

# Excise Duty Memoranda Series

June 2003

Revised January 2007\*

## 3.1.1 Producers and Packagers of Spirits

### Overview

The *Excise Act, 2001* (the “Act”) requires a person to obtain a spirits licence in order to produce or package spirits. This memorandum provides an overview of the obligations and entitlements of persons who may become spirits licensees.

### 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 contact any Canada Revenue Agency (CRA) regional excise duty office for additional information.

### [Proposed amendments]

This memorandum reflects proposed amendments to the Act as contained in Bill C-40, which received first reading on December 5, 2006 in the House of Commons and Bill C-28, which received third reading on December 11, 2006 in the House of Commons. Where information reflects proposed amendments, the information is enclosed in square brackets ([ , ]). Any commentary in this memorandum should not be taken as a statement by the CRA that such amendments will in fact be enacted in their current form.

\* Revised paragraphs are indicated with a side bar in the margin

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La version française de ce document est intitulée *Producteurs et emballeurs de spiritueux*.

Canada

#### Requirement for a spirits licence

- Meaning of “spirits”  
s 2
1. “Spirits” means any material or substance containing more than 0.5% absolute ethyl alcohol by volume, excluding wine, beer, vinegar, denatured alcohol, specially denatured alcohol [fusel oil or other refuse produced as a result of the distillation process] or an approved formulation. Also excluded from the definition of spirits is any product containing or manufactured from beer, vinegar, denatured alcohol, specially denatured alcohol, [fusel oil or other refuse produced as a result of the distillation process] or an approved formulation that is not consumable as a beverage.
- Spirits licence  
ss 14(1), 70(2), [75]  
s 76 and 94
2. A spirits licence authorizes a person (i.e., a “spirits licensee”) to produce or package spirits in Canada. A spirits licence also allows a spirits licensee to import, export, denature, possess and transport bulk spirits.
- Prohibition – production and packaging of spirits  
ss 60(1)
3. A person is prohibited from producing and packaging spirits except in accordance with a spirits licence issued to that person.
- Exception  
ss 60(2)
4. There are two exceptions to the requirement to obtain a spirits licence in order to produce or package spirits. One is for the packaging of spirits from a marked special container by an individual (i.e., a purchaser) at authorized bottle-your-own premises. [The second is when spirits are produced for the purpose of or as a consequence of the analysis of the composition of a product containing absolute ethyl alcohol.] There is no exemption or allowance for the production of spirits for personal use without a licence, as there is for the production of wine, beer or tobacco.
- No entitlement to licence  
s 77 and [131.2],  
ss 14(2) and 14(3),  
para 78(1)(b)
5. A person is not entitled to a spirits licence solely because they are deemed to have:
- (a) packaged spirits by marking a special container;
  - (b) produced spirits by blending wine with spirits;
  - (c) [produced spirits by blending a material or substance, other than spirits or wine, that contains absolute ethyl alcohol with wine or spirits; or
  - (d) produced spirits for the purpose of or as a consequence of the analysis of the composition of the substance containing absolute ethyl alcohol.]
- Security  
para 23(3)(b)
6. A person applying for a spirits licence is required to provide and maintain security with the CRA. For information on security refer to Excise Duty Memoranda 2.2.2, *Security Requirements for Licensees*, 2.2.3, *Surety Bonds* and 2.2.4, *Approved Financial Institutions and Acceptable Bonding Companies*.
- Meaning of “produce”  
s 2
7. To “produce” spirits means to bring spirits into existence by distillation or by any other process, or to recover spirits. Spirits produced through distillation are considered to have come into existence at the earliest point at which they can be reasonably measured after leaving the column of a still.

Meaning of “packaged”  
s 2

8. To package spirits means to place them into a container with a capacity of not more than 100 litres that is ordinarily sold to consumers without being further repackaged into smaller containers. Packaging of spirits also includes placing spirits into a marked special container.

