
Explanatory Notes Relating to the Excise Act, the Excise Act 2001, and Related Texts

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Preface

These explanatory notes describe proposed amendments to the *Excise Act*, the *Excise Act, 2001*, and related Texts. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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PART 3 – DIVISION 1**Excise Act, 2001****Clause 54****Definitions**

EA, 2001

2

Section 2 of the *Excise Act, 2001* (the “Act”) defines terms used in the Act. Certain existing definitions are amended and new definitions are added consequential to the addition of new Part 4.2 of the Act, which relates to vaping products.

These amendments come into force on royal assent.

Subclause 54(1)**“container”**

The existing definition “container” of tobacco or cannabis products in section 2 of the Act means any type of container containing tobacco or cannabis products.

The definition “container” is amended to include any type of container containing vaping products.

“excise stamp”

The existing definition “excise stamp” in section 2 of the Act means for tobacco products a stamp that is issued by the Minister of National Revenue under subsection 25.1(1) of the Act and that has not been cancelled under section 25.5 of the Act, and for cannabis products a stamp that is issued by the Minister under subsection 158.03(1) of the Act and that has not been cancelled under section 158.07 of the Act. The definition is relevant for the purposes of the stamping regime for tobacco and cannabis products.

The definition “excise stamp” is amended to include the new definition of “vaping excise stamp” (see commentary for that new definition).

“manufacture”

The existing definition “manufacture” in section 2 of the Act, in respect a tobacco product, includes any step in the preparation or working up of raw leaf tobacco into a tobacco product. It also includes the packaging of raw leaf tobacco or tobacco products.

The definition “manufacture” is amended to include, in respect of a vaping product, any step in the production of the vaping product, including inserting a vaping substance into a vaping device or packaging the vaping product.

Subclause 54(2)**“packaged”**

EA, 2001

2

The existing definition “packaged” in paragraph 2(a) of the Act means, in the case of a tobacco product or a cannabis product, packaged in a prescribed package.

The definition “packaged” is amended to specify that a vaping product, as is the case with a tobacco product or cannabis product, is “packaged” when it is packaged in a package prescribed by regulations.

Subclause 54(3)**“stamped”**

EA, 2001

2

The existing definition “stamped” in section 2 of the Act, when referring to a tobacco product or a cannabis product, means that an excise stamp, and all prescribed information in a prescribed format, have been affixed to, impressed on or otherwise applied to the tobacco product or cannabis product or its container to indicate that duty, other than special duty, has been paid.

The definition “stamped” is amended to by adding paragraph (c) to include stamped vaping products. “Stamped” in respect of a vaping product means that a vaping excise stamp and all prescribed information is stamped, impressed, printed, marked on, indented into or affixed to the vaping product or its container in the prescribed manner to indicate that the duty has been paid.

Subclause 54(4)**“take for use”**

EA, 2001

2

The existing definition “take for use” means, in respect of a cannabis product, to consume, analyze or destroy the cannabis product.

The definition “take for use” is amended to also refer to vaping products. A vaping product is taken for use when it is consumed, analyzed or destroyed. Generally, duty is payable on an unpackaged vaping product when taken for use (see commentary for new section 158.6). Duty is not payable, however, on an unpackaged vaping product that is taken for analysis or destroyed in certain circumstances such as when taken for analysis or destroyed by the Minister of National Revenue, or when taken for analysis or destroyed by a vaping product licensee in a manner approved by the Minister (see commentary for new section 158.66).

Subclause 54(5)**New definitions**

EA, 2001

2

New definitions are added to section 2 of the Act relating to the new taxation regime for vaping products under the Act.

“additional vaping duty”

The new definition “additional vaping duty” in section 2 of the Act means the additional vaping duty imposed by new section 158.58 of the Act.

In addition to the duty on vaping products manufactured in Canada or imported under new section 158.57 of the Act, section 158.58 imposes a duty in respect of a specified vaping province on vaping products manufactured in Canada or imported in circumstances prescribed by regulations (see commentary for section 158.58).

“immediate container”

The new definition “immediate container” in section 2 of the Act means, in respect of a vaping substance, the container that is in direct contact with the vaping substance. It does not include a

vaping device. This new definition is relevant to the duty rates on vaping products under new Schedule 8 to the Act (see commentary for Schedule 8).

“specified vaping province”

The new definition “specified vaping province” in section 2 of the Act means a province prescribed by regulations. These provinces would be provinces that have entered into an agreement with Canada in respect of the coordination of vaping product taxation.

“vaping device”

The new definition “vaping device” in section 2 of the Act means property (other than prescribed property) that is a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol. The definition also includes a vaping pod or other part that may be used with such a device, or a prescribed property.

This new definition is relevant to the duty rates on vaping products under new Schedule 8 to the Act and the new definition of “vaping substance” (see commentary for that new definition).

“vaping duty”

The new definition “vaping duty” in section 2 of the Act means the duty imposed under new section 158.57 of the Act.

Section 158.57 requires a vaping product licensee to pay a duty on vaping products manufactured in Canada. The section also imposes a duty on vaping products imported into Canada (see commentary for section 158.57).

“vaping excise stamp”

The new definition “vaping excise stamp” in section 2 of the Act means a stamp issued by the Minister of National Revenue pursuant to new subsection 158.36(1) of the Act that has not been cancelled under new section 158.4 of the Act.

Subsection 158.36(1) specifies that the Minister may issue vaping excise stamps to a vaping product licensee or to a prescribed person that is importing vaping products, and that such stamps are to be used to indicate that vaping duty and additional vaping duty, if applicable, have been paid on a packaged vaping product (see commentary for section 158.36). Under section 158.4, the Minister may cancel issued vaping excise stamps or the Minister may direct that such stamps be returned or destroyed (see commentary for section 158.4).

“vaping product”

The new definition “vaping product” in section 2 of the Act means a vaping device that contains a vaping substance or a vaping substance that is not contained within a vaping device. A vaping product does not include a cannabis product.

“vaping product drug”

The new definition “vaping product drug” in section 2 of the Act means a vaping product that is either a drug that has been assigned a drug identification number under the *Food and Drug Regulations* or a prescribed vaping product.

“vaping product licensee”

The new definition “vaping product licensee” in section 2 of the Act means a person that holds a vaping product licence issued by the Minister of National Revenue under section 14 the Act (see commentary for section 14).

“vaping product marking”

The new definition “vaping product marking” in section 2 of the Act means prescribed information that is required under the Act to be printed on, or affixed to, a container of vaping products that are not required under the Act to be stamped.

This new definition is relevant to new sections 158.49 and 158.5 of the Act where certain vaping products to be entered into an excise warehouse must be marked (see commentaries for sections 158.49 and 158.5).

“vaping substance”

The new definition “vaping substance” in section 2 of the Act means a substance or a mixture of substances, whether or not it contains nicotine, that is produced to be used, or sold for use, with a vaping device to produce emissions in the form of an aerosol. This new definition is relevant to the duty rates on vaping products under new Schedule 8 to the Act.

Clause 55**Constructive possession and meaning of possession**

EA, 2001

5

Existing section 5 of the Act provides that, 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.

The amendments to section 5 of the Act come into force on royal assent.

Subclause 55(1)**Constructive possession**

EA, 2001

5(1)

Existing subsection 5(1) of the Act provides that the possession of counterfeit tobacco excise stamps or counterfeit cannabis excise stamps, as well as the unlawful possession of cannabis excise stamps, unstamped cannabis products, unpackaged or unstamped raw leaf tobacco, unstamped tobacco products, tobacco manufacturing equipment, a still, bulk alcohol, non-duty-paid packaged alcohol, or property obtained from offences by one person is deemed to be possession by other persons, where there is knowledge of and consent to the person's possession.

Amended subsection 5(1) also provides that the possession of counterfeit vaping excise stamps, as well as the unlawful possession of vaping excise stamps or unstamped vaping products by one person is deemed to be possession by other persons, where there is knowledge of and consent to the person's possession.

Subclause 55(2)**Definition of possession**

EA, 2001

5(2)

Existing subsection 5(2) of the Act provides that the possession of counterfeit tobacco excise stamps or counterfeit cannabis excise stamps, as well as the unlawful possession of cannabis

excise stamps, unstamped cannabis products, unpackaged or unstamped raw leaf tobacco, unstamped tobacco products, tobacco manufacturing equipment, a still, bulk alcohol or non-duty-paid packaged alcohol is given an extended meaning to include knowingly having such items in the possession by another person or having such items in a place for one's own use or benefit or the use or benefit of another person.

Amended subsection 5(2) also provides that the possession of counterfeit vaping excise stamps, as well as the unlawful possession of vaping excise stamps or unstamped vaping products means not only having such items in one's own possession but also knowingly having such items in the possession or custody of another person or having such items in any place for one's own use or benefit or the use or benefit of another person.

Clause 56

Vaping product licence

EA, 2001

14(1)

Existing subsection 14(1) of the Act provides that, subject to regulations, on application, the Minister of National Revenue may issue certain classes of licences.

Amended subsection 14(1) specifies that, subject to regulations, on application, the Minister may also issue a vaping product licence to a person, authorizing the person to manufacture vaping products.

This amendment comes into force on royal assent.

Clause 57

Issuance of excise warehouse licence

EA, 2001

19(1)

Existing subsection 19(1) of the Act provides that, subject to the regulations, on application the Minister of National Revenue may issue an excise warehouse licence to any person that is not a retailer of alcohol to possess in their excise warehouse non-duty paid packaged alcohol, manufactured tobacco or cigars that are not stamped.

Subsection 19(1) is amended so that the holder of an excise warehouse licence may also possess in their excise warehouse vaping products that are not stamped.

