

# Notice of Ways and Means Motion to amend the Excise Act, 2001 and Other Related Texts

That it is expedient to amend the *Excise Act, 2001* and other related texts as follows:

## Taxation of Vaping Products

Excise Act, 2001

**1 (1) The definitions *container*, *excise stamp* and *manufacture* in section 2 of the *Excise Act, 2001* are replaced by the following:**

***container***, in respect of a tobacco product, a cannabis product or a vaping product, means a wrapper, package, carton, box, crate, bottle, vial or other container that contains the tobacco product, cannabis product or vaping product. (*contenant*)

***excise stamp*** means a tobacco excise stamp, a cannabis excise stamp or a vaping excise stamp. (*timbre d'accise*)

***manufacture*** includes

(a) in respect of a tobacco product, any step in the preparation or working up of raw leaf tobacco into the tobacco product, including packing, stemming, reconstituting, converting or packaging the raw leaf tobacco or tobacco product; and

(b) 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. (*fabrication*)

**(2) Paragraph (a) of the definition *packaged* in section 2 of the Act is replaced by the following:**

(a) in respect of raw leaf tobacco, a tobacco product, a cannabis product or a vaping product, packaged in a prescribed package; or

**(3) The definition *stamped* in section 2 of the Act is amended by striking out “and” at the end of paragraph (a), by adding “and” at the end of paragraph (b) and by adding the following after paragraph (b):**

(c) in respect of a vaping product, that a vaping excise stamp, and all prescribed information in a prescribed format in respect of the vaping product, are stamped, impressed, printed or marked on, indented into or affixed to the vaping product or its container in the prescribed manner to indicate that duty has been paid on the vaping product. (*estampillé*)

**(4) Paragraph (b) of the definition *take for use* in section 2 of the Act is replaced by the following:**

(b) in respect of a cannabis product or a vaping product, to consume, analyze or destroy the cannabis product or vaping product. (*utilisation pour soi*)

**(5) Section 2 of the Act is amended by adding the following in alphabetical order:**

***additional vaping duty*** means a duty imposed under section 158.58. (*droit additionnel sur le vapotage*)

***immediate container*** of a vaping substance means the container that is in direct contact with the vaping substance. It does not include a vaping device. (*contenant immédiat*)

**specified vaping province** means a prescribed province. (*province déterminée de vapotage*)

**vaping device** means property (other than prescribed property) that is

(a) 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;

(b) a vaping pod or another part that may be used with a device referred to in paragraph (a); or

(c) a prescribed property. (*dispositif de vapotage*)

**vaping duty** means a duty imposed under section 158.57. (*droit sur le vapotage*)

**vaping excise stamp** means a stamp that is issued by the Minister under subsection 158.36(1) and that has not been cancelled under section 158.4. (*timbre d'accise de vapotage*)

**vaping product** means

(a) a vaping substance that is not contained within a vaping device; or

(b) a vaping device that contains a vaping substance.

It does not include a cannabis product. (*produit de vapotage*)

**vaping product drug** means a vaping product (other than a prescribed vaping product) that is

(a) a drug that has been assigned a drug identification number under the *Food and Drug Regulations*; or

(b) a prescribed vaping product. (*drogue de produit de vapotage*)

**vaping product licensee** means a person that holds a vaping product licence issued under section 14. (*titulaire de licence de produits de vapotage*)

**vaping product marking** means prescribed information that is required under this Act to be printed on, or affixed to, a container of vaping products that are not required under this Act to be stamped. (*mention obligatoire pour vapotage*)

**vaping substance** means

(a) a substance or 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; or

(b) a prescribed substance, material or thing.

It does not include a prescribed substance, material or thing. (*substance de vapotage*)

## **2 (1) Subsection 5(1) of the Act is replaced by the following:**

### **Constructive possession**

**5 (1)** For the purposes of section 25.2, subsections 25.3(1), 30(1), 32(1) and 32.1(1), section 61, subsections 70(1) and 88(1), section 158.04, subsections 158.05(1) and 158.11(1) and (2), section 158.37, subsections 158.38(1) and 158.44(1) and (2), sections 230 and 231 and subsection 238.1(1), if one of two or more persons, with the knowledge and consent of the rest of them, has anything in the person's possession, it is deemed to be in the custody and possession of each and all of them.

## **(2) The portion of subsection 5(2) of the Act before paragraph (a) is replaced by the following:**

### **Definition of *possession***

**(2)** In this section and in section 25.2, subsections 25.3(1), 30(1), 32(1) and 32.1(1), section 61, subsections 70(1) and 88(1), section 158.04, subsections 158.05(1) and 158.11(1) and (2), section 158.37 and subsections 158.38(1), 158.44(1) and (2) and 238.1(1), ***possession*** means not only having in one's own personal possession but also knowingly

**3 Subsection 14(1) of the Act is amended by striking out “or” at the end of paragraph (d), by adding “or” at the end of paragraph (e) and by adding the following after paragraph (e):**

**(f)** a vaping product licence, authorizing the person to manufacture vaping products.

**4 Subsection 19(1) of the Act is replaced by the following:**

### **Issuance of licence**

**19 (1)** Subject to the regulations, on application, the Minister may issue an excise warehouse licence to a person that is not a retailer of alcohol authorizing the person to possess in their excise warehouse manufactured tobacco, cigars or vaping products that are not stamped or non-duty-paid packaged alcohol.

**5 Paragraph 23(3)(b) of the Act is replaced by the following:**

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

**6 The Act is amended by adding the following after section 158.34:**

## **PART 4.2**

# **Vaping Products**

## **Manufacturing and Stamping**

### **Manufacturing without licence prohibited**

**158.35 (1)** No person shall, other than in accordance with a vaping product licence issued to the person, manufacture vaping products.

### **Deemed manufacturer**

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

### **Exception — manufacture for personal use**

**(3)** An individual who is not a vaping product licensee may manufacture vaping products for their personal use.

### **Exception — regulations**

**(4)** Subsection (1) does not apply in respect of a prescribed person that manufactures prescribed vaping products in prescribed circumstances or for a prescribed purpose.

### **Issuance of vaping excise stamps**

**158.36 (1)** On application in the prescribed form and manner, the Minister may issue, to a vaping product licensee or to a prescribed person that is importing vaping products, stamps the purpose of which is to indicate that vaping duty and, if applicable, additional vaping duty have been paid on a vaping product.

### **Quantity of vaping excise stamps**

(2) The Minister may limit the quantity of vaping excise stamps that may be issued to a person under subsection (1).

### **Security**

(3) No person shall be issued a vaping excise stamp unless the person has provided security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations.

### **Supply of vaping excise stamps**

(4) The Minister may authorize a producer of vaping excise stamps to supply, on the direction of the Minister, vaping excise stamps to a person to which those stamps are issued under subsection (1).

### **Design and construction**

(5) The design and construction of vaping excise stamps shall be subject to the approval of the Minister.

### **Counterfeit vaping excise stamps**

**158.37** No person shall produce, possess, sell or otherwise supply, or offer to supply, without lawful justification or excuse the proof of which lies on the person, anything that is intended to resemble or pass for a vaping excise stamp.

### **Unlawful possession of vaping excise stamps**

**158.38 (1)** No person shall possess a vaping excise stamp that has not been affixed to the container of a vaping product in the manner prescribed for the purposes of the definition *stamped* in section 2 to indicate that duty has been paid on the vaping product.

### **Exceptions — possession**

(2) Subsection (1) does not apply to the possession of a vaping excise stamp by

(a) the person that lawfully produced the vaping excise stamp;

(b) the person to which the vaping excise stamp is issued;

(c) a sufferance warehouse licensee that possesses the vaping excise stamp in their sufferance warehouse on behalf of the person described under paragraph (b); or

(d) a prescribed person.