Meaning of “mark” and  
“special container”  
s 2

9. A marked special container, in respect of spirits, is a container of a capacity greater than 100 litres but not more than 1,500 litres, which has been marked in a prescribed form and manner to indicate that it is intended for delivery to and for use by a registered user, or at bottle-your-own premises.

10. Additional information on marked special containers will be available in Excise Duty Memorandum 3.8.1, *Special Containers of Spirits*. Additional information on the blending of spirits and wine is available in Excise Duty Memorandum 3.1.2, *Licensed Users*.

### Obtaining a spirits licence

11. Instructions and requirements for obtaining a spirits licence are provided in Excise Duty Memorandum 2.2.1, *Obtaining and Renewing a Licence*.

### Obtaining other licence types

12. Depending upon the activities of a spirits licensee, the licensee may be required to possess other types of licences. For example, a spirits licensee may require an excise warehouse licence, a wine licence, or a user’s licence.

Excise warehouse  
licence  
s 19 and s 124

13. A spirits licensee who wishes to defer the payment of excise duty after packaging spirits will be required to possess a separate excise warehouse licence to store non-duty-paid packaged spirits. With the excise warehouse licence, the spirits licensee may defer the payment of excise duty until such time as the packaged spirits are removed from the excise warehouse.

14. Additional information on the types of licences a person may be required to have to perform certain activities regulated under the Act is available in Excise Duty Memorandum 2.1.1, *Licence Types*.

### Possession and transportation of spirits

Possession of bulk  
spirits  
ss 70(2)

15. A spirits licensee may possess and transport bulk spirits that are produced or imported by a spirits licensee. A person who possesses an alcohol registration may also transport bulk spirits on behalf of a spirits licensee.

Alcohol registrants

16. Additional information on the transportation of bulk spirits by alcohol registrants is available in Excise Duty Memorandum 3.1.4, *Alcohol Registrants*.

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Possession of non-duty-paid spirits ss 88(2) and 88(3)

*Regulations Respecting the Possession of Non-Duty-Paid Packaged Alcohol*

17. A person prescribed by Regulations may transport non-duty-paid packaged spirits. This includes a person who is licensed as a Customs bonded carrier or any person who has acceptable documentation showing that they are transporting spirits on behalf of another person as prescribed in the Regulations.

18. Additional information relating to the possession and transportation of spirits will be available in Excise Duty Memorandum 3.2.1, *Possession and Transportation of Spirits*.

#### Possession of a still

Prohibition s 61

19. A person is prohibited from possessing a still or other equipment suitable for the production of spirits with the intent of producing spirits unless the person:

- (a) possesses a spirits licence;
- (b) has a pending application for a spirits licence; or
- (c) [possesses the still or equipment solely for the purpose of producing spirits for the purpose or as a consequence of the analysis of the composition of a substance containing absolute ethyl alcohol.]

Meaning of "pending application" para 61(b)

20. To be considered to have an application pending, a person must have submitted to the CRA all information and documentation required to obtain a spirits licence. This includes a fully completed application form L63, *Licence and Registration Application* Excise Act, 2001, a list of premises to be covered by the licence, and the required security in a form acceptable to the CRA.

No intent to produce spirits

21. It is not prohibited to possess a still, whether chemical or not, that is to be used for purposes other than the production of spirits, such as the purification of water. There is no licence or registration required under the Act to possess a still for uses other than the production of spirits.

#### Imposition, responsibility and liability for excise duty on bulk spirits

Imposition and responsibility s 104 and 122

22. Excise duty is imposed on spirits at the time they are produced in Canada. Generally, the spirits licensee who owns the bulk spirits is responsible for them. However, there may be occasions when a spirits licensee does not own the bulk spirits. If a spirits licensee does not own the bulk spirits, then the responsibility of ownership falls on the spirits licensee or licensed user who last owned them. If no licensee ever owned the bulk spirits, then the responsibility falls on the spirits licensee who imported or produced them or the licensed user who imported them.