This amendment comes into force on royal assent.

Clause 58

Conditions of a vaping licence

EA, 2001

23(3)

Existing subsection 23(3) of the Act outlines the conditions that the Minister of National Revenue may or must impose on a licence granted under the Act. The conditions attached to granting a licence include specifying where and what activities may be conducted under a licence, specifying the amount and form of security required for granting a licence, and specifying any other conditions that the Minister considers appropriate.

Paragraph 23(3)(b) is amended to specify that security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations is required for a vaping product licence.

This amendment comes into force on royal assent.

Clause 59

Vaping products

EA, 2001

Part 4.2

The Act is amended by adding new Part 4.2 that provides rules related to the manufacturing and stamping of vaping products, responsibility for vaping products, and imposition and payment of duty on vaping products.

Manufacturing without licence prohibited

New section 158.35 of the Act sets out rules related to the manufacture of vaping products.

New subsection 158.35(1) of the Act prohibits a person other than a vaping product licensee from manufacturing vaping products. Under new subsection 158.35(2) of the Act, a person who provides equipment to another person to manufacture that other person's own vaping product in the person's place of business is deemed to be the manufacturer of the vaping product and the other person is deemed not to be a manufacturer.

New subsection 158.35(3) of the Act contains an exception to the prohibition found in subsection 158.35(1). Subsection 158.35(3) provides that the prohibition under subsection 158.35(1) does not apply to an individual who manufactures vaping products for personal use. To do so, the individual cannot be a vaping product licensee.

New subsection 158.35(4) of the Act provides that the prohibition under subsection 158.35(1) also does not apply to a person prescribed by regulations that manufactures prescribed vaping products in circumstances prescribed by regulations or for a purpose prescribed by regulations.

New section 158.35 of the Act comes into force on October 1, 2022.

Issuance of vaping excise stamps

New section 158.36 of the Act sets out rules related to the issuance of vaping excise stamps.

New subsections 158.36(1) and (2) of the Act enable the Minister of National Revenue to issue vaping excise stamps, and to limit the quantity of stamps that may be issued, to a vaping product licensee or to a prescribed person that is importing vaping products.

New subsection 158.36(3) of the Act requires that any security required by regulation be provided in a form satisfactory to the Minister before the issuance of vaping excise stamps.

New subsection 158.36(4) of the Act provides that the Minister may authorize a producer of vaping excise stamps to supply vaping excise stamps to a person to whom the Minister has issued stamps under subsection 158.36(1).

New subsection 158.36(5) of the Act provides that the design and construction of vaping excise stamps shall be subject to the Minister's approval.

New subsection 158.36 of the Act comes into force on royal assent.

Counterfeiting vaping excise stamps

New section 158.37 of the Act generally prohibits a person from producing, possessing, selling or otherwise supplying, or offering to supply, anything that is intended to pass for a vaping excise stamp without lawful justification or excuse.

New section 158.37 of the Act comes into force on royal assent.

Unlawful possession of vaping excise stamps

New section 158.38 of the Act establishes prohibitions on who may possess vaping excise stamps. New subsection 158.38(1) of the Act prohibits the possession of vaping excise stamps that have not been affixed to a vaping product or its container to indicate that duty has been paid on the product.

New subsection 158.38(2) of the Act sets out the exceptions to this prohibition. Under subsection 158.38(2) the following persons may possess vaping excise stamps that have not been affixed to a vaping product or its container: the person who lawfully produced the stamps, the person to whom the stamps were issued by the Minister of National Revenue, a sufferance warehouse licensee that possesses the stamps on behalf of the person to whom they were issued, or a prescribed person.

New section 158.38 of the Act comes into force on royal assent.

Unlawful supply of vaping excise stamps

New section 158.39 of the Act prohibits a person from disposing of, selling or otherwise supplying, or offering to supply, vaping excise stamps unless it is done in accordance with the Act.

New section 158.39 of the Act comes into force on royal assent.

Cancellation, return and destruction of vaping excise stamps

New section 158.4 of the Act provides that the Minister of National Revenue may cancel vaping excise stamps that have been issued. The Minister may also direct that the stamps be returned or destroyed in a manner specified by the Minister.

New section 158.4 of the Act comes into force on royal assent.

Unlawful packaging or stamping

New section 158.41 of the Act provides that a person is prohibited from packaging or stamping vaping products unless the person is a vaping product licensee, the importer or owner of the vaping products if they have been placed in a sufferance warehouse for the purpose of being stamped, or a person prescribed by regulations.

New section 158.41 of the Act applies in respect of vaping products manufactured in Canada that are packaged on or after October 1, 2022 and to vaping products that are imported into Canada or released (as defined in the *Customs Act*) on or after that day.

New section 158.41 of the Act also applies in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 if the vaping products are stamped after the day on which new Part 4.2 of the Act receives royal assent; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) after the day on which new Part 4.2 of the Act receives royal assent but before October 1, 2022 if the vaping products are stamped when they are reported under the *Customs Act*.

Unlawful removal

New subsection 158.42(1) of the Act prohibits anyone from removing vaping products from the premises of a vaping product licensee unless they are packaged. Furthermore, if vaping products are intended for the duty-paid market, they must be stamped to indicate that vaping duty has been paid and, if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, to indicate that the additional vaping duty has been paid. If vaping products are not intended for the duty-paid market, all vaping product markings that are required under the Act must be printed on or affixed to its container.

However, new subsection 158.42(2) of the Act provides exceptions from the prohibitions and requirements in subsection 158.42(1). In particular, they do not apply where a licensee removes vaping products from their premises for delivery to another licensee, for export or for delivery to a person for analysis or destruction in accordance with new paragraph 158.66(a)(iv). These prohibitions and requirements also do not apply in respect of a vaping product drug.

New subsection 158.42(3) of the Act provides a further exception from the prohibitions and requirements in subsection 158.42(1) where the Minister of National Revenue removes a vaping product for analysis or destruction.

New section 158.42 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Prohibition – vaping products for sale

New section 158.43 of the Act prohibits any person from purchasing or receiving for sale the following vaping products:

- vaping products sold or provided by a manufacturer that the person knows, or ought to know, is not a vaping product licensee;
- vaping products that are not packaged and stamped as required by the Act; or
- vaping products that the person knows, or ought to know, are fraudulently stamped.

New section 158.43 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Unlawful possession or sale of vaping products

New subsection 158.44(1) of the Act provides that a person that is not a vaping product licensee may not dispose of, sell, offer for sale, purchase or possess vaping products unless they are packaged and properly stamped.

New subsection 158.44(2) of the Act provides that a person that is not a vaping product licensee may not dispose of, sell, offer for sale, purchase or possess a vaping product in a specified vaping province unless it is stamped to indicate that additional vaping duty in respect of the specified vaping province has been paid.

New subsections 158.44(3) to (4) of the Act specify exceptions to the prohibitions in subsections 158.44(1) and (2).

New subsection 158.44(3) of the Act provides that the prohibitions in subsections 158.44(1) and (2) do not apply to the possession of vaping products:

- by a person prescribed by regulations that is transporting the vaping products under circumstances and conditions prescribed by regulations;
- by a person that possesses the vaping products for analysis or destruction in accordance with new paragraph 158.66(a)(iv) of the Act;
- by an accredited representative for their personal or official use;
- by an individual who has imported the vaping products for their personal use in quantities not in excess of limits prescribed by regulations;
- by an individual who has manufactured the vaping products in accordance with new subsection 158.35(3) of the Act; or
- if the vaping products are vaping product drugs.

In the case of imported vaping products, the prohibitions in subsections 158.44(1) and (2) do not apply to the possession of a vaping product by an excise warehouse licensee in their excise warehouse, by a sufferance warehouse licensee in their sufferance warehouse, or by a customs bonded warehouse licensee in their customs bonded warehouse.

New subsection 158.44(4) of the Act provides that the prohibitions in subsections 158.44(1) and (2) do not apply to disposing, selling, offering to sell or purchasing vaping products if:

- a vaping product licensee sells or offers to sell the vaping products for export and the vaping products are exported by the licensee in accordance with this Act;

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- a vaping product licensee sells or offers to sell the vaping products to an accredited representative for their personal or official use;
 - an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping products for export and the vaping products are exported by the licensee in accordance with this Act, where the vaping products are imported vaping products;
 - an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping products to an accredited representative for their personal or official use, where the vaping products are imported vaping products; or
 - the vaping products are vaping product drugs.

New section 158.44 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Sale or distribution by a licensee

New section 158.45 of the Act limits a vaping product licensee's ability to distribute, sell or offer to sell a vaping product to a person. New subsection 158.45(1) of the Act provides that a vaping product licensee is prohibited from distributing a vaping product or selling or offering to sell a vaping product to a person unless the vaping product is packaged and properly stamped (including being stamped to indicate that additional vaping duty has been paid, if applicable).

New subsection 158.45(2) of the Act provides that the prohibitions in subsection 158.45(1) do not apply if the vaping product licensee is distributing, selling or offering for sale the vaping product to another vaping product licensee or to an accredited representative for their personal or official use, if the vaping product is exported by the vaping product licensee in accordance with this Act, or if the vaping product is a vaping product drug.

New section 158.45 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Packaging and stamping of vaping products

New section 158.46 of the Act prohibits a vaping product licensee from entering the vaping products the licensee manufactures into the duty-paid market, unless the products have been packaged and properly stamped by the licensee (including being stamped to indicate that the additional vaping duty has been paid, if applicable) and have the information prescribed by regulations printed on the package.

