Provisions applicable to determination of a question** — If an application has been made under section 205 of the *Excise Act, 2001* or section 311 of the *Excise Tax Act* for the determination of a question, the application or determination of the question shall, subject to section 18.33, be determined in accordance with sections 17.1, 17.2 and 17.4 to 17.8, with any modifications that the circumstances require.

Coordinating Amendments

An Act to amend the *Customs Act* and to make related amendments to other Acts

408.(1) 2001, c. 25 — In this section, "other Act" means the Act entitled An Act to amend the *Customs Act* and to make related amendments to other Acts, being chapter 25 of the Statutes of Canada, 2001.

(2) **Amendment to Customs Act** — On the later of the coming into force of subsection 19(1) of the other Act and subsection 332(1) of this Act, the portion of subsection 28(1) of the *Customs Act* before paragraph (a) is replaced by the following:

28.(1) Liability of operator — The operator of a sufferance warehouse, bonded warehouse or duty free shop is liable for all duties or taxes levied under the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other law relating to customs on goods that have been received in the warehouse or duty free shop unless the operator proves that the goods

(3) **Amendment to other Act** — If subsection 332(2) of this Act comes into force before subsection 19(2) of the other Act, then that subsection 19(2) is repealed on the day on which that subsection 332(2) comes into force.

(4) **Amendment to other Act** — If subsection 332(2) of this Act and subsection 19(2) of the other Act come into force on the same day, then that subsection 332(2) is deemed to have come into force before that subsection 19(2) and subsection (3) applies.

(5) **Amendment to Customs Act** — On the later of the coming into force of section 58 of the other Act and section 297 of this Act, the description of B in paragraph 97.29(1)(a) of the *Customs Act* is replaced by the following:

B is the amount, if any, by which the amount assessed the transferee under subsection 297(3) of the *Excise Act, 2001*, subsection 325(2) of the *Excise Tax Act* and subsection 160(2) of the *Income Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

(6) **Amendment to Tax Court of Canada Act** — On the later of the coming into force of section 100 of the other Act and section 397 of this Act, subsection 2.2(2) of the *Tax Court of Canada Act* is replaced by the following:

(2) **Definition of "amount in dispute"** — For the purposes of this Act, the "amount in dispute" in an appeal means

(a) in the case of an appeal under Part V.1 of the *Customs Act*, the total of all amounts assessed by the Minister of National Revenue under section 97.44 of that Act;

(b) in the case of an appeal under the *Excise Act, 2001*,

(i) the amount of duty, refund or relief that is in issue in the appeal,

(ii) any interest under that Act that is in issue in the appeal, and

(iii) any amount of duty, refund or relief under that Act, that is likely to be affected by the appeal in any other appeal, assessment or proposed assessment of the person who has brought the appeal; and

(c) in the case of an appeal under Part IX of the *Excise Tax Act*,

(i) the amount of tax, net tax and rebate, within the meaning of that Part, that is in issue in the appeal,

(ii) any interest or penalty under that Part that is in issue in the appeal, and

(iii) any amount of tax, net tax or rebate, within the meaning of that Part, that is likely to be affected by the appeal in any other appeal, assessment or proposed assessment of the person who has brought the appeal.

(7) **Amendment to Tax Court of Canada Act** — On the later of the coming into force of subsection 101(1) of the other Act and subsection 398(1) of this Act, subsection 12(1) of the *Tax Court of Canada Act* is replaced by the following:

12.(1) Jurisdiction — The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part V.1 of the *Customs Act*, the *Employment Insurance Act*, the *Excise Act, 2001*, Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Old Age Security Act* and the *Petroleum and Gas Revenue Tax Act*, where references or appeals to the Court are provided for in those Acts.

(8) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of subsection 101(2) of the other Act and subsection 398(2) of this Act, subsections 12(3) and (4) of the *Tax Court of Canada Act* are replaced by the following:

(3) Further jurisdiction — The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 97.58 of the *Customs Act*, section 204 or 205 of the *Excise Act, 2001*, section 310 or 311 of the *Excise Tax Act* or section 173 or 174 of the *Income Tax Act*.

(4) Extensions of time — The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under subsection 28(1) of the *Canada Pension Plan*, section 33.2 of the *Cultural Property Export and Import Act*, section 97.52 or 97.53 of the *Customs Act*, subsection 103(1) of the *Employment Insurance Act*, section 197 or 199 of the *Excise Act, 2001*, section 304 or 305 of the *Excise Tax Act* or section 166.2 or 167 of the *Income Tax Act*.

(9) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of section 102 of the other Act and section 399 of this Act, subsection 18.18(2) of the *Tax Court of Canada Act* is replaced by the following:

(2) Calculation of time limits — For the purpose of calculating a time limit for the purposes of section 18.3003 or 18.3005, the following periods shall be excluded:

(a) the period beginning on December 21 in any year and ending on January 7 of the next year; and

(b) the period during which proceedings are stayed in accordance with subsection 106(3) of the *Customs Act*, subsection 219(3) of the *Excise Act, 2001* or subsection 327(4) of the *Excise Tax Act*.

(10) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of section 103 of the other Act and section 400 of this Act, subsection 18.29(3) of the *Tax Court of Canada Act* is replaced by the following:

(3) Extensions of time — The provisions referred to in subsection (1) also apply, with any modifications that the circumstances require, in respect of applications for extensions of time under subsection 28(1) of the *Canada Pension Plan*, section 33.2 of the *Cultural Property Export and Import Act*, section 97.51 or 97.52 of the *Customs Act*, subsection 103(1) of the *Employment Insurance Act*, section 197 or 199 of the *Excise Act, 2001*, section 304 or 305 of the *Excise Tax Act* or section 166.2 or 167 of the *Income Tax Act*.

