Federal Proposals For Cannabis Tax Released For Public Consultation

November 14, 2017

On November 10, 2017, the Department of Finance ("Finance") released its proposed excise duty and goods and services tax/harmonized sales tax ("GST/HST") framework for cannabis products ("Cannabis") for public consultation (the "Proposals"). If implemented, the Proposals would impose a combined rate of excise duty (both federal and provincial) set at the higher rate of $1.00 per gram or 10 per cent of the sale price of Cannabis. GST/HST would apply in addition to the excise duty.

The proposed duty would apply to all cannabis products (including fresh and dried cannabis, cannabis oils, and seed and seedlings for home cultivation) and is set at a rate to keep the cost of products low in order to eliminate the black market. Adults would be allowed to cultivate cannabis at home (up to four plants per residence) and the current program for access to cannabis for medical purposes would be maintained.

Written comments are to be submitted to Finance by December 7, 2017.

Proposed Excise Act Framework

1. Licences and Stamps

The Proposals impose duties on the production and distribution of Cannabis through the grant of licences and excise stamps. The Proposals are closely aligned with the existing regulatory frameworks for the control and taxation of alcohol and tobacco products, with many provisions of the Excise Act only being slightly amended to address the emergence of this new product.

Only a Cannabis licensee, as defined under the Excise Act, will be permitted to produce Cannabis for sale to the Canadian market. A licence applicant must submit documentation evidencing their financial resources and business plan, and must provide security to cover one full reporting period.

Cannabis cannot enter the Canadian market without a cannabis excise stamp issued under the stamping program (similar to the tobacco stamping program), which is the mechanism that will evidence that the appropriate duty has been paid. The administration of rules, quantity, and the security for the issuance of stamps will be controlled by the Minister of National Revenue. Regulations have yet to be issued detailing stamping and packaging requirements.

2. Imposition of Tax

The stated intent in the proposed rate of excise duty is to ensure that the total cost of Cannabis is low enough so as to eliminate the black market. Cannabis licensees will be liable for paying duties on all Cannabis manufactured for the Canadian market.

The proposed duty of the cannabis products under the Excise Act will be determined based on two separate standards:

Firstly, a flat rate duty will be imposed on the quantity of flowering and non-flowing-material packaged for final retail sale or contained in the product. The flat rate will be set at $0.50 per gram or seed.
Secondly, an ad valorem (or a percentage of the sale price) rate will be imposed at the time of delivery by a licensee to a purchaser. The rate will be set at 5 per cent of the dutiable amount (dutiable amount means the amount of cannabis deemed to be equal to the fair market value of the cannabis product).
The licensee will be required to pay the higher of the two amounts detailed above, with the duty becoming payable at the time of delivery to the purchaser.

Provinces can determine their own rate of excise duty to impose on Cannabis under the Proposals, although the intention is to impose a standard total duty rate of $1.00 per gram or 10 per cent of the dutiable amount, whichever is greater.

3. Offences and Punishment

Non-compliance will attract harsh penalties. Any contravention of the Excise Act including the production of cannabis products without a licence, the failure to affix an excise stamp to products going to market, or the failure to remit the duty can lead to harsh penalties, including fines of up to $600 per gram or 600 per cent of the dutiable amount. The proposed framework imposes fines and imprisonment for a term of up to 5 years for an indictable offence. A summary conviction can lead to fines of up to $300,000 and imprisonment for a term of up to 18 months. Other administrative contraventions of the Excise Act can lead to fines of up to $25,000.

Imposition of GST under the Excise Tax Act

The Proposals include consequential amendments to the Excise Tax Act to ensure Cannabis will generally be a taxable product. The Proposals will have GST/HST apply

to both recreational and medical Cannabis. In addition, GST/HST will apply to Cannabis seeds and seedlings.

Comment

The Proposals represent a complex framework intended to control the production and distribution of cannabis products in the same manner as alcohol and tobacco. Businesses seeking to enter this highly regulated market must ensure they are fully prepared to meet all the obligations under this proposed regime.

BLG is committed to helping its clients effectively and responsibly navigate Canada's move from prohibition to regulation of cannabis. Please visit the Cannabis Industry page and the Tax group page of our website for regular updates from our team.

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