New section 158.46 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Packaging and stamping of imported vaping products

New subsection 158.47(1) of the Act requires an imported vaping product that is to be entered into the duty-paid market to be packaged in a package displaying prescribed information and stamped before they are released under the *Customs Act*. If the vaping product is to be entered in the duty-paid market of a specified vaping province, the product must be stamped to indicate that additional vaping duty in respect of that province has been paid.

New subsection 158.47(2) of the Act provides that the requirements under subsection 158.47(1) do not apply to a vaping product that is imported by a vaping product licensee for further manufacturing, that is imported for re-working or destruction pursuant to an authorization given by the Minister of National Revenue under new subsection 158.53(2) of the Act, or that is imported by an individual for their personal use in quantities within prescribed limits.

New section 158.47 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Notice – absence of stamping

New subsection 158.48(1) of the Act provides that the absence of stamping on a vaping product, as required by the Act, is notice to all persons that the duty has not been paid on that product.

New subsection 158.48(2) of the Act provides that the absence on a vaping product of stamping that indicates that additional vaping duty in respect of a specified vaping province has been paid is notice to all persons that additional vaping duty in respect of the specified vaping province has not been paid on the vaping product.

New section 158.48 of the Act comes into force on royal assent.

Unstamped products to be warehoused

New section 158.49 of the Act requires that all packaged vaping products that are not stamped by a vaping product licensee must be immediately entered into the licensee's excise warehouse.

New section 158.49 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

No warehousing of vaping products without markings

New subsection 158.5(1) of the Act prohibits anyone from entering a container of vaping products into an excise warehouse unless the container has vaping product markings and other prescribed information printed on it.

New subsection 158.5(1) of the Act comes into force on royal assent.

New subsection 158.5(2) of the Act also prohibits anyone from delivering a container of imported vaping products to an accredited representative or to a customs bonded warehouse unless the container has vaping product markings and other prescribed information printed on it.

New subsection 158.5(2) of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

New subsections 158.5(3) and (4) of the Act provide limited exemptions from the marking requirements for a container of imported vaping products under subsection 158.5(1). A container of imported vaping products that were manufactured outside Canada and are stamped may be delivered to a customs bonded warehouse. A container of imported vaping products does not require vaping product markings if prescribed circumstances exist.

New subsections 158.5(3) and (4) of the Act come into force on royal assent.

Non-compliant imports

New subsection 158.51(1) of the Act provides that if an imported vaping product intended for the duty-paid market is not stamped at the time of importation, then the product has to be placed in a sufferance warehouse for stamping.

New subsection 158.51(2) of the Act provides that if an imported vaping product intended for the duty-paid market of a specified vaping province is not stamped at the time of importation to indicate that additional vaping duty in respect of the province has been paid, then the product has to be placed in a sufferance warehouse for stamping.

New subsection 158.51(3) of the Act provides that subsections 158.51(1) and (2) do not apply in prescribed circumstances.

New section 158.51 of the Act comes into force on October 1, 2022.

Vaping products – waste removal

New subsection 158.52(1) of the Act provides that a vaping product that is waste is permitted to be removed from the premises of a vaping product licensee only by the licensee or a person authorized by the Minister of National Revenue.

New subsection 158.52(2) of the Act provides that the vaping product so removed shall be dealt with in the manner authorized by the Minister.

New section 158.52 of the Act comes into force on October 1, 2022.

Re-working or destruction of vaping products

New subsection 158.53(1) of the Act provides a licensee may re-work or destroy a vaping product in the manner authorized by the Minister of National Revenue.

New subsection 158.53(2) of the Act provides that the Minister may authorize a vaping product licensee to import vaping products that were manufactured by the licensee in Canada for re-working or destruction.

New section 158.53 of the Act comes into force on October 1, 2022.

Responsibility

New subsection 158.54(1) of the Act sets out the basic rules for determining the responsible person in respect of vaping products. For a vaping product manufactured in Canada, the responsible person at a particular time is:

- the vaping product licensee that is the owner of the vaping product at that time;
- the vaping product licensee that last owned the vaping product, where it is not owned by a vaping product licensee; or
- a person prescribed by regulations.

For an imported vaping product, new subsection 158.54(2) of the Act provides that the responsible person at a particular time is the person that imported the vaping product or a person prescribed by regulations.

New section 158.54 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Person not responsible

New section 158.55 of the Act provides that a person that is responsible for a vaping product ceases to be responsible for it if:

- it is packaged and stamped and the duty on it is paid;
- it is consumed or used in manufacturing of a vaping product that is a vaping product drug or a prescribed vaping product;
- it is taken for use and the duty on it is paid;
- it is taken for use in accordance with any of the new subparagraphs 158.66(a)(i) to (iv) of the Act (see commentary for section 158.66);
- it is exported;
- it is delivered to an accredited representative for their personal or official use;
- it is lost, under circumstances prescribed by regulations if the person fulfils any conditions prescribed by regulations; or
- prescribed circumstances exist.

New section 158.55 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Imports for personal use

New section 158.56 of the Act provides that an individual that imports vaping product within prescribed limits for their personal use is not responsible for those vaping products.

New section 158.56 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Imposition – vaping duty

New section 158.57 of the Act imposes duty on vaping products. For vaping products manufactured in Canada, duty is payable by the vaping product licensee that packaged them at the time the products are packaged. For imported vaping products, the duty is payable by the

importer, owner or other person liable to pay duty under the *Customs Act*. The rates of the duty are set out in new Schedule 8.

New section 158.57 of the Act applies in respect of vaping products manufactured in Canada that are packaged on or after October 1, 2022, and in respect of vaping products that are imported into Canada or released (as defined in the *Customs Act*) on or after that day.

New section 158.57 of the Act also applies in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 if the vaping products are stamped after the day on which new Part 4.2 of the Act receives royal assent; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) after the day on which new Part 4.2 of the Act receives royal assent but before October 1, 2022 if the vaping products are stamped when they are reported under the *Customs Act*.

Furthermore, in respect of vaping products manufactured in Canada that are packaged before October 1, 2022 and that are stamped after the day on which new Part 4.2 of the Act receives royal assent, the duty imposed under new section 158.57 of the Act is payable by the vaping product licensee that packaged the vaping products at the later of the beginning of October 1, 2022 and the time the vaping products are stamped.

Imposition – additional vaping duty

In addition to the duties imposed under section 158.57 of the Act, new section 158.58 of the Act imposes a duty in respect of a specified vaping province on vaping products, if applicable. This duty is imposed on the vaping products in circumstances prescribed by regulations in the amount determined in a manner prescribed by regulations. For vaping products manufactured in Canada, duty is payable by the vaping product licensee who packaged them at the time the products are packaged. For imported vaping products, the duty is payable by the importer, owner or other person liable to pay duty under the *Customs Act*.

The additional vaping duty would apply in respect of provinces that have entered into an agreement with Canada in respect of the coordination of vaping product taxation.

New section 158.58 of the Act applies in respect of vaping products manufactured in Canada that are packaged on or after October 1, 2022, and in respect of vaping products that are imported into Canada or released (as defined in the *Customs Act*) on or after that day.

New section 158.58 of the Act also applies in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 if the vaping products are stamped after the day on which new Part 4.2 of the Act receives royal assent; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) after the day on which new

Part 4.2 of the Act receives royal assent but before October 1, 2022 if the vaping products are stamped when they are reported under the *Customs Act*.

Furthermore, in respect of vaping products manufactured in Canada that are packaged before October 1, 2022 and that are stamped after the day on which new Part 4.2 of the Act receives royal assent, the duty imposed under new section 158.58 of the Act is payable by the vaping product licensee that packaged the vaping products and at the later of the beginning of October 1, 2022 and the time they are stamped.

Application of Customs Act

New section 158.59 of the Act provides that the duties on imported vaping products imposed under new sections 158.57 and 158.58 of the Act must be paid and collected under the *Customs Act* as if they were duties levied under the *Customs Tariff*.

New section 158.59 of the Act comes into force on royal assent.

Duty on vaping products taken for use

New subsection 158.6(1) of the Act provides that if vaping products are taken for use (see commentary for the definition “take for use”) then a duty is imposed in the amount determined in respect of the vaping product under new Schedule 8 to the Act. If the vaping products that are taken for use are packaged, they are also relieved of the duty imposed under new section 158.57 of the Act.

In addition to the duty imposed by subsection 158.6(1), new subsection 158.6(2) of the Act provides that if vaping products are taken for use then a duty in respect of a specified vaping province is imposed on the vaping products in circumstances prescribed by regulations in the amount determined in a manner prescribed by regulations. This duty would apply in respect of provinces that have entered into an agreement with Canada in respect of the coordination of vaping product taxation.

New subsection 158.6(3) of the Act provides that the duty imposed by subsection 158.6(1) or (2) is payable at the time the vaping products are taken for use by the person responsible for the vaping products at the time they are taken for use.

New section 158.6 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Duty on unaccounted vaping product

New section 158.61 of the Act provides that duty is payable on vaping products that are not accounted for. New subsection 158.61(1) of the Act provides that a duty is imposed on a vaping product if a person responsible for the vaping product cannot account for the vaping product as being in the possession of a vaping product licensee or in the possession of a person in accordance with new subsection 158.44(3) of the Act (see commentary for that new subsection). The duty is imposed in the amount determined in respect of the vaping product under new Schedule 8 to the Act. If the vaping product that is unaccounted for is packaged, it is also relieved of the duty imposed under new section 158.57 of the Act.

In addition to the duty imposed by subsection 158.61(1), new subsection 158.61(2) of the Act provides that if a vaping product cannot be accounted for as described above then a duty in respect of a specified vaping province is imposed in circumstances prescribed by regulations in the amount determined in a manner prescribed by regulations. This duty would apply in respect of provinces that have entered into an agreement with Canada in respect of the coordination of vaping product taxation.