(11) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of section 104 of the other Act and section 401 of this Act, section 18.3001 of the *Tax Court of Canada Act* is replaced by the following:

18.3001 Application - *Customs Act*, *Excise Act, 2001* and *Excise Tax Act* — Subject to section 18.3002, this section and sections 18.3003 to 18.301 apply, with any modifications that the circumstances require, to an appeal under

(a) the *Excise Act, 2001* if

(i) a person has so elected in the notice of appeal for an appeal under that Act or at such later time as may be provided in the rules of Court, and

(ii) the amount in dispute does not exceed \$25,000; and

(b) Part V.1 of the *Customs Act* or Part IX of the *Excise Tax Act* if a person has so elected in the notice of appeal for an appeal under that Act or at such later time as may be provided in the rules of Court.

(12) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of section 105 of the other Act and section 402 of this Act, subsection 18.3002(3) of the *Tax Court of Canada Act* is replaced by the following:

(3) Costs — The Court shall, on making an order under subsection (1), order that all reasonable and proper costs of the person who has brought the appeal be borne by Her Majesty in right of Canada where

(a) in the case of an appeal under Part V.1 of the *Customs Act*, the amount in dispute does not exceed \$10,000;

(b) in the case of an appeal under the *Excise Act, 2001*, the total of sales by the person for the prior calendar year did not exceed \$1,000,000; and

(c) in the case of an appeal under Part IX of the *Excise Tax Act*, the amount in dispute does not exceed \$7,000 and the aggregate of supplies for the prior fiscal year of the person did not exceed \$1,000,000.

(13) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of section 107 of the other Act and section 403 of this Act, subparagraphs 18.3007(1)(c)(i) and (ii) of the *Tax Court of Canada Act* are replaced by the following:

(i) under Part V.1 of the *Customs Act*, the amount in dispute does not exceed \$50,000,

(ii) under the *Excise Act, 2001*, the amount in dispute in the appeal does not exceed \$50,000 and the aggregate of sales by the person for the prior calendar year did not exceed \$6,000,000, or

(iii) under Part IX of the *Excise Tax Act*, the amount in dispute in the appeal does not exceed \$50,000 and the aggregate of supplies for the prior fiscal year of the person did not exceed \$6,000,000.

(14) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of section 108 of the other Act and section 404 of this Act, paragraphs 18.3008(a) and (b) of the *Tax Court of Canada Act* are replaced by the following:

(a) in the case of an appeal under Part V.1 of the *Customs Act*, the amount in dispute does not exceed \$10,000;

(b) in the case of an appeal under the *Excise Act, 2001*, the amount in dispute does not exceed \$25,000 and the aggregate of sales by the person for the prior calendar year did not exceed \$1,000,000; and

(c) in the case of an appeal under Part IX of the *Excise Tax Act*, the amount in dispute does not exceed \$7,000 and the aggregate of supplies for the prior fiscal year of the person did not exceed \$1,000,000.

(15) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of section 109 of the other Act and section 405 of this Act, subsection 18.3009(1) of the *Tax Court of Canada Act* is replaced by the following:

18.3009(1) Costs - appeal under *Customs Act*, *Excise Act, 2001* or *Excise Tax Act* — If an appeal referred to in section 18.3001 is allowed, the Court shall reimburse to the person who brought the appeal the filing fee paid by that person under paragraph 18.15(3)(b). The Court may, in accordance with the rules of Court, award costs to that person if the judgement reduces the amount in dispute by more than one half and

(a) in the case of an appeal under Part V.1 of the *Customs Act*, the amount in dispute does not exceed \$10,000;

(b) in the case of an appeal under the *Excise Act, 2001*

(i) the amount in dispute does not exceed \$25,000, and

(ii) the total of sales by the person for the prior calendar year did not exceed \$1,000,000; or

(c) in the case of an appeal under Part IX of the *Excise Tax Act*,

(i) the amount in dispute does not exceed \$7,000, and

(ii) the aggregate of supplies for the prior fiscal year of the person did not exceed \$1,000,000.

(16) Amendment to *Tax Court of Canada Act* — On the later of the coming into force of section 110 of the other Act and section 406 of this Act, subsection 18.31(2) of the *Tax Court of Canada Act* is replaced by the following:

(2) Determination of a question — If it is agreed under section 97.58 of the *Customs Act*, section 204 of the *Excise Act, 2001* or section 310 of the *Excise Tax Act* that a question should be determined by the Court, sections 17.1, 17.2 and 17.4 to 17.8 apply, with any modifications that the circumstances require, in respect of the determination of the question.

409.(1) Condition - Bill C-24 — Subsections (2) to (9) apply if Bill C-24, introduced in the 1st Session of the 37th Parliament and entitled An Act to amend the *Criminal Code* (organized crime and law enforcement) and to make consequential amendments to other Acts (referred to in this section as the "other Act"), receives royal assent.

(2) Amendment to *Criminal Code* — If section 4 of the other Act comes into force before section 326 of this Act, then, on the later of the day on which that section 4 comes into force and the day on which this Act is assented to,

(a) that section 326 is repealed; and

(b) paragraph (g) of the definition "offence" in section 183 of the *Criminal Code*, as enacted by that section 4, is replaced by the following:

(g) any of the following provisions of the *Excise Act, 2001*, namely,

(i) section 214 (unlawful production, sale, etc., of tobacco or alcohol),

(ii) section 216 (unlawful possession of tobacco product),

(iii) section 218 (unlawful possession, sale, etc., of alcohol),

(iv) section 219 (falsifying or destroying records),

(v) section 230 (possession of property obtained by excise offences), or

(vi) section 231 (laundering proceeds of excise offences),

(3) Amendment to *Criminal Code* — If section 4 of the other Act and section 326 of this Act come into force on the same day, then that section 4 is deemed to have come into force before that section 326 and subsection (2) applies.