### **Unlawful supply of vaping excise stamps**

**158.39** No person shall dispose of, sell or otherwise supply, or offer to supply, a vaping excise stamp otherwise than in accordance with this Act.

### **Cancellation of vaping excise stamps**

**158.4** The Minister may

(a) cancel a vaping excise stamp that has been issued; and

(b) direct that it be returned or destroyed in a manner specified by the Minister.

### **Unlawful packaging or stamping**

**158.41** No person shall package or stamp a vaping product unless

(a) the person is a vaping product licensee;

(b) the person is the importer or owner of the vaping product and the vaping product has been placed in a sufferance warehouse for the purpose of being stamped; or

(c) the person is a prescribed person.

#### **Unlawful removal**

**158.42 (1)** Except as permitted under section 158.52 or if prescribed circumstances exist, no person shall remove a vaping product from the premises of a vaping product licensee unless it is packaged and

(a) if the vaping product is intended for the duty-paid market,

(i) it is stamped to indicate that vaping duty has been paid, and

(ii) if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, it is stamped to indicate that the additional vaping duty has been paid; or

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

#### **Exceptions**

(2) Subsection (1) does not apply to a vaping product licensee that removes from their premises a vaping product if it is

(a) being removed for

(i) delivery to another vaping product licensee,

(ii) export, or

(iii) delivery to a person for analysis or destruction in accordance with subparagraph 158.66(a)(iv); or

(b) a vaping product drug.

#### **Removal by Minister**

(3) Subsection (1) does not apply to the removal of a vaping product for analysis or destruction by the Minister.

#### **Prohibition – vaping products for sale**

**158.43** No person shall purchase or receive for sale a vaping product

(a) from a manufacturer that the person knows, or ought to know, is not a vaping product licensee;

(b) that is required under this Act to be packaged and stamped unless it is packaged and stamped in accordance with this Act; or

(c) that the person knows, or ought to know, is fraudulently stamped.

#### **Unlawful possession or sale of vaping products**

**158.44 (1)** Except if prescribed circumstances exist, no person, other than a vaping product licensee, shall dispose of, sell, offer for sale, purchase or have in their possession a vaping product unless

(a) it is packaged; and

(b) it is stamped to indicate that vaping duty has been paid.

#### **Unlawful possession or sale – specified vaping province**

(2) Except if prescribed circumstances exist, no person, other than a vaping product licensee, shall dispose of, sell, offer for sale, purchase or have in their possession 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.

**Exception — possession of vaping products**

**(3)** Subsections (1) and (2) do not apply to the possession of vaping products

**(a)** in the case of imported vaping products,

**(i)** by an excise warehouse licensee in their excise warehouse,

**(ii)** by a sufferance warehouse licensee in their sufferance warehouse, or

**(iii)** by a customs bonded warehouse licensee in their customs bonded warehouse;

**(b)** by a prescribed person that is transporting the vaping products under prescribed circumstances and conditions;

**(c)** by a person that possesses the vaping products for analysis or destruction in accordance with subparagraph 158.66(a)(iv);

**(d)** by an accredited representative for their personal or official use;

**(e)** by an individual who has imported the vaping products for their personal use in quantities not in excess of prescribed limits;

**(f)** by an individual who has manufactured the vaping products in accordance with subsection 158.35(3); or

**(g)** if the vaping products are vaping product drugs.

**Exception — sale or offer to sale**

**(4)** Subsections (1) and (2) do not apply to the disposal, sale, offering for sale or purchase of a vaping product if

**(a)** the vaping product is an imported vaping product, an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping product for export and the vaping product is exported by the licensee in accordance with this Act;

**(b)** the vaping product is an imported vaping product and an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping product to an accredited representative for their personal or official use; or

**(c)** the vaping product is a vaping product drug.

**Sale or distribution by licensee**

**158.45 (1)** Except if prescribed circumstances exist, no vaping product licensee shall distribute a vaping product or sell or offer for sale a vaping product to a person unless

**(a)** it is packaged;

**(b)** it is stamped to indicate that vaping duty has been paid; and

**(c)** if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, it is stamped to indicate that the additional vaping duty has been paid.

**Exceptions**

**(2)** Subsection (1) does not apply to the distribution, sale or offering for sale of a vaping product by a vaping product licensee

**(a)** to another vaping product licensee;

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

- (c) if the vaping product is exported by the vaping product licensee in accordance with this Act; or
- (d) if the vaping product is a vaping product drug.

#### **Packaging and stamping of vaping products**

**158.46** A vaping product licensee that manufactures a vaping product shall not enter the vaping product into the duty-paid market unless

- (a) the vaping product has been packaged by the licensee;
- (b) the package has printed on it prescribed information;
- (c) the vaping product is stamped at the time of packaging to indicate that vaping duty has been paid; and
- (d) if the vaping product is to be entered in the duty-paid market of a specified vaping province, the vaping product is stamped at the time of packaging to indicate that additional vaping duty in respect of the specified vaping province has been paid.

#### **Packaging and stamping of imported vaping products**

**158.47 (1)** Except if prescribed circumstances exist, if a vaping product is imported, it must, before it is released under the *Customs Act* for entry into the duty-paid market,

- (a) be packaged in a package that has printed on it prescribed information;
- (b) be stamped to indicate that vaping duty has been paid; and
- (c) if the vaping product is to be entered in the duty-paid market of a specified vaping province, be stamped to indicate that additional vaping duty in respect of the specified vaping province has been paid.

#### **Exceptions for certain importations**

**(2)** Subsection (1) does not apply to a vaping product

- (a) that is imported by a vaping product licensee for further manufacturing by the licensee;
- (b) that a vaping product licensee is authorized to import under subsection 158.53(2); or
- (c) that is imported by an individual for their personal use in quantities not in excess of prescribed limits.

#### **Notice — absence of stamping**

**158.48 (1)** The absence on a vaping product of stamping that indicates that vaping duty has been paid is notice to all persons that vaping duty has not been paid on the vaping product.

#### **Notice — absence of stamping**

**(2)** 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.

#### **Unstamped products to be warehoused**

**158.49** If vaping products manufactured in Canada are not stamped by a vaping product licensee, the vaping product licensee must immediately enter the vaping products into the licensee's excise warehouse.

#### **No warehousing of vaping products without markings**

**158.5 (1)** Subject to subsection (4), no person shall enter into an excise warehouse a container of vaping products unless the container has printed on it, or affixed to it, vaping product markings and other prescribed information.

### **No delivery of imported vaping products without markings**

(2) Subject to subsections (3) and (4), no person shall deliver a container of imported vaping products that does not have printed on it, or affixed to it, vaping product markings and other prescribed information to

(a) an accredited representative; or

(b) a customs bonded warehouse.

### **Delivery of imported stamped vaping products**

(3) A container of imported vaping products that were manufactured outside Canada and are stamped may be delivered to a customs bonded warehouse.

### **Exception in prescribed circumstances**

(4) A container of vaping products does not require vaping product markings to be printed on it, or affixed to it, if prescribed circumstances exist.

### **Non-compliant imports**

**158.51 (1)** If an imported vaping product intended for the duty-paid market is not stamped to indicate that vaping duty has been paid when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being so stamped.

### **Non-compliant imports — specified vaping province**

(2) If an imported vaping product intended for the duty-paid market of a specified vaping province is not stamped to indicate that additional vaping duty in respect of the province has been paid when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being so stamped.

### **Exception**

(3) Subsections (1) and (2) do not apply in prescribed circumstances.

### **Vaping products — waste removal**

**158.52 (1)** No person shall remove a vaping product that is waste from the premises of a vaping product licensee other than the licensee or a person authorized by the Minister.

### **Removal requirements**

(2) If a vaping product that is waste is removed from the premises of a vaping product licensee, it shall be dealt with in the manner authorized by the Minister.