New subsection 158.61(3) of the Act provides that the duty imposed by subsection 158.61(1) or (2) is payable by the person responsible for the vaping product at the particular time that the vaping product cannot be accounted for.

New subsection 158.61(4) of the Act provides that subsection 158.61(1) does not apply in circumstances in which the person referred to in that subsection is convicted of an offence under new section 218.2 of the Act (see commentary for that new section).

New section 158.61 of the Act comes into force on October 1, 2022. However, it does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Duty relieved – unstamped vaping products

New subsection 158.62(1) of the Act provides that the duties imposed on vaping products under new sections 158.57 and 158.58 are relieved on unstamped vaping products.

New subsection 158.62(2) of the Act provides that the duty relief in subsection 158.62(1) does not apply to vaping 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* (see commentary for Chapter 98).

New section 158.62 comes into force on royal assent.

Duty relieved – stamped vaping product imported by an individual

New subsection 158.63(1) of the Act provides for relief from the duty imposed by new sections 158.57 and 158.58 of the Act in the case of stamped Canadian-manufactured vaping products that are imported by an individual for their personal use.

New subsection 158.63(2) of the Act provides for relief from the duty imposed by sections 158.57 and 158.58 of the Act in the case of vaping products imported by an individual for their personal use where the vaping products were manufactured outside of Canada but were previously imported and are stamped.

New section 158.63 of the Act comes into force on royal assent.

Duty relieved – importation for destruction

New section 158.64 of the Act provides relief from the duty imposed by new paragraphs 158.57(b) and 158.58(b) of the Act on a stamped product that was manufactured in Canada and that is imported for re-working or destruction in accordance with new section 158.53 of the Act (see commentary for that new section).

New section 158.64 of the Act comes into force on royal assent.

Duty relieved – prescribed circumstances

New section 158.65 of the Act provides for relief from the duty imposed by section 158.57 or 158.58 of the Act on vaping products in circumstances prescribed by regulations.

New section 158.65 of the Act comes into force on royal assent.

Duty not payable – vaping product taken for analysis, destruction, etc.

New section 158.66 of the Act provides that duty is not payable on a vaping product if:

- it is taken for analysis or destroyed by the Minister of National Revenue;
- it is taken for analysis by a vaping product licensee in a manner approved by the Minister of National Revenue;
- it is destroyed by a vaping product licensee in a manner approved by the Minister of National Revenue;
- it is delivered to another person for analysis or destruction in a manner approved by the Minister of National Revenue;
- it is a vaping product drug or a prescribed vaping product; or

- prescribed circumstances exist.

New section 158.66 of the Act comes into force on royal assent.

Restriction – entering vaping product

New section 158.67 of the Act prohibits any person from entering stamped vaping products into an excise warehouse. The section also prohibits any person from entering unstamped vaping products into an excise warehouse except in accordance with the Act. The section must be read in conjunction with new section 158.68 of the Act (see commentary for that new section), which strictly limits the circumstances under which vaping products may be removed from an excise warehouse, and new section 158.5 (see commentary for that new section), which requires vaping products entered into an excise warehouse to bear vaping product markings.

New section 158.67 of the Act comes into force on royal assent.

Prohibition on removal

New subsection 158.68(1) of the Act prohibits any person from removing from an excise warehouse vaping products manufactured in Canada. However, new subsection 158.68(2) of the Act provides an exception to the subsection 158.68(1) where, subject to the regulations, vaping products manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured them only if the products are for export by the licensee or for delivery to an accredited representative for their official or personal use.

New subsection 158.68(3) of the Act provides an additional exception to the subsection 158.68(1) where, subject to the regulations, vaping products manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured them if they are removed for re-working or destruction by the licensee in accordance with new section 158.53 of the Act (see commentary for new section 158.53).

New section 158.68 comes into force on October 1, 2022.

Removal of imported vaping products

New subsection 158.69(1) of the Act prohibits anyone from removing imported vaping products from an excise warehouse. However, new subsection 158.69(2) of the Act provides exceptions to the prohibition in subsection 158.69(1). Subject to regulation, imported vaping products may only be removed from an excise warehouse for delivery to another excise warehouse, for delivery to an accredited representative for their official or personal use, or for export by the excise warehouse licensee in accordance with this Act.

New section 158.69 of the Act comes into force on October 1, 2022.

Clause 60

Determination of fiscal months

EA, 2001

159

Existing section 159 provides for determining various fiscal periods of a person for the purposes of the Act.

Existing subsection 159(1) of the Act sets out rules for determining the fiscal months of a person, other than a cannabis licensee. The fiscal months of a cannabis licensee are determined under subsection 159(1.01) of the Act. Subsection 159(1) is amended to specify that it also does not apply in respect of a vaping product licensee.

Existing subsection 159(1.01) of the Act provides that the fiscal months of a cannabis licensee are calendar months. Subsection 159(1.01) is amended to specify that the fiscal months of a vaping product licensee are also calendar months.

These amendments come into force on royal assent.

Clause 61

No refund on exported vaping products

EA, 2001

180

Existing section 180 of the Act provides that the duty paid on any tobacco product, cannabis product or alcohol entered into the duty-paid market shall not be refunded if the tobacco product, cannabis product or alcohol is subsequently exported. Section 180 is amended so that it also applies in respect of vaping products.

This amendment comes into force on royal assent.

Clause 62

Refund of duty – destroyed vaping product

EA, 2001

187.2

New section 187.2 of the Act provides that the Minister of National Revenue may refund the duty paid on a vaping product to a vaping product licensee if the vaping product is re-worked or destroyed in accordance with new section 158.53 of the Act (see commentary for that new section). To be eligible for such a refund, the vaping product licensee must apply for the refund within two years after the vaping product has been re-worked or destroyed.

This amendment comes into force on royal assent.

Clause 63

Keeping records – general

EA, 2001

206

Section 206 of the Act generally sets out the requirements under the Act relating to keeping of records and information for any purpose relating to the administration and enforcement of the Act.

Existing paragraph 206(1)(d) of the Act provides that a person that transports unstamped tobacco products, unstamped cannabis products or non-duty paid alcohol is required to keep records sufficient to enable a determination to be made of whether they have complied with the Act. This paragraph is amended so that also applies in respect of a person that transports unstamped vaping products.

The amendment to paragraph 206(1)(d) comes into force on October 1, 2022. However, this amendment does not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Section 206 of the Act is also amended to add new subsection 206(2.02) of the Act, which provides that every vaping product licensee must retain records relating to the amount of vaping product manufactured, received, used, packaged, sold and disposed of by the licensee.

New subsection 206(2.02) of the Act comes into force on royal assent.

Clause 64

Unlawful production, sale, etc.

EA, 2001

214

Existing section 214 of the Act provides that certain activities constitute offences under the Act.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, the following offences are added to existing section 214:

- counterfeiting or unlawfully possessing or supplying vaping excise stamps (new sections 158.37 to 158.39);

This first amendment comes into force on royal assent.

Section 214 is further amended to provide that it is also an offence under the Act to contravene any of the following sections of the Act:

- new section 153.35 - manufacturing vaping products without a licence;
- new section 158.41 - packaging or stamping a vaping product unless it is done by a vaping product licensee, by an importer or owner of the product and the product has been placed in a sufferance warehouse, or by a person prescribed by regulations (section 158.41);
- new section 158.43 - knowingly purchasing or receiving for sale vaping products from an unlicensed vaping product licensee, vaping products that are not properly packaged and stamped, or fraudulently stamped vaping products.

This second amendment comes into force on October 1, 2022.

Clause 65

Punishment – sections 158.44 and 158.45

EA, 2001

218.2

New section 218.2 of the Act provides that any person that contravenes new section 158.44 (unlawful possession or sale of vaping products) or 158.45 (sale or distribution of vaping product

by licensee must be packaged and stamped) of the Act is guilty of an offence and liable to a fine or imprisonment or to both.

New paragraph 218.2(1)(a) of the Act provides that a person that contravenes section 158.44 or 158.45 of the Act (see commentaries for the new sections) and is convicted by way of indictment is liable to pay a fine or to imprisonment for a term of not more than five years, or to both. The minimum amount of a fine under paragraph 218.2(1)(a) is the greater of \$1,000 and the amount determined under new Schedule 8 to the Act in respect of the vaping products to which the offence relates multiplied by 200% (plus an additional 200% if the offence occurred in a specified vaping province). The maximum amount of a fine under paragraph 218.2(1)(a) is the greater of \$2,000 and the amount determined under Schedule 8 in respect of the vaping products to which the offence relates multiplied by 300% (plus an additional 300% if the offence occurred in a specified vaping province).

New paragraph 218.2(1)(b) of the Act provides that a person that contravenes section 158.44 or 158.45 of the Act and is convicted by way of summary conviction is liable to pay a fine or to imprisonment for a term of not more than 18 months, or to both. The minimum amount of a fine under paragraph 218.2(1)(b) is the greater of \$500 and the amount determined under Schedule 8 of the Act in respect of the vaping products to which the offence relates multiplied by 200% (plus an additional 200% if the offence occurred in a specified vaping province). The maximum amount of a fine under paragraph 218.2(1)(b) is the greater of \$1,000 and the amount determined under Schedule 8 in respect of the vaping products to which the offence relates multiplied by 300% (plus an additional 300% if the offence occurred in a specified vaping province), which amount is not to exceed \$500,000.

These amendments come into force on October 1, 2022.

Clause 66

Property obtained from offences

EA, 2001
230

Existing section 230 of the Act 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 certain tobacco-, alcohol- or cannabis-related offences under the Act.

