

Excise Duty Memoranda Series

7.1.1 Manufacturers of Tobacco Products

July 2003

Overview	The <i>Excise Act, 2001</i> (the “Act”) requires a person to obtain a tobacco licence in order to manufacture tobacco products. This memorandum provides an overview of the obligations and entitlements of persons who may become tobacco licensees.
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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 Customs and Revenue Agency (CCRA) tax services office for additional information.
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Proposed amendments	This memorandum reflects the proposed amendments to the <i>Excise Act, 2001</i> , which the Minister of Finance announced on June 24, 2003. Any commentary in this memorandum should not be taken as a statement by the CCRA that such amendments will in fact be enacted in their current form.
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La version française de ce document est intitulée *Fabricants de produits du tabac*.



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

7.1.1 Manufacturers of Tobacco Products

Requirement for a tobacco licence

- Issuance of a licence para 14(1)(d)
1. A tobacco licensee is a person who holds a tobacco licence. A tobacco licence authorizes a tobacco licensee to manufacture tobacco products.
- Meaning of “tobacco product” s 2
2. “Tobacco product” means manufactured tobacco, packaged raw leaf tobacco or cigars.
- Meaning of “manufactured tobacco” s 2
3. “Manufactured tobacco” means every article, other than a cigar or packaged raw leaf tobacco, that is manufactured in whole or in part from raw leaf tobacco by any process.
- Meaning of “manufacture” s 2
4. “Manufacture”, in respect of a tobacco product, includes any step in the preparation or working up of raw leaf tobacco into the tobacco product. It includes packing, stemming, reconstituting, converting or packaging the raw leaf tobacco or tobacco product.
5. Definitions of other terms found in the Act and its Regulations that relate to the manufacturing of tobacco products will be available in Excise Duty Memorandum 1.3.1, *Definitions*.
- Security para 23(3)(b) *Regulations Respecting Excise Licences and Registrations* s 5
6. A person applying for a tobacco licence is required to provide and maintain security with the CCRA. The amount of security required to be posted is provided in Excise Duty Memorandum 2.2.2, *Security Requirements for Licensees*. Additional information on posting security is provided in Excise Duty Memoranda 2.2.3, *Surety Bonds*, and 2.2.4, *Approved Financial Institutions and Acceptable Bonding Companies*.

Manufacturing tobacco products without a licence

- Prohibition ss 25(1)
7. The Act imposes a prohibition on the manufacturing of tobacco products unless it is done in accordance with a tobacco licence issued to a person. Therefore, subject to the exceptions noted in paragraphs 10 and 11 of this memorandum, anyone who manufactures tobacco products in Canada is required to obtain a tobacco licence issued under the Act.

Deemed manufacturer of tobacco products

- Deemed manufacturer ss 25(2)
8. A person who, 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 manufacture of a tobacco product, is deemed to be manufacturing the tobacco product, and the other person is deemed not to be manufacturing the tobacco product. Accordingly, the person providing the equipment in their place of business must acquire a tobacco licence and fulfil all other obligations imposed on tobacco licensees under the Act, such as packaging and stamping.

Excise duty rate 9. The deeming provision will, in effect, require that the tobacco products made by the purchaser of raw leaf tobacco using equipment provided by another person in their place of business are taxed at the rate of excise duty applicable to the tobacco products that are actually made on that equipment.

Exceptions to licensing requirements

Manufacturing for personal use para 25(3)(a) 10. An individual who is not a tobacco licensee may manufacture cigars or manufactured tobacco from packaged raw leaf tobacco or manufactured tobacco on which excise duty has been paid, provided that the tobacco or cigars are for the individual’s personal use.

para 25(3)(b) 11. An unlicensed individual may also manufacture cigars or manufactured tobacco from raw leaf tobacco grown on land on which the individual resides, provided that:
(a) the tobacco or cigars are for their personal use or that of the members of their family who reside with the individual, and who are 18 years of age or older; and
(b) the quantity of tobacco or cigars manufactured in any year does not exceed 15 kilograms for the individual and each family member who resides with the individual, and who is 18 years of age or older.