(4) Amendment to *Criminal Code* — If section 4 of the other Act comes into force after section 326 of this Act, then, on the coming into force of that section 4, paragraph (g) of the definition "offence" in section 183 of the *Criminal Code*, as enacted by that section 4, is replaced by the following:

(g) any of the following provisions of the *Excise Act, 2001*, namely,

(i) section 214 (unlawful production, sale, etc., of tobacco or alcohol),

(ii) section 216 (unlawful possession of tobacco product),

(iii) section 218 (unlawful possession, sale, etc., of alcohol),

(iv) section 219 (falsifying or destroying records),

(v) section 230 (possession of property obtained by excise offences), or

(vi) section 231 (laundering proceeds of excise offences),

(5) Amendment to *Criminal Code* — If section 327 of this Act comes into force before subsection 12(2) of the other Act and Bill C-36, introduced in the 1st Session of the 37th Parliament and 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 that section 327, paragraph (b.1) of the definition "enterprise crime offence" in section 462.3 of the *Criminal Code* is replaced by the following:

(b.1) an offence against section 214, 216, 218, 230 or 231 of the *Excise Act, 2001*, section 153, 159, 163.1 or 163.2 of the *Customs Act*, subsection 52.1(9) of the *Competition Act* or subsection 4(1), (2), (3) or (4), or section 6, or subsection 13(1), 14(1), 16(1) or (2), 17(1), 18(1), 19(1), 20(1), 21(1) or 22(1) or section 23 of the *Security of Information Act*, or

(6) Repeal of amendment in this Act to *Criminal Code* — If section 327 of this Act comes into force after subsection 12(2) of the other Act, then, on the later of the day on which that subsection 12(2) comes into force and the day on which this Act is assented to, that section 327 is repealed.

(7) Repeal of amendment in this Act to *Criminal Code* — If section 327 of this Act and subsection 12(2) of the other Act come into force on the same day, then that section 327 is deemed to have come into force after that subsection 12(2) and subsection (6) applies.

(8) Repeal of amendments in this Act to *Customs Act* — If section 62 of the other Act comes into force before sections 342 to 344 of this Act, then, on the later of the day on which that section 62 comes into force and the day on which this Act is assented to, those sections 342 to 344 are repealed.

(9) Repeal of amendments in this Act to *Customs Act* — If section 62 of the other Act and sections 342 to 344 of this Act come into force on the same day, then that section 62 of the other Act is deemed to have come into force before those sections 342 to 344 and subsection (8) applies.

Bill C-30

410. Amendment to this Act — If Bill C-30, introduced in the 1st Session of the 37th Parliament and entitled the *Courts Administration Service Act* (referred to in this section as the "other Act"), receives royal assent, then

(a) on the later of the coming into force of section 14 of the other Act and subsection 205(6) of this Act, subsection 205(6) of this Act is replaced by the following:

(6) Appeal — If a question set out in an application is determined by the Tax Court, the Minister or any of the persons who have been served with a copy of the application and who are named in an order of the Court under subsection (4) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act* or the *Federal Courts Act*, as they relate to appeals from or applications for judicial review of decisions of the Tax Court, appeal from the determination.

(b) on the later of the coming into force of section 14 of the other Act and subsection 276(2) of this Act, subsection 276(2) of this Act is replaced by the following:

(2) Ordinary action — The *Federal Courts Act* and the rules made under it that are applicable to ordinary actions apply to actions instituted under subsection (1), except as varied by special rules made in respect of those actions.

Bill C-32

411.(1) Condition - Bill C-32 — Subsections (2) to (8) apply if Bill C-32, introduced in the 1st Session of the 37th Parliament and entitled the *Canada-Costa Rica Free Trade Agreement Implementation Act* (referred to in this section as the "other Act"), receives royal assent.

(2) Amendment to *Customs Tariff* — On the later of the coming into force of section 42 of the other Act and section 351 of this Act, subsection 94(1) of the *Customs Tariff* is replaced by the following:

94.(1) Definition of "customs duties" — In sections 95 and 96, "customs duties" means customs duties imposed under Part 2, other than

(a) additional customs duties levied under sections 21.1 to 21.3;

(b) surtaxes imposed under section 53, 55, 60, 63, 68 or 78; or

(c) temporary duties imposed under any of sections 69 to 76.1.

(3) Amendment to *Customs Tariff* — On the later of the coming into force of section 43 of the other Act and section 352 of this Act, subparagraph 99(a)(iii) of the *Customs Tariff* is replaced by the following:

(iii) the circumstances in which, and the classes of goods in respect of which, relief of duties levied under sections 21.1 to 21.3 or under the *Special Import Measures Act*, a surtax imposed under section 53, 55, 60, 63, 68 or 78, a temporary duty imposed under any of sections 69 to 76.1, a tax levied under the *Excise Tax Act* or a duty imposed under the *Excise Act, 2001* may not be granted,

(4) Amendment to *Customs Tariff* — On the later of the coming into force of section 44 of the other Act and subsection 354(2) of this Act, paragraph 113(4)(a) of the *Customs Tariff* is replaced by the following:

(a) the circumstances in which, and the classes of goods in respect of which, a refund or drawback of duties levied under sections 21.1 to 21.3 or the *Special Import Measures Act*, a surtax levied under section 53, 55, 60, 63, 68 or 78, a temporary duty levied under any of sections 69 to 76.1, a tax levied under the *Excise Tax Act* or a duty levied under the *Excise Act, 2001* may not be granted under subsection (1);

(5) Amendments to *Customs Tariff*— On the later of the coming into force of section 46 of the other Act and section 362 of this Act, each of the tariff provisions that were, under that section 362, added to the List of Tariff Provisions set out in the schedule to the *Customs Tariff* are amended by

(a) adding in the column "Preferential Tariff / Initial Rate", below the reference to "CIAT", a reference to "CRT: Free"; and

(b) adding in the column "Preferential Tariff / Final Rate", below the reference to "CIAT", a reference to "CRT: Free (A)".