### **Re-working or destruction of vaping products**

**158.53 (1)** A vaping product licensee may re-work or destroy a vaping product in the manner authorized by the Minister.

### **Importation for re-working or destruction**

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

## **Responsibility for Vaping Products**

### **Responsibility — vaping products manufactured in Canada**

**158.54 (1)** Subject to section 158.55, a person is responsible for a vaping product manufactured in Canada at any time if

(a) the person is

(i) the vaping product licensee that owns the vaping product at that time, or

(ii) if the vaping product is not owned at that time by a vaping product licensee, the vaping product licensee that last owned it; or

(b) the person is a prescribed person.

#### **Responsibility – imported vaping products**

(2) Subject to sections 158.55 and 158.56, a person is responsible for an imported vaping product at any time if the person

(a) imported the vaping product; or

(b) is a prescribed person.

#### **Person not responsible**

**158.55** A person that is responsible for a vaping product ceases to be responsible for it if

(a) it is packaged and stamped and the duty on it is paid;

(b) it is consumed or used in the manufacturing of a vaping product that is

(i) a vaping product drug, or

(ii) a prescribed vaping product;

(c) it is taken for use and the duty on it is paid;

(d) it is taken for use in accordance with any of subparagraphs 158.66(a)(i) to (iv);

(e) it is exported;

(f) it is delivered to an accredited representative for their personal or official use;

(g) it is lost in prescribed circumstances and the person fulfils any prescribed conditions; or

(h) prescribed circumstances exist.

#### **Imports for personal use**

**158.56** An individual that imports vaping products for their personal use in quantities not in excess of prescribed limits is not responsible for those vaping products.

## **Imposition and Payment of Duty on Vaping Products**

#### **Imposition**

**158.57** Duty is imposed on vaping products manufactured in Canada or imported in the amount determined under Schedule 8 and is payable

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are packaged; and

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

### **Imposition — additional vaping duty**

**158.58** In addition to the duty imposed under section 158.57, a duty in respect of a specified vaping province is imposed on vaping products manufactured in Canada, or imported, in prescribed circumstances in the amount determined in a prescribed manner and is payable

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are packaged; and

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

### **Application of *Customs Act***

**158.59** The duties imposed under sections 158.57 and 158.58 on imported vaping products shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duties were a duty levied under section 20 of the *Customs Tariff*, and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require.

### **Duty on vaping products taken for use**

**158.6 (1)** If a particular person is responsible for vaping products at a particular time when the vaping products are taken for use, the following rules apply:

(a) if the vaping products are packaged, they are relieved of the duty imposed under subsection 158.57; and

(b) duty is imposed on the vaping products in the amount determined in respect of the vaping products under Schedule 8.

### **Specified vaping province — taken for use**

(2) If a particular person is responsible for vaping products at a particular time when the vaping products are taken for use, a duty in respect of a specified vaping province is imposed on the vaping products in prescribed circumstances in the amount determined in prescribed manner. This duty is in addition to the duty imposed under subsection (1).

### **Duty payable**

(3) The duty imposed under subsection (1) or (2) is payable at the particular time, and by the particular person, referred to in that subsection.

### **Duty on unaccounted vaping products**

**158.61 (1)** If a particular person that is responsible at a particular time for vaping products cannot account for the vaping products as being, at the particular time, in the possession of a vaping product licensee or in the possession of another person in accordance with subsection 158.44(3), the following rules apply:

(a) if the vaping products are packaged, they are relieved of the duty imposed under subsection 158.57; and

(b) duty is imposed on the vaping products in the amount determined in respect of the vaping products under Schedule 8.

### **Specified vaping province — duty on unaccounted vaping products**

(2) If a particular person that is responsible at a particular time for vaping products cannot account for the vaping products as being, at the particular time, in the possession of a vaping product licensee or in the possession of another person in accordance with subsection 158.44(3), a duty in respect of a specified vaping province is imposed on the vaping products in prescribed circumstances in the amount determined in prescribed manner. This duty is in addition to the duty imposed under subsection (1).

### **Duty payable**

**(3)** The duty imposed under subsection (1) or (2) is payable at the particular time, and by the particular person, referred to in that subsection.

### **Exception**

**(4)** Subsection (1) does not apply in circumstances in which the particular person referred to in that subsection is convicted of an offence under section 218.2.

### **Duty relieved – unstamped vaping products**

**158.62 (1)** The duties imposed under sections 158.57 and 158.58 are relieved on a vaping product that is not stamped.

### **Vaping products imported by individual for personal use**

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

### **Duty relieved – stamped vaping product imported by individual**

**158.63 (1)** The duties imposed under sections 158.57 and 158.58 are relieved on vaping products imported by an individual for their personal use if they were manufactured in Canada and are stamped.

### **Duty relieved – reimportation**

**(2)** The duties imposed under sections 158.57 and 158.58 are relieved on vaping products imported by an individual for their personal use if they were manufactured outside Canada, were previously imported into Canada and are stamped.

### **Duty relieved – importation for destruction**

**158.64** The duties imposed under paragraphs 158.57(b) and 158.58(b) are relieved on a stamped vaping product that was manufactured in Canada by a vaping product licensee and that is imported for re-working or destruction in accordance with section 158.53.

### **Duty relieved – prescribed circumstances**

**158.65** The duties imposed under section 158.57 or 158.58 are relieved on a vaping product in prescribed circumstances.

### **Duty not payable**

**158.66** Duty is not payable on a vaping product

**(a)** that is

**(i)** taken for analysis, or destroyed, by the Minister,

**(ii)** taken for analysis by a vaping product licensee in a manner approved by the Minister,

**(iii)** destroyed by a vaping product licensee in a manner approved by the Minister,

**(iv)** delivered by a vaping product licensee to another person for analysis or destruction by that person in a manner approved by the Minister,

**(v)** a vaping product drug, or

**(vi)** a prescribed vaping product; or

**(b)** in prescribed circumstances.

## Excise Warehouses

### Restriction — entering vaping products

**158.67** No person shall enter into an excise warehouse

- (a) a vaping product that is stamped; or
- (b) any other vaping product except in accordance with this Act.

### Prohibition on removal

**158.68 (1)** Except if prescribed circumstances exist, no person shall remove from an excise warehouse vaping products manufactured in Canada.

### Removal of Canadian manufactured vaping products

**(2)** Subject to the regulations, a vaping product manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured it only if it is

- (a) for export by the licensee in accordance with this Act; or
- (b) for delivery to an accredited representative for their official or personal use.

### Removal from warehouse for re-working or destruction

**(3)** 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 section 158.53.

### Removal of imported vaping products

**158.69 (1)** Except if prescribed circumstances exist, no person shall remove imported vaping products from an excise warehouse.

### Exception

**(2)** Subject to the regulations, imported vaping products may be removed from an excise warehouse

- (a) for delivery to another excise warehouse;
- (b) for delivery to an accredited representative for their official or personal use; or
- (c) for export by the excise warehouse licensee in accordance with this Act.

**7 (1) The portion of subsection 159(1) of the Act before paragraph (a) is replaced by the following:**

### Determination of fiscal months

**159 (1)** The fiscal months of a person other than a cannabis licensee or a vaping product licensee shall be determined in accordance with the following rules:

**(2) Subsection 159(1.01) of the Act is replaced by the following:**

### Fiscal months — cannabis or vaping product licensee

**(1.01)** For the purposes of this Act, the fiscal months of a cannabis licensee or a vaping product licensee are calendar months.

**8 Section 180 of the Act is replaced by the following:**

**No refund — exportation**

**180** Subject to this Act, the duty paid on any tobacco product, cannabis product, vaping product or alcohol entered into the duty-paid market shall not be refunded on the exportation of the tobacco product, cannabis product, vaping product or alcohol.