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.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, paragraph 230(1)(a) is amended by making it an offence to knowingly possess property or proceeds of property that were acquired by reason of the commission of or conspiracy to commit vaping product offences under new subsection 218.2(1) of the Act (see commentary for that new subsection).

These amendments come into force on October 1, 2022.

Clause 67

Laundering proceed of certain offences

EA, 2001
231

Existing section 231 of the Act makes it an offence to deal with, in any manner or by any means, property or proceeds of property with intent to conceal or convert the property or proceeds, knowing that the property or proceeds were obtained by reason of the commission of or conspiracy to commit the following tobacco-, alcohol- or cannabis-related offences under the Act:

- unlawful manufacturing, packaging or stamping of tobacco products or cannabis products; or unlawful production or packaging of spirits or wine (section 214);
- unlawful possession or sale of unstamped tobacco products (subsection 216(1));
- certain serious alcohol offences (subsection 218(1)); or
- selling unstamped cannabis, or sale or distribution of cannabis by licensee unless it is packaged and stamped (subsection 218.1(1)).

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.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, paragraph 231(1)(a) is amended by making it an offence to deal with, in any manner or by any means, the property or proceeds of property with intent to conceal or convert the property or proceeds, knowing that the property or proceeds were obtained by reason of the commission of or conspiracy to commit vaping product offences under new subsection 218.2(1) of the Act (see commentary for the new subsection).

These amendments come into force on October 1, 2022.

Clause 68

Part XII.2 of Criminal Code applicable

EA, 2001

232

Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* allow for the seizure and forfeiture of proceeds derived from a designated offence under the *Criminal Code*. A designated offence is defined as (among other things) any offence that may be prosecuted as an indictable offence under the *Criminal Code* or any other Act of Parliament.

Existing section 232 of the Act makes those provisions of the *Criminal Code* relating to a designated offence applicable to proceedings concerning a following offence under the Act:

- unlawful manufacturing, packaging or stamping of tobacco products or cannabis products; or unlawful production or packaging of spirits or wine (section 214);
- unlawful possession or sale of unstamped tobacco products (subsection 216(1));
- certain serious alcohol offences (subsection 218(1));
- selling unstamped cannabis or sale or distribution of cannabis by licensee, unless it is packaged and stamped (subsection 218.1(1));
- possession of property or proceeds obtained by the commission of offences (section 230); or
- concealing property or proceeds obtained by the commission of offences (section 231).

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, subsection 232(1) is amended by also making those provisions of the *Criminal Code* relating to designated offences applicable to proceedings concerning an offence under new subsection 218.2(1) of the Act (see commentary for that new subsection).

These amendments come into force on October 1, 2022.

Clause 69

Contravention of section 158.46 or 158.49

EA, 2001

233.2

New section 233.2 of the Act provides that a vaping product licensee that contravenes section 158.46 of the Act (packaging and stamping of vaping product) or section 158.49 of the Act (unstamped products to be warehoused) is liable to a penalty equal to the amount determined under Schedule 8 to the Act in respect of the vaping products to which the contravention relates

multiplied by 200% (plus an additional 200% if the contravention occurred in a specified vaping province).

This amendment comes into force on October 1, 2022.

Clause 70

Contravention of certain sections

EA, 2001

234

Existing subsection 234(1) of the Act specifies a penalty of up to \$25,000 for contraventions of certain sections of the Act.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, subsection 234(1) is amended to specify a penalty of up to \$25,000 for contraventions of new section 158.5 of the Act (no warehousing of vaping products without markings), or new section 158.67 of the Act (restriction on vaping product entering an excise warehouse). This amendment comes into force on royal assent.

Subsection 234(1) is further amended to provide that it is also an offence under the Act to contravene new section 158.52 of the Act (removal of vaping product waste). This amendment comes into force on October 1, 2022.

Section 234 of the Act is amended to add new subsection 234(4) of the Act, which provides that every person that fails to return or destroy vaping product stamps as directed by the Minister of National Revenue under paragraph 158.4(b) is liable to a penalty of not more than \$25,000. This amendment comes into force on royal assent.

New subsection 234(4) of the Act is subsequently amended to provide that every person that fails to re-work or destroy a vaping product in an authorized manner under new section 158.53 is liable to a penalty of not more than \$25,000. This amendment comes into force on October 1, 2022.

Clause 71**Contravention of section 158.35 and 158.43 to 158.45**

EA, 2001

234.2

New section 234.2 of the Act provides that any person that contravenes new section 158.35 of the Act (manufacture of vaping products without a licence), section 158.43 of the Act (prohibition regarding vaping products for sale, etc.), section 158.44 of the Act (unlawful possession or sale of unstamped vaping products) or section 158.45 of the Act (sale or distribution of vaping product by licensee must be packaged and stamped) is liable to a penalty equal to the amount determined under new Schedule 8 to the Act in respect of the vaping products to which the contravention relates multiplied by 200% (plus an additional 200% if the contravention occurred in a specified vaping province).

This amendment comes into force on October 1, 2022.

Clause 72**Diversion of unstamped products**

EA, 2001

237

New subsection 237(5.1) of the Act provides that a vaping product licensee is liable to a penalty of an amount determined under new subsection 237(5.3) if an unstamped vaping product manufactured in Canada is removed from the licensee's excise warehouse for a purpose described in new subsection 158.68(2) (i.e., for export or for delivery to an accredited representative) but the product is not exported or delivered, as the case may be, for that purpose.

New subsection 237(5.2) of the Act provides that an excise warehouse licensee is liable to a penalty of an amount determined under subsection 237(5.3) if an imported vaping product is removed from the licensee's excise warehouse for a purpose described in new subsection 158.69(2) (i.e., for export, for delivery to an accredited representative, or for delivery to another excise warehouse) but the product is not exported or delivered, as the case may be, for that purpose.

New subsections 237(5.3) of the Act provides that the penalty for the purposes of subsections 237(5.1) or 237(5.2) is equal to the amount determined under new Schedule 8 to the Act in respect of the vaping products that were removed from the warehouse multiplied by 200% (plus

an additional 200% if at least one specified vaping province exists at the time the vaping products were removed from the warehouse).

Existing subsection 237(6) of the Act provides an exception to the offences set out in section 237 if a licensee can prove to the Minister of National Revenue that the product removed from warehouse was returned to the warehouse. Subsection 237(6) is amended so that it also applies in respect of offences under new subsections 237(5.1) and (5.2).

These amendments come into force on October 1, 2022.

Clause 73

Penalty in respect of unaccounted vaping products

EA, 2001
238.01

New subsection 238.01(1) of the Act provides that an excise warehouse licensee is liable to a penalty on a vaping 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.

New subsection 238.01(2) of the Act provides that the amount of the penalty is equal to the amount determined under new Schedule 8 to the Act in respect of the vaping products that cannot be accounted for multiplied by 200% (plus an additional 200% if at least one specified vaping province exists at the time the vaping products were entered into the warehouse).

These amendments come into force on royal assent.

Clause 74

Penalty for unaccounted excise stamps

EA, 2001
238.1

Existing section 238.1 of the Act establishes a penalty for unaccounted excise stamps.

Consequential to the addition of new Part 4.2 of the Act relating to vaping, paragraph 238.1(1)(a) is amended to provide that a penalty would not apply if the person can demonstrate that the

stamps were affixed to vaping products or their containers in the manner prescribed by regulations for the purposes of the definition “stamped” and that duty has been paid on the vaping products.

Similarly, subsection 238.1(2) is amended to establish that the amount of penalty for each vaping excise stamp that cannot be accounted for is equal to \$5.00, or \$10.00 if the stamp is in respect of a specified vaping province.

These amendments come into force on royal assent.

Clause 75

Other diversions

EA, 2001
239

Existing section 239 of the Act provides that, unless a penalty under section 237 of the Act applies, a person is liable to a penalty equal to 200% of the duty that was imposed on packaged alcohol, a tobacco product or a cannabis product if the product 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 the product 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.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, section 239 is amended to also refer to vaping products.

This amendment comes into force on October 1, 2022.

Clause 76

Certain things not to be returned

EA, 2001
264

Existing section 264 of the Act provides that alcohol, specially denatured alcohol, a restricted formulation, raw leaf tobacco, an excise stamp, a tobacco product or a cannabis product seized under section 260 of the Act 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.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, section 264 is amended to prevent a seized vaping product from being returned to any person, except if the seizure was made in error.

This amendment comes into force royal assent.

Clause 77

Dealing with things seized

EA, 2001
266

Existing subsection 266(1) of the Act specifies that the Minister of National Revenue may sell, destroy or otherwise deal with any item seized in the course of an inspection under section 260 of the Act. However, under existing subsection 266(2) of the Act, the Minister may only sell seized spirits or specially denatured alcohol to a spirits licensee, seized wine to a wine licensee, seized raw leaf tobacco or tobacco products to a tobacco licensee and seized cannabis products to a cannabis licensee.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, new paragraph 266(2)(f) is added to restrict the sale by the Minister of seized vaping products to a vaping product licensee.

This amendment comes into force on royal assent.

Clause 78

Regulations – Governor in Council

EA, 2001
304

Existing section 304 of the Act provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act. Section 304 is amended consequential to the addition of new Part 4.2 of the Act relating to vaping products.

Paragraph 304(1)(c.1) is amended to provide authority to the Governor in Council to make regulations regarding the types of security that are acceptable for the issuance of vaping excise stamps and the manner of determining the amount of that security.

Paragraph 304(1)(f) is amended to provide authority to the Governor in Council to make regulations regarding the information to be provided on vaping products, as well as on containers of vaping products.

Paragraph 304(1)(i) is amended to provide authority to the Governor in Council to make regulations regarding the entry and removal of vaping products from an excise warehouse.