(6) Amendments in respect of *Importation of Intoxicating Liquors Act* — If section 395 of this Act comes into force before section 53 of the other Act, then

(a) on the later of the day on which that section 395 comes into force and the day on which the other Act is assented to, that section 53 is repealed; and

(b) on the coming into force of section 37 of the other Act,

(i) subsection 3(1.1) of the *Importation of Intoxicating Liquors Act* is replaced by the following:

(1.1) **Suspension of paragraph (2)(f)** — The operation of paragraph (2)(f) is suspended during the period in which paragraph (2)(c) is in force.

(ii) paragraphs 3(2)(e) and (f) of the *Importation of Intoxicating Liquors Act* are replaced by the following:

(e) the importation of bulk spirits into a province from Costa Rica by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

(i) are entitled to the benefit of the Costa Rica Tariff referred to in section 49.1 of the *Customs Tariff*, and

(ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

(f) the importation of bulk spirits into a province from the United States by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

(i) are entitled to the United States Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and

(ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province; and

(g) the transfer by a licensed distiller of any spirits produced or packaged in accordance with the *Excise Act, 2001* that is permitted by any Act or regulation or by special permit of the *Canada Customs and Revenue Agency*, if the spirits

(i) in the case of packaged spirits, are kept in an excise warehouse of a licensed distiller and in accordance with the laws of the province in which they are kept, and

(ii) in the case of bulk spirits, are kept in accordance with the *Excise Act, 2001* and the laws of the province in which they are kept.

(7) Amendments to *Importation of Intoxicating Liquors Act* — If section 395 of this Act comes into force after section 53 of the other Act, then, on the coming into force of section 395 of this Act,

(a) subsection 3(1.1) of the *Importation of Intoxicating Liquors Act* is replaced by the following:

(1.1) **Suspension of paragraph (2)(f)** — The operation of paragraph (2)(f) is suspended during the period in which paragraph (2)(c) is in force.

(b) the portion of subsection 3(2) of the *Importation of Intoxicating Liquors Act* after paragraph (b) is replaced by the following:

(c) the importation of bulk spirits into a province from a NAFTA country by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

(i) are entitled to the United States Tariff, the Mexico Tariff or the Mexico-United States Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*; and

(ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

(d) the importation of bulk spirits into a province from Chile by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

(i) are entitled to the benefit of the Chile Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and

(ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

- (e) the importation of bulk spirits into a province from Costa Rica by a licensed distiller for the purpose of being packaged by the distiller, if the spirits
 - (i) are entitled to the benefit of the Costa Rica Tariff referred to in section 49.1 of the *Customs Tariff*, and
 - (ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;
 - (f) the importation of bulk spirits into a province from the United States by a licensed distiller for the purpose of being packaged by the distiller, if the spirits
 - (i) are entitled to the United States Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and
 - (ii) are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province; and
 - (g) the transfer by a licensed distiller of any spirits produced or packaged in accordance with the *Excise Act, 2001* that is permitted by any Act or regulation or by special permit of the *Canada Customs and Revenue Agency*, if the spirits
 - (i) in the case of packaged spirits, are kept in an excise warehouse of a licensed distiller and in accordance with the laws of the province in which they are kept, and
 - (ii) in the case of bulk spirits, are kept in accordance with the *Excise Act, 2001* and the laws of the province in which they are kept.
- (c) subsection 3(3) of the *Importation of Intoxicating Liquors Act* is repealed.

(8) Amendments to *Importation of Intoxicating Liquors Act* — If section 395 of this Act and section 53 of the other Act come into force on the same day, then that section 395 is deemed to have come into force after that section 53 and subsection (7) applies.

PART 9

AMENDMENTS RELATED TO EXCISE TAX ON TOBACCO PRODUCTS

1997, c. 36

Customs Tariff

2001, c. 16, s. 3(1)

412. Paragraphs 21(2)(a) to (c) of the *Customs Tariff* are replaced by the following:

- (a) \$0.0575 per cigarette, in the case of cigarettes;
- (b) \$0.0425 per stick, in the case of tobacco sticks; and
- (c) \$0.0375 per gram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

R.S., c. E-15

Excise Tax Act

1994, c. 29, s. 1(1); 1999, c. 17, s. 145(2)(E)

413. The definitions "black stock", "black stock cigarettes" and "Indian" in subsection 2(1) of the *Excise Tax Act* are repealed.

2001, c. 16, s. 18(1)

414. Paragraphs 23.11(2)(a) to (c) of the Act are replaced by the following:

- (a) \$0.03 per cigarette, in the case of cigarettes;
- (b) \$0.02415 per stick, in the case of tobacco sticks; and
- (c) \$19.15 per kilogram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

2001, c. 16, s. 18(1)

415. Paragraphs 23.12(1)(a) to (c) of the Act are replaced by the following:

- (a) \$0.0575 per cigarette, in the case of cigarettes;
- (b) \$0.0425 per stick, in the case of tobacco sticks; and
- (c) \$0.0375 per gram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

2001, c. 16, s. 18(1)

416.(1) Paragraphs 23.13(1)(a) to (c) of the Act are replaced by the following:

- (a) \$0.0575 per cigarette, in the case of cigarettes;

(b) \$0.0425 per stick, in the case of tobacco sticks; and

(c) \$37.50 per kilogram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

2001, c. 16, s. 18(1)

(2) Paragraph 23.13(2)(a) of the Act is replaced by the following:

(a) \$0.1025 per cigarette, in the case of cigarettes;

2001, c. 16, s. 18(1)

(3) Paragraph 23.13(2)(c) of the Act is replaced by the following:

(c) \$56.65 per kilogram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

1994, c. 29, s. 6(1); 2000, c. 30, ss. 5(3), (4); 2001, c. 16, ss. 22(1), 23(1), 25(1), (2)

417. Sections 23.31 to 23.35 of the Act are repealed.

2000, c. 30, s. 16(1); 2001, c. 16, ss. 34(1), 35(1), 37(1)

418. Sections 97.1 to 97.4 of the Act are repealed.

1994, c. 29, s. 14(1); 1997, c. 26, s. 74(1); 2001, c. 16, ss. 40(1), (2), 41(1)

419. Sections 1 to 3 of Schedule II to the Act are replaced by the following:

1. Cigarettes: \$0.17138 for each five cigarettes or fraction of five cigarettes contained in any package.

2. Tobacco sticks: \$0.02715 per stick.

3. Manufactured tobacco other than cigarettes and tobacco sticks: \$23.148 per kilogram.

420. Interest — For the purposes of applying the provisions of the *Customs Tariff* and the *Excise Tax Act* that provide for the payment of, or the liability to pay, interest in respect of any amount, the amount shall be determined and interest shall be computed on it as though this Part had been assented to on November 2, 2001.