**9 The Act is amended by adding the following after section 187.1:**

**Refund of duty — destroyed vaping product**

**187.2** The Minister may refund to a vaping product licensee the duty paid on a vaping product that is re-worked or destroyed by the licensee in accordance with section 158.53 if the licensee applies for the refund within two years after the vaping product is re-worked or destroyed.

**10 (1) Paragraph 206(1)(d) of the Act is replaced by the following:**

(d) every person that transports a tobacco product, cannabis product or vaping product that is not stamped or non-duty-paid packaged alcohol.

**(2) Subsection 206 of the Act is amended by adding the following after subsection (2.01):**

**Keeping records — vaping product licensee**

**(2.02)** Every vaping product licensee shall keep records that will enable the determination of the amount of vaping product manufactured, received, used, packaged, re-worked, sold or disposed of by the licensee.

**11 (1) The portion of section 214 of the Act before paragraph (a) is replaced by the following:**

**Unlawful production, sale, etc.**

**214** Every person that contravenes any of sections 25, 25.2 to 25.4, 27 and 29, subsection 32.1(1) and sections 60, 62, 158.02, 158.04 to 158.06, 158.08, 158.1 and 158.37 to 158.39 is guilty of an offence and liable

**(2) The portion of section 214 of the Act before paragraph (a), as enacted by subsection (1), is replaced by the following:**

**Unlawful production, sale, etc.**

**214** Every person that contravenes any of sections 25, 25.2 to 25.4, 27 and 29, subsection 32.1(1) and sections 60, 62, 158.02, 158.04 to 158.06, 158.08, 158.1, 158.35, 158.37 to 158.39, 158.41 and 158.43 is guilty of an offence and liable

**12 The Act is amended by adding the following after section 218.1:**

**Punishment — sections 158.44 and 158.45**

**218.2 (1)** Every person that contravenes section 158.44 or 158.45 is guilty of an offence and liable

(a) on conviction on indictment, to a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3) or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$500,000 and the amount determined under subsection (3) or to imprisonment for a term of not more than 18 months, or to both.

**Minimum amount**

**(2)** The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the amount determined by the formula

$$(A + B) \times 200\%$$

where

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the offence relates, using the rates of duty applicable at the time the offence was committed, and

**B** is

(i) if the offence occurred in a specified vaping province, the amount determined for A, and

(ii) in any other case, 0; and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

#### **Maximum amount**

(3) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the amount determined by the formula

$$(A + B) \times 300\%$$

where

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the offence relates, using the rates of duty applicable at the time the offence was committed, and

**B** is

(i) if the offence occurred in a specified vaping province, the amount determined for A, and

(ii) in any other case, 0; and

(b) \$2,000 in the case of an indictable offence and \$1,000 in the case of an offence punishable on summary conviction.

#### **13 Paragraph 230(1)(a) of the Act is replaced by the following:**

(a) the commission of an offence under section 214 or subsection 216(1), 218(1), 218.1(1), 218.2(1) or 231(1); or

#### **14 Paragraph 231(1)(a) of the Act is replaced by the following:**

(a) the commission of an offence under section 214 or subsection 216(1), 218(1), 218.1(1) or 218.2(1); or

#### **15 Subsection 232(1) of the Act is replaced by the following:**

#### **Part XII.2 of *Criminal Code* applicable**

**232 (1)** Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings for an offence under section 214, subsection 216(1), 218(1), 218.1(1) or 218.2(1) or section 230 or 231.

#### **16 The Act is amended by adding the following after section 233.1:**

#### **Contravention of section 158.46 or 158.49**

**233.2** Every vaping product licensee that contravenes section 158.46 or 158.49 is liable to a penalty equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

**B** is

(a) if the contravention occurred in a specified vaping province, the amount determined for A, and

(b) in any other case, 0.

**17 (1) Subsection 234(1) of the Act is replaced by the following:**

**Contravention of certain sections**

**234 (1)** Every person that contravenes section 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5 or 158.67 is liable to a penalty of not more than \$25,000.

**(2) Subsection 234(1) of the Act, as enacted by subsection (1), is replaced by the following:**

**Contravention of certain sections**

**234 (1)** Every person that contravenes section 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5, 158.52 or 158.67 is liable to a penalty of not more than \$25,000.

**(3) Section 234 of the Act is amended by adding the following after subsection (3):**

**Failure to comply**

**(4)** Every person that fails to return or destroy stamps as directed by the Minister under paragraph 158.4(b) is liable to a penalty of not more than \$25,000.

**(4) Subsection 234(4) of the Act, as enacted by subsection (3), is replaced by the following:**

**Failure to comply**

**(4)** Every person that fails to return or destroy stamps as directed by the Minister under paragraph 158.4(b), or that fails to re-work or destroy a vaping product in the manner authorized by the Minister under section 158.53, is liable to a penalty of not more than \$25,000.

**18 The Act is amended by adding the following after section 234.1:**

**Contravention — sections 158.35 and 158.43 to 158.45**

**234.2** Every person that contravenes section 158.35, that receives for sale vaping products in contravention of section 158.43 or that sells or offers to sell vaping products in contravention of section 158.44 or 158.45 is liable to a penalty equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

**B** is

(a) if the contravention occurred in a specified vaping province, the amount determined for A, and

(b) in any other case, 0.

**19 Subsection 237(6) of the Act is replaced by the following:**

**Diversion of unstamped vaping products**

**(5.1)** Every vaping product licensee is liable to a penalty on a vaping product manufactured in Canada that is removed from the excise warehouse of the licensee for a purpose described in subsection 158.68(2) if the product is not delivered or exported, as the case may be, for that purpose.

### **Diversion of imported vaping products**

**(5.2)** Every excise warehouse licensee is liable to a penalty on an imported vaping product that is removed from the excise warehouse of the licensee for a purpose described in subsection 158.69(2) if the product is not delivered or exported, as the case may be, for that purpose.

### **Amount of penalty for diversion of vaping products**

**(5.3)** The amount of a penalty for each vaping product that is removed from an excise warehouse for a purpose referred to in subsection (5.1) or (5.2) and that is not delivered or exported, as the case may be, for that purpose is equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

**A** is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the vaping product is removed from the excise warehouse; and

**B** is

**(a)** if at least one province is prescribed for the purposes of the definition *specified vaping province* in section 2 at the time the vaping product is removed from the excise warehouse, the amount determined for A, and

**(b)** in any other case, 0.

### **Exception**

**(6)** A licensee that would otherwise be liable to a penalty under this section is not liable if the licensee proves to the satisfaction of the Minister that the alcohol, tobacco product or vaping product that was removed from their excise warehouse or special excise warehouse was returned to that warehouse.

## **20 The Act is amended by adding the following after section 238:**

### **Penalty in respect of unaccounted vaping products**

**238.01 (1)** Every excise warehouse licensee is liable to a penalty on a vaping product entered into their excise warehouse if the licensee cannot account for the vaping product

**(a)** as being in the warehouse;

**(b)** as having been removed from the warehouse in accordance with this Act; or

**(c)** as having been destroyed by fire while kept in the warehouse.

### **Amount of penalty**

**(2)** The amount of a penalty for each vaping product that cannot be accounted for is equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

**A** is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the vaping product is entered into the excise warehouse; and

**B** is

**(a)** if at least one province is prescribed for the purposes of the definition *specified vaping province* in section 2 at the time the vaping product is entered into the excise warehouse, the amount determined for A, and

**(b)** in any other case, 0.

## **21 (1) Paragraph 238.1(1)(a) of the Act is replaced by the following:**

(a) the person can demonstrate that the stamps were affixed to tobacco products, cannabis products, vaping products or their containers in the manner prescribed for the purposes of the definition *stamped* in section 2 and that duty, other than special duty, has been paid on the tobacco products, cannabis products or vaping products; or

**(2) Subsection 238.1(2) of the Act is amended by striking out “or” at the end of paragraph (a), by adding “or” at the end of paragraph (b) and by adding the following after paragraph (b):**

(c) in the case of a vaping excise stamp

(i) if the stamp is in respect of a specified vaping province, \$10.00, and

(ii) in any other case, \$5.00.