Meaning of “personal use” s 2 12. The “personal use” of a good by an individual means the use of the good by the individual or by others at the individual’s expense. It does not include the sale or other commercial use of the good.

Obtaining a tobacco licence

13. Additional information relating to the requirements and procedures for obtaining a tobacco licence under the Act is provided in Excise Duty Memorandum 2.2.1, *Obtaining and Renewing a Licence*.

Obtaining other licence types

14. Depending upon the activities of a tobacco licensee, the licensee may be required to possess other types of licences. For example, a tobacco licensee may require an excise warehouse licence.

Excise warehouse licence ss 19(1) 15. A tobacco licensee who wishes to possess unstamped manufactured tobacco or cigars will be required to have a separate excise warehouse licence. The requirement to have this separate licence depends upon the nature and scope of the licensee’s business operations. An excise warehouse licence authorizes the tobacco licensee to possess in their excise warehouse manufactured tobacco or cigars that are not stamped with a tobacco stamp.

16. Additional information with respect to the types of licences a person may be required to possess to perform certain activities regulated under the Act is available in Excise Duty Memorandum 2.1.1, *Licence Types*. Additional information on the warehousing of tobacco products is available in Excise Duty Memoranda 8.1.1, *Excise Warehouses*, and 8.4.1, *Warehousing of Tobacco Products*.

7.1.1 Manufacturers of Tobacco Products

Stamping and marking requirements

Packaging and stamping of tobacco s 34

17. The Act prohibits a tobacco licensee from entering a tobacco product into the duty-paid market, unless the product has been packaged by the licensee, and stamped at the time of packaging with prescribed information printed on the package.

18. Additional information relating to the prescribed information required to be indicated on packaged tobacco is available in the draft *Stamping and Marking of Tobacco Products Regulations*, and will be available in Excise Duty Memorandum 7.6.1, *Packaging, Stamping and Marking Requirements*.

Imposition and rates of excise duty

Imposition of duty ss 42(1)

19. Excise duty is imposed on tobacco products manufactured in Canada and is payable by the tobacco licensee who manufactured them, at the time they are packaged. Duty is also imposed on imported tobacco products or raw leaf tobacco and is payable by the importer, owner or other person who is liable to pay any customs duty on the products or tobacco.

Imported partially manufactured tobacco ss 42(2)

20. Partially manufactured tobacco imported by a tobacco licensee for further manufacture is deemed to be manufactured in Canada by the licensee. Since the duty imposed on tobacco products manufactured in Canada is not payable until they are packaged, the partially manufactured tobacco is not subject to excise duty at the time of importation.

Additional duty on cigars s 43

21. An additional duty is imposed on cigars manufactured and sold in Canada, by the tobacco licensee who manufactured the cigars, at the time of their delivery to a purchaser.

Rates of duty – cigarettes s 1, Schedule 1

22. The rates of duty on cigarettes are as follows:

- \$0.374875 for each five cigarettes or fraction of five cigarettes contained in any package, if the cigarettes are black stock
 - for delivery by the tobacco licensee who manufactured them to a duty free shop or customs bonded warehouse,
 - for delivery by the tobacco licensee who manufactured them to a person for use as ships' stores in accordance with the *Ships' Stores Regulations*, or
 - for export by the tobacco licensee who manufactured them for delivery to a foreign duty free shop or as foreign ships' stores; and
- \$0.396255 for each five cigarettes or fraction of five cigarettes contained in any package, in any other case.