421. Coming into force — Sections 412 to 420 are deemed to have come into force on November 2, 2001.

PART 10

AMENDMENTS RELATED TO SHIPS' STORES

1986, c. 1

Customs Act

422.(1) *Customs Act* — Paragraph 164(1)(c) of the *Customs Act*, chapter 1 of the Statutes of Canada, 1986, is replaced by the following:

(c) designating certain classes of goods as ships' stores for use on board a conveyance of a prescribed class, including a class based on

(i) the physical attributes, functions or legal descriptions of conveyances,

(ii) areas within which conveyances voyage,

(iii) requirements, or limitations, related to voyages of conveyances, or

(iv) any combination of the bases mentioned in subparagraphs (i) to (iii);

(c.1) limiting the quantity of goods referred to in paragraph (c) that may be used as described in that paragraph during any prescribed period or periods;

(2) Subsection (1) is deemed to have come into force on November 10, 1986.

R.S., c. 41 (3rd Supp.)

Customs Tariff

1995, c. 41, s. 55(1)

423.(1) Paragraph 95(1)(g) of the *Customs Tariff*, as enacted by subsection 55(1) of chapter 41 of the Statutes of Canada, 1995, is replaced by the following:

(g) designating certain classes of goods as ships' stores for use on board a conveyance of a prescribed class, including a class based on

- (i) the physical attributes, functions or legal descriptions of conveyances,
- (ii) areas within which conveyances voyage,
- (iii) requirements, or limitations, related to voyages of conveyances, or
- (iv) any combination of the bases mentioned in subparagraphs (i) to (iii);

(g.1) limiting the quantity of goods referred to in paragraph (g) that may be used as described in that paragraph during any prescribed period or periods;

(2) Subsection (1) is deemed to have come into force on January 1, 1996.

1997, c. 36

Customs Tariff

424.(1) Paragraph 99(g) of the *Customs Tariff* is replaced by the following:

(g) designating certain classes of goods as ships' stores for use on board a conveyance of a prescribed class, including a class based on

- (i) the physical attributes, functions or legal descriptions of conveyances,
- (ii) areas within which conveyances voyage,
- (iii) requirements, or limitations, related to voyages of conveyances, or
- (iv) any combination of the bases mentioned in subparagraphs (i) to (iii);

(g.1) limiting the quantity of goods referred to in paragraph (g) that may be used as described in that paragraph during any prescribed period or periods;

(2) A regulation, or any provision of a regulation, made before January 1, 2004 under paragraph 99(g) or (g.1) of the *Customs Tariff*, as enacted by subsection (1), may, if it so provides, be retroactive and have effect for any period before it is made that begins on or after June 1, 2002.

(3) Subsection (1) is deemed to have come into force on January 1, 1998.

R.S., c. E-14

Excise Act

425. Replacement of "approvisionnement de navire" with "provisions de bord" — The French version of the *Excise Act* is amended by replacing the words "approvisionnement de navire" with the words "provisions de bord" in the following provisions, with any grammatical modifications that the circumstances require:

- (a) paragraph 52.1(e);
- (b) subparagraph 58(2)(a)(i);
- (c) clauses 58.1(6)(a)(i)(C) and (E);
- (d) paragraph 173(3)(a);
- (e) subparagraph 202(3)(c)(iii);
- (f) section 216;
- (g) clauses 239.1(2)(a)(i.1)(B) and (iii)(A) and (B) and subparagraph 239.1(2)(b)(vi); and
- (h) paragraph 240(2)(f) and subparagraphs 240(3)(a.1)(ii) and (c)(i) and (ii).

R.S.C. 1970, c. E-13

Excise Tax Act

1986, c. 9, s. 21(3)

426.(1) Subsection 35(2.3) of the *Excise Tax Act*, as enacted by subsection 21(3) of chapter 9 of the Statutes of Canada, 1986, is replaced by the following:

(2.3) Regulations — The Governor in Council may make regulations

(a) designating certain classes of goods as ships' stores for use on board a conveyance of a prescribed class, including a class based on

- (i) the physical attributes, functions or legal descriptions of conveyances,
- (ii) areas within which conveyances voyage,
- (iii) requirements, or limitations, related to voyages of conveyances, or
- (iv) any combination of the bases mentioned in subparagraphs (i) to (iii); and

(b) limiting the quantity of goods referred to in paragraph (a) that may be used as described in that paragraph during any prescribed period or periods.

(2) Subsection (1) is deemed to have come into force on November 10, 1986.

R.S., c. E-15

Excise Tax Act

R.S., c. 7 (2nd Supp.), s. 21(3); 1993, c. 25, s. 58

427.(1) Subsection 59(3.2) of the *Excise Tax Act* is replaced by the following:

(3.2) Regulations — The Governor in Council may make regulations

(a) designating certain classes of goods as ships' stores for use on board a conveyance of a prescribed class, including a class based on

- (i) the physical attributes, functions or legal descriptions of conveyances,
- (ii) areas within which conveyances voyage,
- (iii) requirements, or limitations, related to voyages of conveyances, or
- (iv) any combination of the bases mentioned in subparagraphs (i) to (iii); and

(b) limiting the quantity of goods referred to in paragraph (a) that may be used as described in that paragraph during any prescribed period or periods.