**22 The portion of section 239 of the Act before paragraph (a) is replaced by the following:**

#### **Other diversions**

**239** Unless section 237 applies, every person is liable to a penalty equal to 200% of the duty that was imposed on packaged alcohol, a tobacco product, a cannabis product or a vaping product if

**23 Section 264 of the Act is replaced by the following:**

#### **Certain things not to be returned**

**264** Despite any other provision of this Act, any alcohol, specially denatured alcohol, restricted formulation, raw leaf tobacco, excise stamp, tobacco product, cannabis product or vaping product that is seized under section 260 must not be returned to the person from whom it was seized or any other person unless it was seized in error.

**24 Subsection 266(2) of the Act is amended by striking out “and” at the end of paragraph (d), by adding “and” at the end of paragraph (e) and by adding the following after paragraph (e):**

(f) a seized vaping product only to a vaping product licensee.

**25 (1) Paragraph 304(1)(c.1) of the Act is replaced by the following:**

(c.1) respecting the types of security that are acceptable for the purposes of subsection 158.03(3) or 158.36(3), and the manner by which the amount of the security is to be determined;

**(2) Paragraph 304(1)(f) of the Act is replaced by the following:**

(f) respecting the information to be provided on tobacco products, packaged alcohol, cannabis products and vaping products and on containers of tobacco products, packaged alcohol, cannabis products and vaping products;

**(3) Paragraph 304(1)(i) of the Act is replaced by the following:**

(i) respecting the entry and removal of tobacco products, alcohol or vaping products from an excise warehouse or a special excise warehouse;

**(4) Paragraph 304(1)(n) of the Act is replaced by the following:**

(n) respecting the sale under section 266 of alcohol, tobacco products, raw leaf tobacco, specially denatured alcohol, restricted formulations, cannabis products or vaping products seized under section 260;

**26 The Act is amended by adding the following after section 304.2:**

#### **Definition of *coordinated vaping duty system***

**304.3 (1)** In this section, *coordinated vaping duty system* means the system providing for the payment, collection and remittance of duty imposed under any of section 158.58 and subsections 158.6(2) and 158.61(2) and any provisions relating to duty imposed under those provisions or to refunds in respect of any such duty.

### **Coordinated vaping duty system regulations – transition**

**(2)** The Governor in Council may make regulations, in relation to the joining of a province to the coordinated vaping duty system,

- (a)** prescribing transitional measures, including
  - (i)** a tax on the inventory of vaping products held by a vaping product licensee or any other person, and
  - (ii)** a duty or tax on vaping products that are delivered prior to the province joining that system; and
- (b)** generally to effect the implementation of that system in relation to the province.

### **Coordinated vaping duty system regulations – rate variation**

**(3)** The Governor in Council may make regulations

- (a)** prescribing rules in respect of whether, how and when a change in the rate of duty for a specified vaping province applies (in this section any such change in the rate of duty is referred to as a “rate variation”), including rules deeming, in specified circumstances and for specified purposes, the status of anything to be different than what it would otherwise be, including when duty is imposed or payable and when duty is required to be reported and accounted for;
- (b)** if a manner of determining an amount of duty is to be prescribed in relation to the coordinated vaping duty system,
  - (i)** specifying the circumstances or conditions under which a change in the manner applies, and
  - (ii)** prescribing transitional measures in respect of a change in the manner, including
    - (A)** a tax on the inventory of vaping products held by a vaping product licensee or any other person, and
    - (B)** a duty or tax on vaping products that are delivered prior to the change; and
- (c)** prescribing amounts and rates to be used to determine any refund that relates to, or is affected by, the coordinated vaping duty system, excluding amounts that would otherwise be included in determining any such refund, and specifying circumstances under which any such refund shall not be paid or made.

### **Coordinated vaping duty system regulations – general**

**(4)** For the purpose of facilitating the implementation, application, administration and enforcement of the coordinated vaping duty system or a rate variation or the joining of a province to the coordinated vaping duty system, the Governor in Council may make regulations

- (a)** prescribing rules in respect of whether, how and when that system applies and rules in respect of other aspects relating to the application of that system in relation to a specified vaping province, including rules deeming, in specified circumstances and for specified purposes, the status of anything to be different than what it would otherwise be, including when duty is imposed or payable and when duty is required to be reported and accounted for;
- (b)** prescribing rules related to the movement of vaping products between provinces, including a duty, tax or refund in respect of such movement;
- (c)** providing for refunds relating to the application of that system in relation to a specified vaping province;
- (d)** adapting any provision of this Act or of the regulations made under this Act to the coordinated vaping duty system or modifying any provision of this Act or those regulations to adapt it to the coordinated vaping duty system;
- (e)** defining, for the purposes of this Act or the regulations made under this Act, or any provision of this Act or those regulations, in its application to the coordinated vaping duty system, words or expressions used in this Act or those regulations including words or expressions defined in a provision of this Act or those regulations;

- (f) providing that a provision of this Act or of the regulations made under this Act, or a part of such a provision, does not apply to the coordinated vaping duty system;
- (g) prescribing compliance measures, including penalties and anti-avoidance rules; and
- (h) generally in respect of the application of that system in relation to a province.

#### **Conflict**

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

**27 The Act is amended by adding, after Schedule 7, the Schedule 8 set out in the Schedule to this Motion.**

Criminal Code

**28 (1) Subparagraph (g)(i) of the definition *offence* in section 183 of the *Criminal Code* is replaced by the following:**

- (i) section 214 (unlawful production, sale, etc., of tobacco, alcohol, cannabis or vaping products),

**(2) Paragraph (g) of the definition *offence* in section 183 of the Act is amended by adding the following after subparagraph (iii.1):**

- (iii.2) section 218.2 (unlawful possession, sale, etc., of unstamped vaping products),

Excise Tax Act

**29 The definition *excisable goods* in subsection 123(1) of the *Excise Tax Act* is replaced by the following:**

***excisable goods*** means beer or malt liquor (within the meaning assigned by section 4 of the *Excise Act*) and spirits, wine, tobacco products, cannabis products and vaping products (within the meaning assigned by section 2 of the *Excise Act, 2001*); (*produit soumis à l'accise*)

Federal-Provincial Fiscal Arrangements Act

**30 Subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act* is amended by adding the following in alphabetical order:**

***coordinated vaping product taxation agreement*** means an agreement or arrangement entered into by the Minister on behalf of the Government of Canada under Part III.3, including any amendments or variations to the agreement or arrangement made in accordance with that Part; (*accord de coordination de la taxation des produits de vapotage*)

**31 The Act is amended by adding the following after section 8.82:**

### **PART III.3**

## **Coordinated Vaping Product Taxation Agreements**

#### **Coordinated Vaping Product Taxation Agreement**

**8.9 (1)** The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement or arrangement with the government of a province respecting the taxation of vaping products and, without restricting the generality of the foregoing, respecting

(a) the collection, administration and enforcement of taxes on vaping products in respect of the province under a single Act of Parliament;

(b) the provision to the Government of Canada by the government of the province, or to the government of the province by the Government of Canada, of

(i) information acquired in the administration and enforcement of Acts imposing taxes on vaping products and Acts providing for rebates, refunds or reimbursements of taxes on vaping products, paid or payable, or of amounts paid or payable as or on account of the taxation of vaping products, and

(ii) other information related to the regulation of vaping and the distribution of vaping products relevant to the system of taxation of vaping products under a single Act of Parliament;

(c) the accounting for taxes collected in accordance with the agreement;

(d) the implementation of and transition to the system of taxation of vaping products contemplated under the agreement;

(e) payments, and the eligibility for payments, by the Government of Canada to the government of the province in respect of the revenues from the system of taxation contemplated under the agreement and to which the province is entitled under the agreement, the time when such payments will be made, and the remittance by the government of the province to the Government of Canada of any overpayments by the Government of Canada or the right of the Government of Canada to set off any overpayments against other amounts payable by the Government of Canada to the government of the province, whether under the agreement or any other agreement or arrangement or any Act of Parliament;

(f) the payment by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, of the taxes on vaping products payable under the system of taxation of vaping products contemplated under the agreement and the accounting for the taxes on vaping products so paid;

(g) the compliance by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, with the Act of Parliament under which the system of taxation of vaping products is administered and regulations made under that Act; and

(h) other matters that relate to, and that are considered advisable for the purposes of implementing or administering, the system of taxation of vaping products contemplated under the agreement.

