

Federal Government Introduces its Cannabis Tax Proposal; Alberta Unveils Proposed Provincial Framework

Jonathan Sherman

October 4, 2017

On Tuesday, October 3, 2017 the Government of Canada unveiled its proposal for a federal excise tax on the sale of cannabis. Under the proposal, a \$1 tax would be levied on prices up to and including \$10 per gram and a 10% tax would be levied on prices over \$10 per gram. The proposal is for the tax revenues to be evenly split between the Federal and Provincial Governments.

Ottawa's proposal is likely good news for licensed producers of cannabis (**LPs**). The tax is lower than expected and should not represent a significant barrier to competition with the black market. Further, it should not meaningfully impair the ability of LPs to remain profitable or to manage costs effectively.

The proposal also indicates that the Federal Government's principal objective, at least initially, is not to generate the maximum amount of revenue possible, but rather to address public health and safety issues and to eradicate the black market. While it is unclear whether other taxes such as HST will also be levied on cannabis sales, the proposed tax rate is markedly lower than those found in U.S. jurisdictions that have legalized cannabis for adult-use, including: Colorado (25%), Oregon (17% plus an optional 3% municipal tax), Washington (15% on wholesale cannabis and 8% on retail sales), and Nevada (33% - 38%).

However, Ottawa's proposal was met with opposition from premiers who are concerned that it does not adequately compensate them for bearing the bulk of the costs associated with legalizing cannabis, such as developing infrastructure and establishing regulatory and enforcement frameworks. Some, like British Columbia Premier John Horgan, worry that provinces will be forced to split revenues with the Federal Government despite incurring more than half of the costs. Others, like Manitoba Premier Brian Pallister, fear that unanticipated costs could result in the Federal and Provincial Governments splitting losses rather than gains.

While the Federal Government's proposal has not been finalized, it remains to be seen what impact, if any, it will have on provinces who have yet to implement their cannabis distribution and enforcement regimes. For instance, the Alberta Provincial Government unveiled part of its proposed framework today, October 4, 2017 which indicates that while sales will be limited to specialized cannabis stores, pricing has not yet been determined and will depend on the taxation framework that is implemented by the Federal Government.

Highlights of the Alberta Provincial Government framework include:

Cassels

- the Provincial Government will manage wholesale and distribution through a government-regulated distributor similar to the current system in Alberta for alcohol distribution;
- online sales of cannabis will be considered but may not be available as of the Federal Government's July 2018 implementation date;
- specialized retailers will be permitted to sell cannabis in cannabis-specific stores without alcohol, tobacco or pharmaceuticals and the Provincial Government will regulate the operating hours and locations of such cannabis-specific retailers;
- Alberta is considering two potential approaches to cannabis-specific retail locations:

o government-owned and operated stores similar to the framework in Ontario (see prior blog post here); or

o licensed and regulated private retailers consistent with Alberta's current system for alcohol distribution;

- the legal age to purchase cannabis in Alberta will be set at 18, aligning it with both the mandatory minimum age proposed by the Government of Canada in Bill C-45 and with the province's minimum drinking age;
- those over the age of 18 will be permitted to possess up to 30 grams of cannabis in a public space, while those under 18 will be subject to a zero tolerance approach, meaning that a youth in possession of more than 5 grams could face criminal charges;
- individuals will be permitted to consume cannabis in their homes and in some public spaces where smoking tobacco is allowed, but use in all cars is prohibited;
- initially cannabis cafes and lounges will not be permitted, but the Alberta Government has stated that they will revisit the issue once its base framework is in place and the Federal Government has determined the framework for edible cannabis products;
- in line with the Federal Government's decision on home-grown cannabis, Albertan's will be allowed to grow up to four plants per household for personal use, each up to a height of 100 cm, but will be restricted to growing their plants indoors; and
- Alberta is working with their law enforcement and transportation industries to develop new techniques to monitor and detect drivers that are under the influence of cannabis.

We can help

For more information about how Cassels can assist your business, please contact a member of our firm's cross-disciplinary Cannabis Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.