Paragraph 304(1)(n) is amended to provide authority to the Governor in Council to make regulations regarding the sale of seized vaping products.

These amendments come into force on royal assent.

Clause 79

Regulations – Governor in Council – Coordinated vaping duty system

EA, 2001

304.3

New subsection 304.3(1) of the Act defines the “coordinated vaping duty system” as the system for providing for the payment, collection and remittance of duty imposed by new section 158.58 (additional vaping duty in respect of a specified vaping province on vaping products manufactured in Canada or imported into Canada), subsection 158.6(2) (duty in respect of a specified vaping province on vaping products taken for use) and subsection 158.61(2) (duty in respect of a specified vaping province on unaccounted vaping products) of the Act and any provisions relating to duty imposed under those provisions or to refunds in respect of any such duty. This system is relevant to the application of those duties in relation to provinces that have entered into an agreement with Canada in respect of the coordination of vaping product taxation.

New subsections 304.3(2) to (4) of the Act provide the Governor in Council with various regulation-making authorities in respect of the coordinated vaping duty system on transition, rate variation and other general matters that would facilitate the implementation, application, administration and enforcement of the coordinated vaping duty system.

New subsection 304.3(5) of the Act provides that, if a regulation made under the Act in respect of the coordinated vaping duty system states that it applies despite any provision of the Act, in the event of a conflict between the regulation and the Act, the regulation prevails to the extent of the conflict.

These amendments come into force on royal assent.

Clause 80

Duty on vaping products

EA, 2001
Schedule 8

New Schedule 8 to the Act provides rules for determining the amount of duty imposed on vaping products under various sections of the Act as well as amount of fines and penalties.

Section 1 of Schedule 8 specifies the duty imposed on vaping products that are vaping devices that contain vaping substances or that are vaping substances in immediate containers.

Section 2 of Schedule 8 specifies the duty imposed on vaping products that are vaping substances not in any vaping device or immediate container.

These amendments come into force on royal assent.

Consequential and Related Amendments

Criminal Code

Clause 81

Definition

Criminal Code
183

Section 183 of the *Criminal Code* enables enforcement officers to intercept private communications for the purposes of investigating certain offences.

Existing paragraph 183(g) of the *Criminal Code* specifies that certain offences under the Act are included in the definition of “offence” in section 183 of the *Criminal Code*.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, subparagraph 183(g)(i) of the *Criminal Code* is amended to include vaping products under section 214 of the Act (unlawful possession or sale of tobacco, alcohol or cannabis products).

This first amendment comes into force on royal assent.

The definition of “offence” in section 183 is further amended by adding new subparagraph (g)(iii.2). The new subparagraph provides that section 218.2 of the Act (unlawful possession and sale of unstamped vaping products) is included in the definition of “offence” in section 183 of the *Criminal Code*.

This second amendment comes into force on October 1, 2022.

*Excise Tax Act***Clause 82****Definition**

ETA

123(1)

The existing definition “excisable good” in subsection 123(1) of the *Excise Tax Act* means beer or malt liquor (within the meaning of section 4 of the *Excise Act*) and spirits, wine, cannabis products and tobacco products (within the meaning of section 2 of the Act).

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, the definition “excisable good” in subsection 123(1) is expanded to also include vaping products (within the meaning of section 2 of the Act).

This amendment comes into force on October 1, 2022.

*Federal-Provincial Fiscal Arrangements Act***Clause 83****Definition**

FPFAA

2(1)

Subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act* (the FPFAA) defines terms used throughout the FPFAA. Subsection 2(1) is amended by adding the definition “coordinated vaping product taxation agreement”. This term is used in new Part III.3 of the FPFAA (see commentary for new sections 8.9 to 8.92 of the FPFAA) and in section 40 of the FPFAA (see commentary for amendments to section 40 of the FPFAA). The term “coordinated vaping product taxation agreement” refers to an agreement or arrangement respecting vaping product taxation, entered into under new Part III.3, between the Government of Canada and the government of a province.

This amendment comes into force on royal assent.

Clauses 84 and 85

Coordinated Vaping Product Taxation Agreements

FPFAA

8.9 to 8.92 and 40

New Part III.3 of the FPFAA provides the authority for federal-provincial/territorial agreements respecting vaping product taxation, including

- the collection, administration and enforcement of vaping product taxes under a single Act of Parliament;
- the sharing of information acquired in the administration and enforcement of Acts imposing vaping product taxes and Acts providing for rebates, refunds or reimbursements of vaping product taxes and the sharing of other information related to the regulation of vaping and distribution of vaping products relevant to the system of vaping product taxation;
- the accounting for vaping product taxes collected;
- the implementation of and transition to the system of vaping product taxation;
- payments, and the eligibility for payments, by the Government of Canada to the government of the province or territory in respect of the revenues from the system of taxation contemplated under the agreement and to which the province or territory is entitled under the agreement;
- the payment by the respective governments, and their agents and subservient bodies, of the vaping product taxes under the system of vaping product taxation contemplated under the agreement, the accounting for the vaping product taxes so paid and the compliance by them with the legislation under which the system of vaping product taxation is administered; and
- other matters that relate to, and that are considered advisable for the purposes of implementing or administering, the system of vaping product taxation contemplated under the agreement.

Under new Part III.3 of the FPFAA, authority is also provided for the payment, out of amounts received under the Act of Parliament under which vaping product taxes are collected, to the province or territory in accordance with the coordinated vaping product taxation agreement, including advances in respect of those amounts.

Consequential amendments are also made to section 40 of the FPFAA, which provides the Governor in Council the power to make regulations under the FPFAA, to include references where appropriate to coordinated vaping product taxation agreements.

These amendments come into force on royal assent.

*Customs Act***Clause 86****Definition**

Customs Act

2(1)

The definitions of “immediate container”, “vaping device”, “vaping product”, “vaping product licensee” and “vaping substance” are added to subsection 2(1) of the *Customs Act* and all of these definitions reference the corresponding definitions in section 2 of the Act.

These amendments come into force on royal assent.

Clause 87**Sale of detained goods**

Customs Act

97.25(3)

New paragraph 97.25(3)(c.1) of the *Customs Act* is added to provide that any imported vaping products that are detained can only be sold to a vaping product licensee.

This amendment comes into force on October 1, 2022.

Clause 88**Contravention relating to tobacco, cannabis and designated goods**

Customs Act

109.2(2)

Existing subsection 109.2(2) of the *Customs Act* is amended to include vaping products where the unlawful removal of the products by a person from a customs office, sufferance warehouse, bonded warehouse or duty-free shop would be liable to a penalty under this subsection.

This amendment comes into force on October 1, 2022.

Clause 89**No return of certain goods**

Customs Act

117(2)

Existing subsection 117(2) of the *Customs Act* is amended to include vaping products where goods seized from a person cannot be returned to the person or any other person unless the goods were seized in error.

This amendment comes into force on October 1, 2022.

Clause 90**Dealing with goods seized**

Customs Act

119.1(1.1)

New paragraph 119.1(1.1)(c) of the *Customs Act* is added to provide that any imported vaping products seized can only be sold to a vaping product licensee.

This amendment comes into force on October 1, 2022.

Clauses 91 and 92**Disposal of things abandoned or forfeit**

Customs Act

142(1) and 142.1

Existing subsection 142(1) and section 142.1 of the *Customs Act* are amended to include vaping products where products abandoned or finally forfeited under the *Customs Act* would be disposed of by the Minister of Public Safety.

These amendments come into force on October 1, 2022.

Clause 93**Regulations**

Customs Act

164(1)

Existing subsection 164(1) of the *Customs Act* provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of the *Customs Act*. Existing paragraph 164(1)(h.2) is amended to provide authority to the Governor in Council to make regulations regarding the sale of vaping products detained, seized, abandoned or forfeited under the *Customs Act*.

This amendment comes into force on October 1, 2022.

Customs Tariff**Clause 94****Goods of heading No. 98.04**

Customs Tariff

83(a)

Existing paragraph 83(a) of the *Customs Tariff* concerning the travellers' exemption for returning residents is amended to include a reference to vaping products so that the amount of duty imposed on imported vaping products is reduced by the quantity of vaping products that are within the traveller's exemption.

This amendment comes into force on October 1, 2022.

Clause 95**Exception for tobacco products or designated goods**

Customs Tariff

89(2)

Existing subsection 89(2) of the *Customs Tariff* provides an exception for tobacco products or designated goods with respect to the duty relief under subsection 89(1). Subsection 89(2) is amended to provide this exception for vaping products.

This amendment comes into force on October 1, 2022.

Clause 96**No refund or drawback in respect of tobacco products**

113(2)

Customs Tariff

Existing subsection 113(2) of the *Customs Tariff* provides an exception for tobacco products or designated goods with respect to the duty refund or drawback under subsection 113(1). Subsection 113(2) is amended to provide this exception for vaping products.

This amendment comes into force on October 1, 2022.

Clause 97**Duty-free importation of vaping products by certain persons or for certain purposes**

Chapters 98 and 99 of the Schedule

Customs Tariff

The following tariff items in Chapter 98 and 99 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff* are amended to provide duty-free importation of vaping products of up to 120 ml or 120 g of vaping substance, within any combination of not more than 12 vaping devices and immediate containers:

- tariff item Nos. 9804.10.00 and 9804.20.00 - residents returning after an absence from Canada of not less than 48 hours or 7 days, respectively;
- tariff item No. 9805.00.00 - members of the Canadian forces, employees of the Canadian government or former residents of Canada returning to Canada to resume residence in

Canada after having been residents of another country for a period of not less than one year;

- tariff item No. 9807.00.00 - settlers arriving in Canada; and
- tariff item No. 9827.00.00 - members of the military forces of countries that are parties to the North Atlantic Treaty Organization or are members of the Commonwealth, or civilian employees of those military forces who are not Canadian citizens or permanent residents of Canada and are stationed in Canada on official duty.