(2) A regulation, or any provision of a regulation, made before January 1, 2004 under paragraph 59(3.2)(a) or (b) of the *Excise Tax Act*, as enacted by subsection (1), may, if it so provides, be retroactive and have effect for any period before it is made that begins on or after June 1, 2002.

(3) Subsection (1) is deemed to have come into force on December 12, 1988.

428. The Act is amended by adding the following after section 68.4:

68.5(1) Definitions — The definitions in this subsection apply in this section.

"eligible ship" means a ship that is a tug, ferry or passenger ship engaged in trade on an inland voyage and that

- (a) is not proceeding outside Canada other than to
 - (i) a part that lies within the United States of any lake or river a part of which is included in the inland waters of Canada, or
 - (ii) Lake Michigan; and
- (b) is not engaged in international trade.

"inland voyage" means a voyage (other than a minor waters voyage)

- (a) on the inland waters of Canada, together with those parts that lie within the United States of any lake or river included in the inland waters of Canada; or
- (b) on Lake Michigan.

"inland waters of Canada" means all the rivers, lakes and other navigable fresh waters within Canada, and includes the St. Lawrence River as far seaward as a straight line drawn

- (a) from Cap des Rosiers to West Point Anticosti Island; and
- (b) from Anticosti Island to the north shore of the St. Lawrence River along the meridian of longitude sixty-three degrees west.

"minor waters of Canada" means all inland waters of Canada (other than Lake Ontario, Lake Erie, Lake Huron including Georgian Bay, Lake Superior and the St. Lawrence River east of a line drawn from Father Point to Point Orient) and includes all bays, inlets and harbours of or on those lakes or Georgian Bay.

"minor waters voyage" means a voyage within the minor waters of Canada together with those parts that lie within the United States of any lake or river included in the minor waters of Canada.

"rebate period" means the period

- (a) that begins on June 1, 2002 and that ends on December 31, 2002;
- (b) that begins on January 1, 2003 and that ends on December 31, 2003; or
- (c) that begins on January 1, 2004 and that ends on December 31, 2004.

(2) **Rebate in respect of fuel for eligible ship** — If a person purchases or intends to purchase fuel that is, or is to be, used by the person to operate or maintain an eligible ship during a rebate period, subject to this Part, the Minister shall, on application by the person, pay to the person a rebate for the period determined in accordance with subsection (3).

(3) **Determination of rebate** — The amount of the rebate payable to a person under subsection (2) for a rebate period is equal to

- (a) if the amount applied for is based on an estimate, acceptable to the Minister and made within any period specified by the Minister, of the quantity of fuel that is, or is to be, purchased after May 2002 by the person and is, or is to be, used by the person to operate or maintain an eligible ship during the rebate period, the total amount of tax under Part III that would be imposed on that fuel; or
- (b) in any other case, the total amount of tax under Part III imposed on fuel that is purchased by the person after May 2002 and is used by the person to operate or maintain an eligible ship during the rebate period.

(4) **One application per period** — A person shall not file more than one application (other than an application referred to in paragraph (8)(b)) under this section for any rebate period.

(5) **Reconciliation report** — If a person is paid a rebate for a rebate period based on an estimate referred to in paragraph (3)(a), the person shall, not later than 60 days after the end of the period, file with the Minister in prescribed manner a reconciliation report in prescribed form that indicates

- (a) the amount of the rebate paid to the person; and
- (b) the amount of tax under Part III imposed on the fuel purchased by the person after May 2002 and used by the person to operate or maintain an eligible ship during the rebate period.

(6) **Extension for filing** — The Minister may at any time, in writing, extend the time required by subsection (5) for filing a reconciliation report.

(7) **Effect of extension for filing** — If the Minister has, under subsection (6), extended the time required by subsection (5) for filing a reconciliation report

- (a) the report shall be filed within the time so extended;
- (b) any amount of excess rebate that is required to be paid within the time otherwise required by subsection (9) shall be paid within the time so extended; and
- (c) any interest or penalty payable under this section shall be calculated on the basis that the person has until the expiry of the period so extended to file the reconciliation report.

(8) **Additional amount payable to rebate recipient** — If a person files a reconciliation report for a rebate period and the amount referred to in paragraph (5)(b) exceeds the amount referred to in paragraph (5)(a) in respect of the period

- (a) the Minister shall pay to the person an amount equal to that excess amount; and
- (b) the filing of the reconciliation report is deemed to be an application to the Minister for payment of that excess amount.

(9) **Liability for excess rebate and interest up to due date of reconciliation** — If the rebate paid to a person for a rebate period is determined on the basis of an estimate referred to in paragraph (3)(a) and the amount paid exceeds the amount referred to in paragraph (5) (b) in respect of the period, the person shall pay to the Receiver General

- (a) on or before the day on or before which the reconciliation report for the rebate period is required to be filed, an amount (in this section referred to as the "excess rebate") equal to that excess amount; and
- (b) interest at the prescribed rate, in respect of each month or fraction of a month in the period that begins on the first day following the day on which the rebate is paid to the person and that ends on the earlier of the day the total of the excess rebate and all interest under this paragraph is paid and the day on or before which the reconciliation report is required to be filed, calculated on the total of the amount of the excess rebate that has not been paid to the Receiver General, and of the amount of interest that is outstanding, in the month or fraction of a month.

(10) **Deemed tax liability** — The portion of the total of the excess rebate payable by a person in respect of a rebate period, and of the interest payable by the person under paragraph (9)(b), that is outstanding at the end of the day on or before which the reconciliation report for the period is required to be filed is deemed to be an amount of tax payable under this Act that is required to be, and that has not been, paid by the person on or before that day.

