

# Excise Duty Memoranda Series

## 2.2.2 Security Requirements for Licensees

March 2003

### Overview

This memorandum explains the requirements for certain licensees to provide and maintain security with the Canada Customs and Revenue Agency (CCRA) under the provisions of the *Excise Act, 2001* (the “Act”). It explains the types of security acceptable to the CCRA and the amount of security that is required to be posted.

### Disclaimer

The information in this memorandum does not replace the law found in the Act and its Regulations. It is provided for your reference. As it may not completely address your situation, you may wish to refer to the Act or its Regulations, or to contact any CCRA tax services office for additional information.

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## Persons required to provide security

### Security requirements para 23(3)(b)

1. A person applying for or renewing a spirits licence or tobacco licence under the Act is required to provide security in a form satisfactory to the CCRA and in an amount determined by the *Regulations Respecting Excise Licences and Registrations*.
2. A person applying for or renewing any licence or registration other than a spirits licence or a tobacco licence is exempt from the security provisions of the Act and is not required to post security.

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La version française de ce document est intitulée *Exigences de caution pour les titulaires de licence*.

 Canada Customs and Revenue Agency Agence des douanes et du revenu du Canada

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3. Security, as a condition of licensing, will be required to be provided before a licence is issued or renewed.

### Amount of security required

*Regulations Respecting  
Excise Licences and  
Registrations ss 5(1)*

4. The amount of security that must be posted is set at a minimum of \$5,000 and a maximum of \$2 million, in Canadian funds.

5. The amount of security required depends on the type of licence for which an application is made. There are different rules for calculating the security required for a spirits licence and for a tobacco licence.

Spirits licence

6. Security provided with an application for a spirits licence must be sufficient to ensure payment of all amounts for which the licensee is or will be responsible under sections 104 to 112 of the Act.

7. It should be noted that the determination is based on the quantity of bulk spirits that a spirits licensee is responsible for, and not the quantity in their possession. A spirits licensee may be responsible for bulk spirits that are not in their possession, or, conversely, they may not be responsible for bulk spirits that are in their physical possession.

8. Generally, the amount that a spirits licensee is or will be responsible for is based on the quantity of bulk alcohol that a spirits licensee owns at any given time.

9. Additional information on determining who is responsible for bulk spirits is available in Excise Duty Memorandum 3.2.2, *Imposition and Responsibility for Duty on Spirits*.

10. To calculate the amount of bulk spirits for which a spirits licensee is responsible, the licensee must first determine the quantity of bulk spirits for which they are responsible **at any time**. The licensee must then determine the potential liability on this quantity of bulk spirits by applying the appropriate excise duty rate imposed on each strength of spirit.

11. The licensee must then submit security that is equal to or in excess of the potential liability calculated (to a maximum of \$2 million).

Tobacco licence

12. Security provided with an application for a tobacco licence must be sufficient to ensure payment of the amount of duty payable on the licensee's excise duty return for any fiscal month (to a maximum of \$2 million).

13. The amount of duty payable refers to duty payable on the excise duty return. This amount is net of deductions and refunds that are claimed on the return.

14. Additional information on determining the amount of duty payable and for completing and filing an *Excise Duty Return – Tobacco Licence* is available in Excise Duty Memorandum 10.1.4, *Completing an Excise Duty Return – Tobacco Licence*.