The following tariff items are amended so that duty-free importation of vaping products are excluded from these tariff items:

- tariff item Nos. 9804.30.00 and 9804.40.00 - goods included in the baggage accompanying residents returning after an absence from Canada of not less than 48 hours or 24 hours respectively;
- tariff item No. 9816.00.00 - donations sent by persons abroad to friends in Canada or imported personally by persons who are not residents of Canada as gifts to friends;
- tariff heading 98.25 - mail or courier importations for personal or household use;
- tariff heading 98.26 - general exemption of goods acquired abroad by a traveller for personal or household use and accompanying the traveller arriving in Canada from abroad if the traveller arrives at a designated customs office; and
- tariff item No. 9906 - importations for the purpose of carrying out field studies conducted by certain expeditions.

These amendments come into force on October 1, 2022.

Amendments to Various Regulations

Clause 98

Tariff Item No. 9805.00.00 Exemption Order

3

The *Tariff Item No. 9805.00.00 Exemption Order* provides for the exemption of certain goods from certain requirements specified in tariff item No. 9805.00.00 (members of the Canadian forces, employees of the Canadian government or former residents of Canada returning to Canada). With the addition of new Part 4.2 of the Act relating to vaping products, new paragraph 3(b.1) is added to expand the exemption to include vaping products owned by and in possession of the importer.

This amendment comes into force on October 1, 2022.

Clause 99

Postal Imports Remission Order

2

The *Postal Imports Remission Order* (the Order) provides for the remission of customs duties, sales and excise taxes on certain goods imported by mail. The existing definition of “goods” in section 2 excludes certain goods for the purposes of this Order.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, the existing definition of “goods” in paragraph 2(a) is amended to also exclude vaping products for the purposes of this Order.

The new definition of “vaping product” is also added in the existing section 2 of the Order and it has the same meaning as in section 2 of the Act.

These amendments come into force on October 1, 2022.

Clause 100

Courier Imports Remission Order

2

The *Courier Imports Remission Order* (the Order) provides for the remission of customs duties, sales and excise taxes on certain imported goods transported into Canada by courier services. The existing definition of “goods” in section 2 excludes certain goods for the purposes of this Order.

Consequential to the addition of new Part 4.2 of the Act relating to vaping products, the existing definition of “goods” in paragraph 2(a) is amended to also exclude vaping products for the purposes of this Order.

The new definition of “vaping product” is also added in the existing section 2 of the Order and it has the same meaning as in section 2 of the Act.

These amendments come into force on October 1, 2022.

Clauses 101 and 102

Customs Sufferance Warehouses Regulations 15(4) and 17

The *Customs Sufferance Warehouses Regulations* (the Regulations) outline the requirements on the operation of a customs sufferance warehouse. The amendments to these Regulations are consequential to the addition of new Part 4.2 of the Act relating to vaping products. These amendments come into force on October 1, 2022.

Existing subsection 15(4) of the Regulations provides the time limit of 14 days on certain goods (including tobacco products) before the goods are forfeited if they are not removed from a customs sufferance warehouse. With the addition of new Part 4.2 of the Act relating to vaping products, subsection 15(4) is amended so that it also applies in respect of vaping products.

Existing section 17 of the Regulations restricts the manner in which the alteration of certain goods may be carried out inside of a customs sufferance warehouse. Paragraph 17(a) is amended so that imported vaping products in a sufferance warehouse may only be altered for the purpose of stamping the vaping products, if the vaping products are placed in the sufferance warehouse in accordance with section 158.51 of the Act.

Clauses 103 and 104

Non-residents' Temporary Importation of Baggage and Conveyances Regulations 2 and 4(1)

The *Non-residents' Temporary Importation of Baggage and Conveyances Regulations* (the Regulations) outline the conditions and time limits in which non-residents could import their baggage and conveyance on a temporary basis. The amendments to these Regulations are consequential to the addition of new Part 4.2 of the Act relating to vaping products. These amendments come into force on October 1, 2022.

The definitions of “immediate container”, “vaping device”, “vaping product” and “vaping substance” are added to section 2 of the Regulations and all these definitions reference those in section 2 of the Act.

Existing subsection 4(1) of the Regulations outlines the limits in which non-residents could import certain goods duty-free into Canada. New paragraph 4(1)(b.1) is added to provide the duty-free limit in respect of imported vaping products as up to 120 ml or 120 g of vaping substance, within any combination of not more than 12 vaping devices and immediate containers.

Clause 105

Tariff Item No. 9807.00.00 Exemption Order

2

The *Tariff Item No. 9807.00.00 Exemption Order* provides for the exemption of certain goods from certain requirements specified in tariff item No. 9807.00.00 (settlers arriving in Canada). With the addition of new Part 4.2 of the Act relating to vaping products, the existing paragraph 2(b) is amended to include vaping products in this exemption.

This amendment comes into force on October 1, 2022.

Clauses 106 to 109

Customs Bonded Warehouses Regulations

2, 14, 16.1 and 18

The *Customs Bonded Warehouses Regulations* (the Regulations) outline the requirements on the operation of a customs bonded warehouse. The amendments to these Regulations are consequential to the addition of new Part 4.2 of the Act relating to vaping products.

Section 2 of the Regulations sets out the defined terms that are used in the Regulations. The new definition of “vaping product” is added to section 2 of the Regulations and it has the same meaning as in section 2 of the Act. This amendment comes into force on October 1, 2022.

Existing section 14 of the Regulations restricts certain domestic products from being entered into a customs bonded warehouse. Section 14 of the Regulations is amended to add new paragraph 14(g), which has the effect of also applying this restriction in respect of unstamped vaping products.

New section 16.1 is added to the Regulations to provide that imported vaping products may not be removed from a customs bonded warehouse unless the products are to be removed for sale to a foreign diplomat in Canada or for export from Canada.

Existing section 18 of the Regulations provides the time limit of 5 years on certain goods before the goods are forfeited if they are not removed from a customs bonded warehouse. Section 18 is amended so that this time limit also applies to vaping products.

The amendments to sections 14 and 18 of the Regulations and new section 16.1 of the Regulations come into force on October 1, 2022. However, these amendment do not apply before 2023 in respect of (a) vaping products manufactured in Canada that are packaged before October

1, 2022 and that are not stamped; and (b) vaping products that are imported into Canada or released (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

Clauses 110 to 113

Regulations Respecting Excise Licences and Registrations

2(2), 4, 5(1) and 12(1)(e)

The *Regulations Respecting Excise Licences and Registrations* (the Regulations) provide the requirements for applicants wishing to produce and distribute spirits, wine, tobacco and cannabis products. The Regulations require that certain conditions be met in order to obtain and maintain a licence or registration. With the addition of new Part 4.2 of the Act relating to vaping products, the Regulations also apply to applicants wishing to manufacture and distribute vaping products. The following amendments to the Regulations come into force on royal assent.

Existing subsection 2(2) of the Regulations provides that an applicant is eligible for a licence (other than a duty-free shop licence) if, among other things, they have not failed in the last 5 years to comply with an Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of, or controls on, alcohol or tobacco products or any regulations made under it. Subparagraph 2(2)(b)(i) is amended to also refer to an Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of, or controls on, vaping products or any regulations made under it.

Existing section 4 of the Regulations provides that the duration of a licence issued under the Act is 2 years. Section 4 is amended to specify that the duration of a vaping product licence is 3 years, while the duration remains 2 years for all other types of licences.

Existing subsection 5(1) of the Regulations provides that security must be posted by an applicant for a spirits licence, a tobacco licence or a cannabis licence, and sets out the amount of that security. Subsection 5(1) of the Regulations is amended to specify that an applicant for a vaping product licence must post security in an amount that is sufficient to ensure payment of the amount of duty referred in paragraph 160(b) of the Act and that is not less than \$5,000 and not more than \$5 million per licence, as is the case for a tobacco or a cannabis licensee.

Existing section 12 of the Regulations provides conditions that must be met when a licence or a registration is canceled. Paragraph 12(1)(e) provides that a ground for cancelling a licence or a registration is the failure to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of, or controls, on alcohol or tobacco products, or any regulations made under it. Paragraph 12(1)(e) of the Regulations is amended to also provide that a ground for cancelling a licence or a registration is the failure to comply with any

Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of, or controls, on vaping products, or any regulations made under it.

Clause 114 and 115

Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped

Title and 1.4

The *Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped* (the Regulations) identify the classes of persons who may possess unstamped tobacco products or cannabis products, and the conditions under which they may possess these products. The amendments to the Regulations are consequential to the addition of new Part 4.2 of the Act relating to vaping products.

The title of the Regulations is amended to *Regulations Respecting the Possession of Tobacco, Cannabis or Vaping Products That Are Not Stamped*. This amendment comes into force on royal assent.

New section 1.4 of the Regulations provides that, for the purpose of paragraph 158.44(3)(b) of the Act (possession of vaping products by a prescribed person that is transporting the products), a person may possess unstamped vaping products

- if that person is authorized by an officer under section 19 of the *Customs Act* to be transporting imported vaping products and the person is acting in accordance with that authorization; or
- if that person has documentation providing evidence that they are transporting the vaping products on behalf of a vaping product licensee, an excise warehouse licensee or an accredited representative.

This amendment comes into force on October 1, 2022.