(11) **Interest and penalty on deemed tax** — A person who is in default in paying an amount of tax referred to in subsection (10) shall pay to the Receiver General interest at the prescribed rate, and penalty of one-half of one percent, in respect of each month or fraction of a month in the period that begins on the first day following the day on or before which the reconciliation report is required to be filed and

that ends on the day the total of that tax is paid, calculated on the total of the tax, penalty and interest outstanding in that month or fraction of a month.

(12) **Time for paying interest and penalty** — Any interest under paragraph (9)(b) or subsection (11) and any penalty under that subsection shall be paid not later than the last day of the month in respect of which the interest or penalty was calculated.

(13) **Interest and penalty under ten dollars** — No interest under paragraph (9)(b) or subsection (11) and no penalty under that subsection is required to be paid if the person who would otherwise be liable to pay the interest or the penalty pays all taxes under this section payable by the person and, on the payment, the total interest and penalty otherwise payable by the person under those provisions is less than ten dollars.

(14) **Restriction** — The Minister shall not, at a particular time, pay an amount to a person under this section unless the person has

(a) filed with the Minister all reconciliation reports for rebate periods ending before that time for which a rebate was paid to the person that was based on an estimate referred to in paragraph (3)(a); and

(b) paid all excess rebates in respect of rebate periods ending before that time and all interest and penalty under this section that have accrued to that time.

(15) **Limitation period** — An application may not be made under subsection (2) after December 31, 2006.

429. Replacement of "approvisionnement de navire" with "provisions de bord" — The French version of the Act is amended by replacing the words "approvisionnement de navire" with the words "provisions de bord", with any grammatical changes that the circumstances require, in the following provisions:

(a) paragraph 23.11(1)(c);

(b) subsection 68.17(1); and

(c) paragraph 70(1)(b).

SOR/86-878

Ships' Stores Regulations

430. Valid and effective from November 10, 1986 — The *Ships' Stores Regulations* made by Order in Council P.C. 1986-1856 of August 13, 1986 and registered as SOR/86-878, as amended, are deemed to have been validly made and everything done under, and all consequences flowing from, those Regulations since November 10, 1986 are deemed effective as if those Regulations were so made.

SOR/96-40

Ships' Stores Regulations

431. Valid and effective from January 1, 1996 — The *Ships' Stores Regulations* made by Order in Council P.C. 1995-2248 of December 28, 1995, and registered as SOR/96-40, are deemed to have been validly made and everything done under, and all consequences flowing from, those Regulations since January 1, 1996 are deemed effective as if those Regulations were so made.

SOR/78-376

Ships Suppliers Drawback Regulations

432. The *Ships Suppliers Drawback Regulations* are repealed.

PART 11

COMING INTO FORCE

433. Coming into force — The provisions of this Act, other than sections 1 and 408 to 432, come into force on a day or days to be fixed by order of the Governor in Council.

SCHEDULE 1

RATES OF DUTY OF TOBACCO PRODUCTS

1. Cigarettes:

(a) \$0.287375 for each five cigarettes or fraction of five cigarettes contained in any package, if the cigarettes are black stock

(i) for delivery by the tobacco licensee who manufactured them to a duty free shop or customs bonded warehouse,

(ii) for delivery by the tobacco licensee who manufactured them to a person for use as ships' stores in accordance with the *Ships' Stores Regulations*, or

(iii) for export by the tobacco licensee who manufactured them for delivery to a foreign duty free shop or as foreign ships' stores; and

(b) \$0.308755 for each five cigarettes or fraction of five cigarettes contained in any package, in any other case.

2. Tobacco sticks:

- (a) \$0.042483 per stick, if the tobacco sticks are black stock
 - (i) for delivery by the tobacco licensee who manufactured them to a duty free shop or customs bonded warehouse,
 - (ii) for delivery by the tobacco licensee who manufactured them to a person for use as ships' stores in accordance with the *Ships' Stores Regulations*, or
 - (iii) for export by the tobacco licensee who manufactured them for delivery to a foreign duty free shop or as foreign ships' stores; and
- (b) \$0.045483 per stick, in any other case.

3. Manufactured tobacco other than cigarettes and tobacco sticks:

- (a) \$37.483 per kilogram, if the manufactured tobacco is black stock
 - (i) for delivery by the tobacco licensee who manufactured it to a duty free shop or customs bonded warehouse,
 - (ii) for delivery by the tobacco licensee who manufactured it to a person for use as ships' stores in accordance with the *Ships' Stores Regulations*, or
 - (iii) for export by the tobacco licensee who manufactured it for delivery to a foreign duty free shop or as foreign ships' stores; and
- (b) \$41.481 per kilogram, in any other case.

4. Cigars: \$14.786 per 1,000 cigars.

5. Raw leaf tobacco: \$1.572 per kilogram.

SCHEDULE 2

(Section 43)

ADDITIONAL DUTY ON CIGARS

Cigars:

The greater of

- (a) \$0.03947 per cigar, and
- (b) 50%, computed on
 - (i) the sale price, in the case of cigars manufactured in Canada, or
 - (ii) the duty-paid value, in the case of imported cigars.

SCHEDULE 3

(Sections 53, 54 and 56)

RATES OF SPECIAL DUTIES ON CERTAIN MANUFACTURED TOBACCO

1. Special duty on imported manufactured tobacco:

- (a) \$0.0575 per cigarette, in the case of cigarettes;
- (b) \$0.0425 per stick, in the case of tobacco sticks; and
- (c) \$0.0375 per gram, in the case of manufactured tobacco other than cigarettes or tobacco sticks.

2. Special duty on traveller's tobacco:

- (a) \$0.0575 per cigarette, in the case of cigarettes;
- (b) \$0.0425 per stick, in the case of tobacco sticks; and
- (c) \$0.0375 per gram, in the case of manufactured tobacco other than cigarettes or tobacco sticks.

3. Special duty on unstamped tobacco products:

- (a) \$0.0575 per cigarette, in the case of cigarettes;
- (b) \$0.0425 per stick, in the case of tobacco sticks; and
- (c) \$37.50 per kilogram, in the case of tobacco products other than cigarettes or tobacco sticks.