Liability for excise duties 124, 126, 127, 132 and 145 para 109(b) to (f)	<p>23. The spirits licensee responsible for the bulk spirits is liable for the excise duty on them until such time as that excise duty is paid or relieved, or when the responsibility or liability for the spirits is transferred. Excise duty becomes payable at the time the spirits are packaged, taken for use or cannot be accounted for. The responsibility and the accompanying excise duty liability may be transferred when the bulk spirits are sold to another licensee. On the other hand, if the spirits are packaged and immediately entered into an excise warehouse, the excise warehouse licensee becomes liable for the excise duty on the spirits, rather than the spirits licensee. Excise duty may be relieved if the bulk spirits are used or destroyed, or lost in specific circumstances and conditions as set out in the <i>Losses of Bulk Spirits and Packaged Alcohol Regulations</i>.</p> <p>24. Additional information on the imposition of excise duty will be available in Memorandum 3.2.2, <i>Imposition and Responsibility for Excise Duty on Spirits</i>.</p>
Rates of excise duties 122 and 123 Schedule 4	<p>25. The rates of excise duty applicable to spirits are available in Excise Duty Memorandum 1.5.1, <i>Rates of Excise Duty</i>.</p>
Special duties 133 Schedule 5	<p>26. There is also a special duty of \$0.12 per litre of absolute ethyl alcohol contained in the spirits, which applies on imported spirits delivered to or imported by a licensed user.</p>

### Maintaining records and filing returns

Keeping records ss 206(1)	<p>27. Every person who possesses a licence under the Act is required to maintain all records that are necessary to determine whether they are in compliance with the Act.</p> <p>28. Additional information on the requirement to maintain books and records is available in Excise Duty Memorandum 9.1.1, <i>General Requirements for Books and Records</i>.</p>
Filing returns ss 160(1)	<p>29. Every spirits licensee is required to file form B266, <i>Excise Duty Return – Spirits Licensee</i>, in respect of each fiscal month, and to calculate and remit any excise duty payable on that return. A licensee who possesses more than one licence will be required to file a separate return for each licence. For example, a spirits licensee who also possesses an excise warehouse licence will be required to file a B266, <i>Excise Duty Return – Spirits Licensee</i> and a B262, <i>Excise Duty Return – Excise Warehouse Licensee</i>.</p>
Fiscal month ss 159(1)	<p>30. Where a licensee has determined a fiscal month for GST/HST purposes, the same fiscal month applies for purposes of excise duty. Where such a fiscal month has not yet been determined, a person may choose a fiscal month using established GST/HST rules, or use a calendar month.</p>
Branches or divisions filing separate returns ss 164(1)	<p>31. Where a spirits licensee has branches or divisions with distinct operations under a spirits licence, the licensee may apply to the Minister for authority to file separate returns for each branch or division.</p>

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32. Additional information with respect to the filing of monthly returns, remitting excise duty and paying the correct amounts of excise duty is available in Excise Duty Memorandum 10.1.1, *Returns and Payments*. Information relating to the amounts to be included on the excise duty return is contained in Excise Duty Memorandum 10.1.7, *Completing an Excise Duty Return – Spirits Licensee*.

#### Debts and the collections process

Debts  
ss 284(1)

33. Excise duty and other amounts payable under the Act are debts due to the Crown and may be recovered through the court process or in any other manner provided under the Act.

Reminder notice

34. A spirits licensee who owes excise duty or is late filing returns may receive a notice or a telephone call from a CRA official as a reminder of their obligation to pay past due excise duty or file outstanding returns.

#### Contraventions and penalties

Enforcement  
Part 6

35. Additional information on contraventions and penalties will be provided in Excise Duty Memoranda 11.2.1, *Contraventions and Penalties*.

All of the memoranda in the Excise Duty Memoranda Series will be available on the CRA Web site at [www.cra-arc.gc.ca/tax/technical/act2001-e.html](http://www.cra-arc.gc.ca/tax/technical/act2001-e.html).