- Rates of duty – tobacco sticks
s 2, Schedule 1
23. The rates of duty on tobacco sticks are as follows:
- \$0.054983 per stick, if the tobacco sticks are black stock
 - for delivery by the tobacco licensee who manufactured them to a duty free shop or customs bonded warehouse,
 - for delivery by the tobacco licensee who manufactured them to a person for use as ships' stores in accordance with the *Ships' Stores Regulations*, or
 - for export by the tobacco licensee who manufactured them for delivery to a foreign duty free shop or as foreign ships' stores; and
 - \$0.057983 per stick, in any other case.
- Rates of duty – manufactured tobacco
s 3, Schedule 1
24. The rates of duty on manufactured tobacco other than cigarettes and tobacco sticks are as follows:
- \$49.983 per kilogram, if the manufactured tobacco is black stock
 - for delivery by the tobacco licensee who manufactured it to a duty free shop or customs bonded warehouse,
 - for delivery by the tobacco licensee who manufactured it to a person for use as ships' stores in accordance with the *Ships' Stores Regulations*, or
 - for export by the tobacco licensee who manufactured it for delivery to a foreign duty free shop or as foreign ships' stores; and
 - \$53.981 per kilogram, in any other case.
- Rates of duty – cigars
s 4, Schedule 1,
Schedule 2
25. The rate of duty on cigars is \$14.786 per 1,000 cigars. An additional duty on cigars also applies at the rate of the greater of \$0.065 per cigar and 65%, computed on the sale price in the case of cigars manufactured in Canada, or the duty-paid value, in the case of imported cigars.
- Relief of duty – unstamped tobacco
s 45
26. Excise duties are relieved on tobacco products that are not stamped. Unstamped tobacco products are prohibited from being entered into the duty paid market
- Relief of duty – raw leaf tobacco
s 46
27. Excise duty is relieved on raw leaf tobacco imported by a tobacco licensee for by the licensee.
- Relief of duty – stamped manufactured tobacco
s 48
28. Excise duties are also relieved on stamped manufactured tobacco that was manufactured in Canada by a tobacco licensee and that is imported by the licensee for reworking or destruction.

Maintaining records and filing returns

- Keeping records ss 206(1)
29. Every person who possesses a tobacco licence under the Act is required to maintain all records that are necessary to determine whether they are in compliance with the Act.
30. Additional information on the requirement to maintain books and records is available in Excise Duty Memorandum 9.1.1, *General Requirements for Books and Records*.
- Filing returns ss 160
31. Every tobacco licensee is required to file form B267, *Excise Duty Return – Tobacco Licensee*, 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 is required to file separate returns for each licence. For example, a tobacco licensee who also possesses an excise warehouse licence will also be required to file form B262, *Excise Duty Return – Excise Warehouse Licensee*.
- Fiscal months ss 159(1)
32. 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.
- Branches or divisions filing separate returns ss 164(1)
33. Where a tobacco licensee has branches or divisions with distinct operations under a tobacco licence, the licensee may apply to the Minister for authority to file separate returns for each branch or division.
34. Additional information with respect to the filing of monthly returns, remitting excise duty, and paying the correct amounts of excise duty will be available in Excise Duty Memorandum 10.1.1, *Returns and Payments*. Additional information relating to the amounts to be included on an excise duty return will be provided in Excise Duty Memoranda 10.1.3, *Completing an Excise Duty Return – Excise Warehouse Licensee*, and 10.1.8, *Completing an Excise Duty Return – Tobacco Licensee*.

Debts and the collections process

- Debts ss 284(1)
35. 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
36. A tobacco licensee who owes excise duty or is late filing returns may receive a notice or a telephone call from a CCRA official as a reminder of their obligation to pay past due excise duty or file outstanding returns.
37. Additional information on the collections process will be available in Excise Duty Memorandum 12.2.1, *Collection Activities*.

Offences and penalties

Unlawful tobacco
production
s 214

38. Any person who manufactures tobacco products without a licence (other than an unlicensed individual who manufactures tobacco products for personal use, as noted in paragraphs 10 and 11 of this memorandum) is guilty of an offence and, upon conviction, may be liable to a fine or imprisonment.

Enforcement
Part 6

39. Additional information on offences and penalties will be provided in Excise Duty Memoranda 7.9.1, *Tobacco-Related Offences and Penalties*, and 12.9.1, *Administrative Offences and Penalties*.

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/act2001-e.html>