### Maintenance of security

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| Review of security                    | 15. Licences issued under the Act remain in effect for a period of two years, unless suspended or cancelled prior to expiration. The provision of adequate security is a condition of licensing, and therefore the licensee must ensure that the level of security provided remains sufficient for the duration of the licence. The licensee must exercise care when determining the level of security to be provided, to account for anticipated or possible increased liabilities during the two-year licensing period.                  |
| Failure to maintain adequate security | 16. The failure to maintain a sufficient level of security may lead to the suspension of a licence by the CCRA.  |
| Increase in security required         | 17. If, during the period in which a licence is in effect, the licensee determines that the level of security has become, or may become, inadequate, the licensee should immediately contact their Regional Excise Duty Office to discuss the situation. A listing of these offices is available in Excise Duty Memorandum 1.1.2, <i>Regional Excise Duty Offices</i> .  |
|                                       | 18. If the CCRA has reviewed the security requirements and advises the licensee that increased security is required, the licensee must provide the additional security required without delay.   |
| Increase in security not required     | 19. Adjustments may not be required for minimal changes to the amount of security. If the CCRA has reviewed the security requirements, the licensee may not be required to increase the amount of security if <ul style="list-style-type: none"> <li>(a) the amount of security required is \$100,000 or less and the additional amount of security is less than 10% of that amount, or</li> <li>(b) the amount of security required exceeds \$100,000 and the additional amount of security required does not exceed \$10,000.</li> </ul> |
| Decrease in amount of security        | 20. If at any time a decrease in the total amount of security is warranted, the licensee may request in writing that the excess amount of security be returned. The excess amount of security will not be returned unless the excess amount exceeds the thresholds noted in paragraph 19 of this memorandum.   |

### Acceptable forms of security

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| para 23(3)(b)                          | 21. Security provided must be in a form satisfactory to the CCRA.  |
| Satisfactory forms Regulations ss 5(2) | 22. Security in Canadian funds may be in the form of cash, certified cheque, transferable bonds issued by the Government of Canada, or surety bonds. |

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### Cash and certified cheques

23. Security posted in the form of cash or certified cheque will be refunded to the licensee when the privileges afforded with the licence under the Act are no longer required and the obligations for which the security was taken have been met.

### Government of Canada bonds

- Canada Savings Bonds not accepted 24. The CCRA accepts as security transferable Government of Canada bonds. Government of Canada Savings Bonds are **not** acceptable as these bonds are not transferable.
- Acceptable guarantors 25. Banks named in Schedule A or Schedule B to the *Bank Act* are acceptable as guarantors for transfer certificates in connection with Government of Canada bonds.
- Market value 26. The market value of government bonds posted as security must, at the time of submission, be sufficient to cover the security required. Market value information may be found in the financial sections of most major daily newspapers.
- Transfer form Y76 27. Fully registered and registered Government of Canada bonds, when deposited as security, must be accompanied by transfer form Y76, *Government of Canada Bond Transfer Form*, fully completed by the registered owner assigning the respective bonds to the Receiver General for Canada. Form Y76 must be signed by the registered owner, if an individual, or in the case of an incorporated company, by the duly authorized officer or officers of that company. In addition, the signature and authority to sign must be guaranteed by a Canadian chartered bank or other financial institution acceptable to the Bank of Canada.
- Change in name or sale of a company 28. When a company changes its name and the bonds held as security are transferred to the new name, a letter along with a certified copy of the *Supplementary Letters Patent* must be forwarded to the Regional Excise Duty office concerned. When a company is sold and the bond held as security is to be transferred to the new owner, a new form Y76 must be prepared by the registered owner. Another form Y76 must be prepared by the new owner assigning the bond(s) to the Receiver General for Canada.
- Bonds returned 29. Government of Canada Bonds held as security are returned to the bearer when the privileges afforded with the licence are no longer required and all of the obligations for which the security was posted have been met.

### Surety bonds

30. Surety bonds must be in a form and manner approved by the CCRA, and issued by an approved financial institution or an acceptable bonding company. Information on surety bonds acceptable to the CCRA as security is available in Excise Duty Memoranda 2.2.3, *Surety Bonds*, and 2.2.4, *Approved Financial Institutions and Acceptable Bonding Companies*.

### **Breach of conditions**

31. When security has been tendered in the form of cash, certified cheque or Government of Canada bonds and there has been a contravention of the Act, or normal collection activities have failed to resolve an unpaid balance on a licensee's account, the CCRA may withhold a portion of the security equal to the unpaid balance.

All of the memoranda in the Excise Duty Memoranda Series will be available on the CCRA Web site at <http://www.ccra-adrc.gc.ca/tax/technical/exciseduty-e.html>