### **Amending agreements**

(2) The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement with the government of a province amending or varying an agreement or arrangement with the province entered into under subsection (1) or this subsection.

### **Payments**

**8.91** If there is a coordinated vaping product taxation agreement with the government of a province, the appropriate minister may pay to the province out of amounts received in a fiscal year under the Act of Parliament referred to in paragraph 8.9(1)(a)

(a) amounts determined in accordance with the agreement as provided, and at such times as are specified, in the agreement; and

(b) subject to the regulations, advances in respect of the amounts referred to in paragraph (a).

### **Statutory authority to make payments**

**8.92** Despite any other Act, the payments paid under a coordinated vaping product taxation agreement under the authority of section 8.91 may be made without any other or further appropriation or authority.

**32 (1) Paragraph 40(b) of the Act is replaced by the following:**

(b) respecting the calculation and payment to a province of advances on account of any amount that may become payable to the province under this Act, an administration agreement, a reciprocal taxation agreement, a sales tax harmonization agreement, a coordinated cannabis taxation agreement or a coordinated vaping product taxation agreement and the adjustment, by way of reduction or set off, of other payments to the province because of those advances;

**(2) Paragraph 40(d) of the Act is replaced by the following:**

(d) prescribing the time and manner of making any payment under this Act, an administration agreement, a sales tax harmonization agreement, a coordinated cannabis taxation agreement or a coordinated vaping product taxation agreement;

Customs Act

**33 Subsection 2(1) of the Customs Act is amended by adding the following in alphabetical order:**

*immediate container* has the same meaning as in section 2 of the *Excise Act, 2001*; (*contenant immédiat*)

*vaping device* has the same meaning as in section 2 of the *Excise Act, 2001*; (*dispositif de vapotage*)

*vaping product* has the same meaning as in section 2 of the *Excise Act, 2001*; (*produit de vapotage*)

*vaping product licensee* has the same meaning as in section 2 of the *Excise Act, 2001*; (*titulaire de licence de produits de vapotage*)

*vaping substance* has the same meaning as in section 2 of the *Excise Act, 2001*; (*substance de vapotage*)

**34 Subsection 97.25(3) of the Act is amended by adding the following after paragraph (c):**

(c.1) if the good is a vaping product, to a vaping product licensee;

**35 Subsection 109.2(2) of the Act is replaced by the following:**

**Contravention relating to tobacco, cannabis and vaping products and to designated goods**

(2) Every person that

(a) removes tobacco products, cannabis products, vaping products or designated goods or causes tobacco products, cannabis products, vaping products or designated goods to be removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts, or

(b) sells or uses tobacco products or designated goods designated as ships' stores in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts,

is liable to a penalty equal to double the total of the duties that would be payable on like tobacco products, cannabis products, vaping products or designated goods released in like condition at the rates of duties applicable to like tobacco products, cannabis products, vaping products or designated goods at the time the penalty is assessed, or to such lesser amount as the Minister may direct.

**36 Subsection 117(2) of the Act is replaced by the following:**

**No return of certain goods**

(2) Despite subsection (1), if spirits, wine, specially denatured alcohol, restricted formulations, cannabis, raw leaf tobacco, excise stamps, tobacco products or vaping products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.

**37 Subsection 119.1(1.1) of the Act is amended by striking out “and” at the end of paragraph (c) and by adding the following after paragraph (c):**

(c.1) a vaping product may only be to a vaping product licensee; and

**38 The portion of subsection 142(1) of the Act before paragraph (a) is replaced by the following:**

**Disposal of things abandoned or forfeit**

**142 (1)** Unless the thing is spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco, an excise stamp, a tobacco product or a vaping product, anything that has been abandoned to Her Majesty in right of Canada under this Act and anything the forfeiture of which is final under this Act shall

**39 (1) Subsection 142.1(1) of the Act is replaced by the following:**

**Dealing with abandoned or forfeited alcohol, etc.**

**142.1 (1)** If spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco, a tobacco product or a vaping product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it.

**(2) Subsection 142.1(2) of the Act is amended by striking out “and” at the end of paragraph (c) and by adding the following after paragraph (c):**

(c.1) a vaping product may only be to a vaping product licensee; and

**40 Paragraph 164(1)(h.2) of the Act is replaced by the following:**

(h.2) respecting the sale of alcohol, a tobacco product, raw leaf tobacco, specially denatured alcohol, a restricted formulation or a vaping product detained, seized, abandoned or forfeited under this Act;

Customs Tariff

**41 Paragraph 83(a) of the *Customs Tariff* is replaced by the following:**

(a) in the case of goods that would have been classified under tariff item No. 9804.10.00 or 9804.20.00, the value for duty of the goods shall be reduced by an amount equal to that maximum specified value and, in the case of alcoholic beverages, vaping products and tobacco, the quantity of those goods shall, for the purposes of assessing duties other than a duty under section 54 of the *Excise Act, 2001*, be reduced by the quantity of alcoholic beverages, vaping products and tobacco and up to the maximum quantities specified in tariff item No. 9804.10.00 or 9804.20.00, as the case may be;

**42 Subsection 89(2) of the Act is replaced by the following:**

**Exception**

(2) Relief of the duties or taxes levied or imposed under sections 21.1 to 21.3, the *Excise Act, 2001* or the *Excise Tax Act* may not be granted under subsection (1) on tobacco products, vaping products or designated goods.

**43 Subsection 113(2) of the Act is replaced by the following:**

**No refund**

(2) No refund or drawback of the duties imposed on tobacco products or vaping products under the *Excise Act, 2001* shall be granted under subsection (1), except if a refund of the whole or the portion of the duties is required to be granted under Division 3.

**44 (1) The Description of Goods of tariff item No. 9804.10.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “For the purpose of this tariff item,” and ending with “of manufactured tobacco.” with a reference to “For the purpose of this tariff item, goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding**

1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers.”

**(2) Paragraphs (a) and (b) of the Description of Goods of tariff item No. 9804.20.00 in the List of Tariff Provisions set out in the schedule to the Act are replaced by the following:**

**(a)** goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers, if included in the baggage accompanying the person at the time of return to Canada; and

**(b)** if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products) acquired abroad are not included in the baggage accompanying the person, they may be classified under this tariff item if they are reported by the person at time of return to Canada.