Clauses 116 to 127

Stamping and Marking of Tobacco and Cannabis Products Regulations

Title, 2(c), 4, 4.01, 4.11, 4.2, 5.1, 8, 9, Schedule 7 and Schedule 8

The *Stamping and Marking of Tobacco and Cannabis Products Regulations* (the Regulations) provide rules relating to the stamping, marking and labelling of tobacco and cannabis products. Among other things, the Regulations include rules to set out the stamping requirements of tobacco and cannabis products and define the term “packaged” as the term used in the Act and

all related regulations. The amendments to the Regulations are consequential to the addition of new Part 4.2 of the Act relating to vaping products.

The following amendments come into force on royal assent except for the addition of new section 5.1 of the Regulations, which comes into force on October 1, 2022.

The title of the Regulations is amended to become the *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations*.

The existing paragraph 2(c) of the Regulations provides rules relating to when a cannabis product is packaged for the purpose of paragraph (a) of the definition “packaged” in section 2 of the Act. Paragraph 2(c) of the Regulations is amended to specify that, as is the case for a cannabis product, a vaping product is packaged in a prescribed package when it is packaged in the smallest package (including any outer wrapping that is customarily displayed to the consumer) in which it is normally offered for sale to the general public.

Existing section 4 of the Regulations provides rules for determining who, other than a tobacco licensee, may be issued tobacco excise stamps or may possess tobacco or cannabis excise stamps that have not been affixed to a tobacco product or cannabis product. Section 4 of the Regulations is amended to provide that, for the purposes of new subsection 158.36(1) of the Act (issuance of vaping excise stamps – see commentary for that new subsection), a vaping excise stamp may be issued to a person who satisfies the requirements set out in paragraphs 2(2)(a) to (e) of the *Regulations Respecting Excise Licences and Registrations*.

Section 4 of the Regulations is also amended to add new subsection 4(4), which specifies that, for the purpose of paragraph 158.38(2)(c) of the Act, the following persons are prescribed persons that may possess vaping excise stamps that have not been affixed to a vaping product:

- a person that transports a vaping excise stamp on behalf of the person that lawfully produced the vaping excise stamp or the person to which the vaping excise stamp is issued; and
- a person that has in their possession vaping excise stamps for the purpose of applying adhesive to the stamps on behalf the vaping product licensee to which the vaping excise stamps are issued.

New section 4.01 of the Regulations provides that if the Minister of National Revenue holds security that a person has provided in respect of vaping excise stamps under subsection 158.36(3) of the Act (see commentary for that new subsection) at any time in a particular calendar month and the person is not a vaping product licensee throughout the calendar month, then the person must file with the Minister an information return in respect of any vaping excise stamps issued to that person. The information return must be made in a prescribed form

containing prescribed information and be filed in a prescribed manner on or before the last day of the first month following the particular calendar month.

New section 4.11 of the Regulations sets out the amount of security required for the issuance of a vaping excise stamp related to vaping products for the purposes of new subsection 158.36(3) of the Act. The amount of this security is the greater of \$1.00 multiplied by the number of vaping excise stamps in possession and \$5000, up to a maximum of \$5 million.

If, however, a person has already provided security under paragraph 23(3)(b) of the Act (security relating to a spirits, tobacco or cannabis licence) to an amount equal to or greater than the amount as determined above, then the amount of security for the purpose of subsection 158.36(3) of the Act is nil. Furthermore, if a person has already provided security under paragraph 23(3)(b) of the Act for an amount that is less than the amount as determined above, then the amount of security for the purpose of subsection 158.36(3) of the Act is the difference between the amount as determined above and the amount of security provided for the purpose of paragraph 23(3)(b) of the Act.

Existing section 4.2 of the Regulations provides rules relating to the manner of affixing an excise stamp to a package for the purposes of the definition “stamped” in section 2 of the Act. Section 4.2 is amended to specify that the prescribed manner of affixing a vaping excise stamp to a package is similar to the manner of affixing a tobacco excise stamp to a tobacco product and a cannabis stamp to packaged cannabis. The manner is described in paragraphs (a) to (e) of section 4.2.

New section 5.1 of the Regulations sets out the prescribed limit on the amount of vaping products that a person may import into Canada for their personal use. New subsection 5.1(1) of the Regulations provides that the limit is five units of vaping products for the purposes of paragraph 158.44(3)(e) of the Act (possession of unstamped vaping products for personal importation), paragraph 158.47(2)(c) of the Act (exception to packaging and stamping of imported vaping products for personal use) and section 158.56 of the Act (responsibility rule respecting vaping products imported for personal use) of the Act. New subsection 5.1(2) of the Regulations provides that one unit of vaping products is 120 ml or 120 g of vaping substance, within any combination of not more than 12 vaping devices and immediate containers. New section 5.1 of the Regulations comes into force on October 1, 2022.

New sections 8 and 9 of the Regulations set out the requirements with respect to the marking of containers of vaping products that are not stamped. New subsection 8(1) of the Regulations provides that for the purposes of subsection 158.5(1) of the Act (no warehousing of vaping products without marking), the required marking for vaping products manufactured in Canada is set out in Schedule 7 to the Regulations. The required marking for imported vaping products is

set out in Schedule 8 to the Regulations. New subsection 8(2) of the Regulations requires the markings must be printed or affixed to the vaping product container in prescribed manner.

New subsection 9(1) of the Regulations provides that for the purposes of subsection 158.5(2) of the Act (no delivery of imported vaping products without marking), the required marking for imported vaping products is set out in Schedule 8 to the Regulations. New subsection 9(2) of the Regulations requires the marking must be printed or affixed to the vaping product container in prescribed manner.

The existing Schedule 7 to the Regulations describes the markings for tobacco products.

The heading of Schedule 7 to the Regulations is amended to Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured in Canada. The reference to the new section 8 of the Regulations is also added.

The existing Schedule 8 to the Regulations describes the markings for tobacco products destined to non-duty paid markets. The heading of Schedule 8 to the Regulations is amended to Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured Outside Canada, Containers of Cigars Manufactured in Canada and Intended for Delivery to a Duty Free Shop or as Ships' Stores and Containers of Imported Manufactured Tobacco and Cigars Referred to in Subsection 38(2) of the Act. The reference to the new section 9 of the Regulations is also added. The amendments are consequential to the addition of new Part 4.2 of the Act relating to vaping products.

PART 3 – DIVISION 2**Excise Act, 2001****Clause 129****Information on container**

EA, 2001

87(a.1)

Existing section 87 of the *Excise Act, 2001* (the Act) provides that every alcohol licensee who packages alcohol shall display all prescribed information on the container containing the alcohol and on any packaging encasing the container in the circumstances described in paragraphs (a) through (b).

Existing paragraph 87(a.1) provides that the information required, in the case of wine on which duty is not imposed because of paragraph 135(2)(a) (i.e., wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada), must be on the packaging and encasing container before the wine is: removed from the licensee's premises; consumed; or made available for sale on the licensee's premises.

Consequential to the repeal of existing paragraph 135(2)(a), existing paragraph 87(a.1) is also repealed.

This amendment comes into force, or is deemed to have come into force, on June 30, 2022.

Clause 130**Prohibition – possession**

EA, 2001

88(2)(i)

Existing paragraph 88(2)(i) of the Act provides an exception to restrictions on possession of non-duty-paid packaged alcohol in subsection 88(1). The paragraph provides among other things that wine referred to in paragraph 135(2)(a) of the Act (i.e., wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada) may be possessed by any person despite subsection 88(1).

Consequential to the repeal of existing paragraph 135(2)(a), existing paragraph 88(2)(i) is also amended to remove the reference to paragraph 135(2)(a).

This amendment comes into force, or is deemed to have come into force, on June 30, 2022, but does not apply to wine packaged before that day.

Clause 131

Imposition – bulk wine taken for use

EA, 2001
134(3)

Existing subsection 134(1) of the Act provides that duty is imposed on bulk wine that is taken for use. Existing paragraph 134(3)(a) of the Act provides that subsection 134(1) does not apply to wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada.

Consequential to the repeal of the excise duty relief on wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada, existing subsection 134(3) of the Act is also amended to remove reference to wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada.

This amendment comes into force, or is deemed to have come into force, on June 30, 2022.

Clause 132

Imposition – wine packaged in Canada

EA, 2001
135(2)(a)

Existing subsection 135(1) of the Act provides that duty is imposed on wine that is packaged in Canada. Existing paragraph 135(2)(a) of the Act provides that subsection 135(1) does not apply to wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada.

Existing paragraph 135(2)(a) of the Act is repealed.

This amendment applies to wine packaged on or after June 30, 2022.

PART 3 – DIVISION 3**Excise Act****Clause 133****Definition**

EA

4

This clause amends the existing definition “beer” or “malt liquor” in section 4 of the *Excise Act*, to exclude beer or malt liquor containing no more than 0.5% absolute ethyl alcohol by volume.

This amendment comes into force, or is deemed to have come into force, on July 1, 2022.

Clause 134**Exclusion of exports**

EA

170.1

This clause amends subsection 170.1(3) of the *Excise Act*.

Subsection 170.1(1) of the Act provides reduced excise duty rates for the first 75,000 hectolitres of beer and malt liquor brewed in Canada per year by a licensed brewer. Paragraph 170.1(3)b) of the Act currently excludes beer or malt liquor containing no more than 0.5% absolute ethyl alcohol by volume from the first 75,000 hectolitres brewed in Canada, for the purposes of these reduced rates.

Subsection 170.1(3) of the Act is amended to remove the reference to beer or malt liquor containing no more than 0.5% absolute ethyl alcohol by volume, since beer or malt liquor containing no more than 0.5% absolute ethyl alcohol by volume is no longer subject to the Act.

This amendment comes into force, or is deemed to have come into force, on July 1, 2022.