4. Special duty on stamped tobacco products:

- (a) \$0.068224 per cigarette, in the case of cigarettes;
- (b) \$0.0345 per stick, in the case of tobacco sticks; and
- (c) \$33.502 per kilogram, in the case of tobacco products other than cigarettes or tobacco sticks.

SCHEDULE 4

(Sections 122 and 123)

RATES OF DUTY ON SPIRITS

1. Spirits: \$11.066 per litre of absolute ethyl alcohol contained in the spirits.
2. Spirits containing not more than 7% absolute ethyl alcohol by volume: \$0.2459 per litre of spirits.

SCHEDULE 5

(Section 133)

RATE OF SPECIAL DUTY ON SPIRITS

Special duty on spirits:

\$0.12 per litre of absolute ethyl alcohol contained in the spirits.

SCHEDULE 6

(Sections 134 and 135)

RATES OF DUTY ON WINE

Wine:

- (a) in the case of wine that contains not more than 1.2% of absolute ethyl alcohol by volume, \$0.0205 per litre;
- (b) in the case of wine that contains more than 1.2% of absolute ethyl alcohol by volume but not more than 7% of absolute ethyl alcohol by volume, \$0.2459 per litre; and
- (c) in the case of wine that contains more than 7% of absolute ethyl alcohol by volume, \$0.5122 per litre.

SCHEDULE 7

(Section 362 and Subsection 411(5))

ADDITIONS TO THE LIST OF TARIFF PROVISIONS

[Not reproduced]

Excise Act, 2001

Explanatory Notes and Draft Regulations

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

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.

EXPLANATORY NOTES

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.

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-onpremises 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-onpremises 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 recordkeeping 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 nonduty-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*)

Section 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-onpremises 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 in 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 *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 *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 2nd 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.

Draft Regulations

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*;

"licensee" means a person to whom the Minister has issued a spirits licence or a user's licence under the Act;

"registrant" means a person to whom the Minister has issued an alcohol registration under the Act.

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, vatting, 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*;

"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;

"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

"obscurator tables" means the Canadian Alcoholometric Obscurator Equivalent Tables, 1993, copyright by the Minister of Supply and Services, published under the authority of the Minister of National Revenue.

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;
- (b) a laboratory table is \$15;
- (c) obscurator 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 obscurator 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*;

"alcohol registration" means an alcohol registration issued under section 17 of the Act;

"ferment-on-premises registration" means a ferment-on-premises registration issued under section 15 of the Act;

"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;

"licensee" means a person to whom the Minister has issued a licence under the Act;

"registrant" means a person to whom the Minister has issued a registration under the Act;

"registration" means an alcohol registration, an SDA registration, a user's registration or a ferment-on-premises registration;

"SDA registration" means an SDA registration issued under section 18 of the Act;

"user's registration" means a user's registration issued under section 16 of the Act.

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.

(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*.

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*;

"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.

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 Departmental Alcohol Determination Regulations, 1997	SOR/97-282
2 Distillery Departmental Regulations	C.R.C., c. 570
3 Distillery Regulations	C.R.C., c. 569
4 Excise Warehousing Departmental Regulations	C.R.C., c. 573
5 Excise Warehousing Regulations	C.R.C., c. 572
6 Experimental Fuel Spirit Regulations	SOR/82-204
7 Ontario Flue-Cured Tobacco Excise Regulations	C.R.C., c. 577
8 Pharmacists Regulations	C.R.C., c. 578
9 Spirits Drawback Regulations	C.R.C., c. 579

REGULATIONS RESPECTING THE MARKING OF SPECIAL CONTAINERS

MARKING

- The marking on a special container shall be
 - legible;
 - clearly visible during normal handling; and
 - capable of remaining in place until the alcohol in the special container is completely removed.
- The marking on a special container of spirits shall indicate, in English and French, that
 - the contents of the container are packaged spirits; and
 - the container is intended for delivery to, and
 - use by, a registered user, or
 - use at, a bottle-your-own premises.
- The marking on a special container of wine shall indicate, in English and French, that
 - the contents of the container are packaged wine; and
 - the container is intended for delivery to, and use at, a bottle-your-own premises.

COMING INTO FORCE

- These regulations come into force < >.

REGULATIONS EXEMPTING CERTAIN TOBACCO PRODUCTS FROM SPECIAL DUTY

- 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.
- 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.
- The *Export Tax Exemption Regulations (Tobacco Products)* 1 are repealed.
- These regulations come into force < >.

SCHEDULE 1

(Section 1)

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
Brand
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

Brand 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*;

"manufacturer" means a manufacturer of tobacco products;

"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.

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* 1 are repealed.

11. The *Tobacco Regulations* 2 are repealed.

COMING INTO FORCE

12. These regulations come into force <>.

SCHEDULE 1

(Paragraph 3(1)(a))

STAMPS FOR PACKAGES OF CIGARETTES AND TOBACCO STICKS



CANADA
DUTY PAID
CIGARETTES

CANADA DUTY PAID DROIT ACQUITTE

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

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

CANADA DUTY PAID DROIT ACQUITTE

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

CIGARS - CIGARES
CANADA

DUTY PAID
DROIT ACQUITTÉ

CANADA DUTY PAID DROIT ACQUITTÉ

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)

DUTY PAID TOBACCO DROIT ACQUITTÉ	CANADA	DUTY PAID TABAC DROIT ACQUITTÉ
DUTY PAID	TABAC CANADA TOBACCO	DROIT ACQUITTÉ
CANADA TABAC TOBACCO DROIT ACQUITTÉ DUTY PAID		
CANADA DUTY PAID DROIT ACQUITTÉ		

Footnotes

- 1. SOR/94-749
- 1. C.R.C., c. 581
- 2. C.R.C., c. 580



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