**(3) The Description of Goods of tariff item No. 9804.30.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “For the purpose of this tariff item,” and ending with “or manufactured tobacco.” with a reference to “For the purpose of this tariff item, goods shall not include those which could otherwise be imported into Canada free of duties, nor alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco or vaping products.”**

**(4) The Description of Goods of tariff item No. 9804.40.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “For the purpose of this tariff item,” and ending with “or manufactured tobacco.” with a reference to “For the purpose of this tariff item, goods shall not include alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco or vaping products.”**

**(5) Paragraphs (a) and (b) of the Description of Goods of tariff item No. 9805.00.00 in the List of Tariff Provisions set out in the schedule to the Act are replaced by the following:**

**(a)** the provisions shall apply to either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers, if they are included in the baggage accompanying the importer, and no relief from payment of duties is being claimed in respect of alcoholic beverages, tobacco or vaping products under another item in this Chapter at the time of importation;

**(b)** if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products) are not accompanying the person returning from abroad, they may be classified under this item when imported at a later time if they are reported by the person at the time of return to Canada; and

**(6) The Description of Goods of tariff item No. 9807.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by striking out “and” at the end of subparagraph (a)(i), by adding “and” at the end of subparagraph (a)(ii), and by adding the following after subparagraph (a)(ii):**

**(iii)** vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers;

**(7) Paragraph (c) of the Description of Goods of tariff item No. 9807.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “(other than alcoholic beverages, cigars, cigarettes, tobacco sticks and manufactured tobacco)” with a reference to “(other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products)”.**

**(8) The Description of Goods of tariff item No. 9816.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “and not being advertising matter, tobacco or alcoholic beverages,” with a reference to “and not being advertising matter, tobacco, alcoholic beverages or vaping products,”.**

**(9) The Description of Goods of heading 98.25 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “alcoholic beverages; tobacco; tobacco products;” with a reference to “alcoholic beverages; tobacco; tobacco products; vaping products;”.**

**(10) The Description of Goods of heading 98.26 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “alcoholic beverages; tobacco; tobacco products;” with a reference to “alcoholic beverages; tobacco; tobacco products; vaping products;”.**

**(11) The Description of Goods of tariff item No. 9827.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “Goods, which may include” and ending with “of manufactured tobacco,” with a reference to “Goods, which may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco products not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers,”**

**(12) The Description of Goods of tariff item No. 9906.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “other than alcoholic beverages and tobacco products,” with a reference to “other than alcoholic beverages, tobacco products and vaping products,”.**

Amendments to Various Regulations

Tariff Item No. 9805.00.00 Exemption Order

**45 Section 3 of the *Tariff Item No. 9805.00.00 Exemption Order* is amended by adding the following after paragraph (b):**

**(b.1)** vaping products owned by and in the possession of the importer;

Postal Imports Remission Order

**46 (1) Paragraph (a) of the definition *goods* in section 2 of the *Postal Imports Remission Order* is replaced by the following:**

**(a)** alcoholic beverages, cannabis products, vaping products, cigars, cigarettes and manufactured tobacco;

**(2) Section 2 of the Order is amended by adding the following in alphabetical order:**

***vaping product*** has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

Courier Imports Remission Order

**47 (1) Paragraph (a) of the definition *goods* in section 2 of the *Courier Imports Remission Order* is replaced by the following:**

**(a)** alcoholic beverages, cannabis products, vaping products, cigars, cigarettes and manufactured tobacco;

**(2) Section 2 of the Order is amended by adding the following in alphabetical order:**

***vaping product*** has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

## Customs Sufferance Warehouses Regulations

### **48 Subsection 15(4) of the *Customs Sufferance Warehouses Regulations* is replaced by the following:**

**(4)** For the purposes of subsection 39.1(1) of the Act, firearms, prohibited ammunition, prohibited devices, prohibited or restricted weapons, tobacco products and vaping products are goods of a prescribed class that are forfeit if they are not removed from a sufferance warehouse within 14 days after the day on which they were reported under section 12 of the Act.

### **49 Paragraph 17(a) of the Regulations is replaced by the following:**

**(a)** stamping the goods, if the goods consist of

**(i)** imported raw leaf tobacco or imported tobacco products that are placed in the sufferance warehouse in accordance with section 39 of the *Excise Act, 2001*, or

**(ii)** imported vaping products that are placed in the sufferance warehouse in accordance with section 158.51 of the *Excise Act, 2001*;

## Non-residents' Temporary Importation of Baggage and Conveyances Regulations

### **50 Section 2 of the *Non-residents' Temporary Importation of Baggage and Conveyances Regulations* is amended by adding the following in alphabetical order:**

***immediate container*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*contenant immédiat*)

***vaping device*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*dispositif de vapotage*)

***vaping substance*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*substance de vapotage*)

### **51 Subsection 4(1) of the Regulations is amended by striking out “or” at the end of paragraph (b) and by adding the following after that paragraph:**

**(b.1)** 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers; or

## Tariff Item No. 9807.00.00 Exemption Order

### **52 Paragraph 2(b) of the *Tariff Item No. 9807.00.00 Exemption Order* is replaced by the following:**

**(b)** tobacco products and vaping products;

## Customs Bonded Warehouses Regulations

### **53 Section 2 of the *Customs Bonded Warehouses Regulations* is amended by adding the following in alphabetical order:**

***vaping product*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*produit de vapotage*)

### **54 Section 14 of the Regulations is amended by striking out “and” at the end of paragraph (e), by adding “and” at the end of paragraph (f) and by adding the following after paragraph (f):**

**(g)** vaping products that are not stamped.

### **55 The Regulations are amended by adding the following after section 16:**

**16.1** No licensee shall receive into or remove from a bonded warehouse imported vaping products unless they are to be removed from the warehouse for sale to a foreign diplomat in Canada or export from Canada.

**56 Section 18 of the Regulations is replaced by the following:**

**18** For the purposes of subsections 37(2) and 39.1(2) of the *Customs Act*, tobacco products, packaged spirits and vaping products are a prescribed class of goods and are forfeit if they have not been removed from the bonded warehouse within five years of the day on which the goods are described in the form prescribed under subsection 19(2) of that Act.

Regulations Respecting Excise Licences and Registrations

**57 Subparagraph 2(2)(b)(i) of the *Regulations Respecting Excise Licenses and Registrations* is replaced by the following:**

(i) failed 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, tobacco products or vaping products or any regulations made under it, or

**58 Section 4 of the Regulations is replaced by the following:**

**4** A licence is valid for the period specified in the licence, which period shall not exceed

(a) in the case of a vaping product licence, three years; and

(b) in any other case, two years.

**59 (1) The portion of subsection 5(1) of the Regulations before paragraph (a) is replaced by the following:**

**5 (1)** For the purposes of paragraph 23(3)(b) of the Act, the amount of security to be provided by an applicant for a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence is an amount of not less than \$5,000 and

**(2) Paragraph 5(1)(b) of the Regulations is replaced by the following:**

(b) in the case of a tobacco licence, a cannabis licence or a vaping product licence, be sufficient to ensure payment of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of \$5 million per licence.

**60 Paragraph 12(1)(e) of the Regulations is replaced by the following:**

(e) fails 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, tobacco products or vaping products, or any regulations made under it; or

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

**61 The title of the *Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped* is replaced by the following:**

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

**62 The Regulations are amended by adding the following after section 1.3:**

**1.4** For the purposes of paragraph 158.44(3)(b) of the *Excise Act, 2001*, a person may possess a vaping product that is not stamped if

(a) the person is authorized by an officer under section 19 of the *Customs Act* to transport vaping products that have been reported under section 12 of that Act and is acting in accordance with that authorization; or

(b) the person has in their possession documentation that provides evidence that the person is transporting the vaping product on behalf of

(i) a vaping product licensee,

(ii) an excise warehouse licensee, or

(iii) an accredited representative.

## Stamping and Marking of Tobacco and Cannabis Products Regulations

**63 The title of the *Stamping and Marking of Tobacco and Cannabis Products Regulations* is replaced by the following:**

### Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

**64 Paragraph 2(c) of the Regulations is replaced by the following:**

(c) a cannabis product or a vaping product is packaged in a prescribed package when it is packaged in the smallest package — including any outer wrapper, package, box or other container — in which it is sold to the consumer.

**65 (1) Subsection 4(1) of the Regulations is replaced by the following:**

**4 (1)** For the purposes of subsections 25.1(1) and 158.36(1) of the Act, a prescribed person is a person that satisfies the requirements set out in paragraphs 2(2)(a) to (e) of the *Regulations Respecting Excise Licences and Registrations*.

**(2) Section 4 of the Regulations is amended by adding the following after subsection (3):**

**(4)** For the purposes of paragraph 158.38(2)(d) of the Act, the following persons are prescribed:

(a) a person that transports a vaping excise stamp on behalf of a person described in paragraph 158.38(2)(a) or (b) of the Act; and

(b) a person that has in their possession vaping excise stamps only for the purpose of applying adhesive to the stamps on behalf of the vaping product licensee to which the stamps are issued.

**66 The Regulations are amended by adding the following after section 4:**

**4.01 (1)** If the Minister holds, at any time in a calendar month, security that a person has provided under subsection 158.36(3) of the Act and if the person is not a vaping product licensee throughout the calendar month, the person must file with the Minister an information return for the calendar month in respect of the possession and use of any vaping excise stamps issued to the person.

**(2)** The information return of a person for a particular calendar month must

(a) be made in prescribed form containing prescribed information; and

(b) be filed in prescribed manner on or before the last day of the first calendar month following the particular calendar month.

**67 The Regulations are amended by adding the following after section 4.1:**

**4.11 (1)** Subject to subsections (2) to (4), the amount of security for the purpose of subsection 158.36(3) of the Act is the greater of

(a) \$1.00 multiplied by the number of vaping excise stamps that either are in the applicant's possession at the time of application or are to be issued in respect of the application, and

(b) \$5,000.

**(2)** Subject to subsections (3) and (4), if the amount determined under paragraph (1)(a) is greater than \$5 million, the amount of security for the purpose of subsection 158.36(3) of the Act is \$5 million.

**(3)** If a person has provided security under paragraph 23(3)(b) of the Act in an amount that is equal to or greater than the amount of security determined in accordance with subsections (1) and (2), the amount of security for the purpose of subsection 158.36(3) of the Act is nil.

**(4)** If a person has provided security under paragraph 23(3)(b) of the Act in an amount that is less than the amount of security determined in accordance with subsections (1) and (2), the amount of security for the purpose of subsection 158.36(3) of the Act is the difference between the amount of security determined in accordance with subsections (1) and (2) and the amount of security provided by the person under paragraph 23(3)(b) of the Act.

**68 The portion of section 4.2 of the Regulations before paragraph (a) is replaced by the following:**

**4.2** For the purposes of the definition *stamped* in section 2 of the Act and subsections 25.3(1), 158.05(1) and 158.38(1) of the Act, the prescribed manner of affixing an excise stamp to a package is by affixing the stamp

**69 The Regulations are amended by adding the following after section 5:**

**5.1 (1)** For the purposes of paragraphs 158.44(3)(e) and 158.47(2)(c) and section 158.56 of the Act, the prescribed limit is five units of vaping products.

**(2)** For the purposes of subsection (1), a unit of vaping products consists of 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers.

**70 The heading after section 7 of the Regulations is replaced by the following:**

## Vaping Product Marking

**8 (1)** For the purposes of subsection 158.5(1) of the Act, the required vaping product markings are

- (a)** for containers of vaping products manufactured in Canada, the marking set out in Schedule 7; and
- (b)** for containers of vaping products manufactured outside Canada, the marking set out in Schedule 8.

**(2)** The vaping product markings must be printed on or affixed to the container in a conspicuous manner and in accordance with the specifications set out in the appropriate Schedule.

**9 (1)** For the purposes of subsection 158.5(2) of the Act, the required vaping product marking is the marking set out in Schedule 8.

**(2)** The vaping product marking must be printed on or affixed to the container in a conspicuous manner and in accordance with the specifications set out in Schedule 8.

**71 The heading of Schedule 7 to the Regulations is replaced with the following:**

### SCHEDULE 7

(Sections 6 and 8)

## Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured in Canada

**72 The heading of Schedule 8 to the Regulations is replaced with the following:**

## SCHEDULE 8

(Sections 6 to 9)

# 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

### Application

**73 (1)** Sections 158.35, 158.51 to 158.53, 158.68 and 158.69 of the *Excise Act, 2001*, as enacted by section 6, subsection 11(2), sections 12 to 16, subsections 17(2) and (4), sections 18, 19 and 22, subsection 28(2) and sections 29, 34 to 52, 62 and 69 come into force on October 1, 2022.

**(2)** Sections 158.41, 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by section 6, apply 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. Those sections of the *Excise Act, 2001* also apply 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 section 6 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 section 6 receives royal assent but before October 1, 2022 if the vaping products are stamped when they are reported under that Act.

**(3)** Sections 158.42 to 158.47 and 158.49, subsection 158.5(2), sections 158.54 to 158.56, 158.6 and 158.61 of the *Excise Act, 2001*, as enacted by section 6, subsection 10(1) and sections 54 to 56 come into force on October 1, 2022. However, those provisions of that Act, subsection 10(1) and sections 54 to 56 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.

**(4)** In applying sections 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by section 6, in respect of vaping products manufactured in Canada that are packaged before October 1, 2022, paragraph (a) of each of those sections 158.57 and 158.58 is to be read as follows:

(a) in the case of vaping products manufactured in Canada, 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; and

### WTO Settlement on the 100-per-cent Canadian Wine Exemption

**74 (1)** Section 87 of the *Excise Act, 2001* is amended by adding “and” at the end of paragraph (a) and by repealing paragraph (a.1).

**(2)** Subsection (1) comes into force, or is deemed to have come into force, on June 30, 2022.

**75 (1) Paragraph 88(2)(i) of the Act is replaced by the following:**

(i) that is wine referred to in paragraph 135(2)(b) may be possessed by any person; and

**(2) Subsection (1) 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.**

**76 (1) Subsection 134(3) of the Act is replaced by the following:**

**Exception**

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

**(2) Subsection (1) applies to wine taken for use on or after June 30, 2022.**

**77 (1) Paragraph 135(2)(a) of the Act is repealed.**

**(2) Subsection (1) applies to wine packaged on or after June 30, 2022.**

## SCHEDULE

(Section 27)

## SCHEDULE 8

(Sections 158.57, 158.6, 158.61, 218.2, 233.2, 234.2 and 238.1)

# Duty on Vaping Products

**1** Vaping products that are vaping devices that contain vaping substances or that are vaping substances in immediate containers: for each vaping device or immediate container of vaping substance

**(a)** if the vaping substance is in liquid form, the amount equal to the total of:

**(i)** for the first 10 millilitres of vaping substance in the vaping device or immediate container: \$1.00 per two millilitres of vaping substance or fraction thereof, and

**(ii)** for any additional amount of vaping substance in the vaping device or immediate container: \$1.00 per ten millilitres of vaping substance or fraction thereof; and

**(b)** if the vaping substance is in solid form, the amount equal to the total of:

**(i)** for the first 10 milligrams of vaping substance in the vaping device or immediate container: \$1.00 per two milligrams of vaping substance or fraction thereof, and

**(ii)** for any additional amount of vaping substance in the vaping device or immediate container: \$1.00 per ten milligrams of vaping substance or fraction thereof.

**2** Vaping products that are vaping substances not in any vaping device or container:

**(a)** if the vaping substance is in liquid form, the amount equal to the total of:

**(i)** for the first 10 millilitres of vaping substance: \$1.00 per two millilitres of vaping substance or fraction thereof, and

**(ii)** for any additional amount of vaping substance: \$1.00 per ten millilitres of vaping substance or fraction thereof; and

**(b)** if the vaping substance is in solid form, the amount equal to the total of:

**(i)** for the first 10 milligrams of vaping substance: \$1.00 per two milligrams of vaping substance or fraction thereof, and

**(ii)** for any additional amount of vaping substance: \$1.00 per ten milligrams of vaping substance or fraction thereof.