

Tobacco Tax Act Review – Consultation Paper #2

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Ministry of
Finance

TOBACCO TAX ACT REVIEW – CONSULTATION PAPER #2

INTRODUCTION

The Ministry of Finance (the Ministry) is undertaking a project to review the *Tobacco Tax Act* and make recommendations for proposed amendments to better reflect current practices in the tobacco industry, support improved administration including the ability to combat illicit tobacco, and streamline requirements. As part of the review, the Ministry is engaging in consultations and making recommendations for improvement.

Several key topics are being assessed as part of the project. These topics are discussed in two consultation papers. This is Consultation Paper #2, which discusses the exempt sale retail dealer program and the band tobacco tax. For topics related to improving administration, strengthening compliance and enforcement, and reducing complexity, see Consultation Paper #1.

The project does not include changes to the tax base or that impact provincial revenue. For example, the project does not consider changing tobacco tax rates or imposing any new tax.

EXEMPT SALE RETAIL DEALER PROGRAM

Under federal legislation, eligible First Nations individuals and bands are exempt from British Columbia tax on tobacco purchased on First Nations land for their own use.¹ The Exempt Sale Retail Dealer (ESRD) program established under the *Tobacco Tax Act* is the mechanism by which the Province administers this tax exemption.

The ESRD program balances two goals. First, the program facilitates access to exempt tobacco for eligible purchasers. Second, the program is intended to prevent exempt tobacco from entering the taxable market (to protect provincial revenue for the benefit of all residents of British Columbia).

These policy goals are accomplished through the issuance of specific permits authorizing businesses to sell tax-exempt tobacco on First Nations land (ESRD permits) and the establishment of limits on the quantity of tax-exempt tobacco that may be purchased for resale by each authorized business (called an allocation). Allocations are designed to reasonably supply the relevant market area with sufficient tax-exempt tobacco to meet the purchase demands of eligible consumers in that area and can be increased or decreased to meet those demands.

The ESRD program has specific rules set out in the *Tobacco Tax Act Regulation* for purposes of administering the program, including:

- authority for the director to authorize a dealer to sell exempt tobacco;

¹ For the purposes of this consultation paper, First Nations land means reserve land or former reserve land that is now part of treaty lands.

- authorizing ESRD dealers to purchase, possess and store exempt tobacco;
- authorizing the director to refuse to issue an ESRD permit if the director is satisfied that there are sufficient dealers in the market area (generally the area within a 25 km radius of the proposed retail location);
- authorizing the director to restrict ESRD permits to one location (similar to retail dealers of taxable tobacco);
- requiring that a person may hold only one ESRD permit at a time; and
- requiring ESRD dealers to obtain from each consumer information that shows the consumer is an eligible exempt consumer.

Additionally, the regulation sets a sale limit on how much exempt tobacco an ESRD dealer can sell to a person per day and per month. Currently, an ESRD dealer must not sell more than 400 grams of exempt tobacco in a day to the same person and must not sell more than 1,600 grams of exempt tobacco in a month to the same person. For example, the limit for cigarettes is 2 cartons in a day, and 8 cartons in a month, to the same person.² The purpose of this rule is to prevent excess amounts of exempt tobacco from being purchased by a single person who could then resell the exempt tobacco to ineligible purchasers. Excess sales to the same purchaser may indicate the tobacco purchased is not for personal use.

Historically, exempt sales of tobacco and information about the purchaser were required to be captured on paper “signature sheets”. This approach is burdensome to consumers, ESRD permit holders and government alike and resulted in an inability to effectively ensure that exempt tobacco was not entering the taxable market.

As a result of these challenges, and to better track and manage the sale limit, the Ministry recently developed the Tobacco and Fuel Tax Exemption Simplification (TAFT) system. TAFT is an electronic point-of-sale (POS) system for use by retail dealers of exempt tobacco and fuel. There is no cost to retail dealers to set up the system or for ongoing technical support. The system electronically verifies eligibility of purchasers and documents tax-exempt tobacco sales in real-time. TAFT replaces the need for the paper-based documentation process (signature sheets and paper returns) for tax-exempt sales of tobacco and fuel made on First Nations land. Currently, the new POS system is being offered to retailers to use on a voluntary basis.

Also see Manufacturing and Distribution in Consultation Paper #1.

Ministry Request for Input

The Ministry recognizes that the primarily paper-based administration of the ESRD program may have resulted in the inability for new businesses to become an ESRD. This in turn may have an impact on the economic viability of a proposed business. While providing economic opportunity is not a specific goal of the ESRD program, the Ministry is promoting the use of TAFT across the province with the recognition that TAFT

² The monthly limit of 8 cartons of cigarettes is equal to an average of 52 cigarettes per day for personal use.

not only simplifies administration and helps protect against the loss of tax revenue, but also broad adoption of TAFT within market areas may enable further opportunities for new exempt tobacco retail dealers to enter those markets. With 53% of all ESRDs throughout the province having adopted the use of TAFT as of April 2024, the Ministry is hopeful a significant majority of ESRDs will be using TAFT by the end of 2024. In addition, the Ministry is considering expressly enabling the director to require its use for new ESRDs and transitioning to mandatory use of TAFT as part of proposed legislative changes.

The Ministry is interested in feedback on the ESRD program and suggestions for further improving ways in which the Ministry can balance the need to provide access to legitimate tax exempt tobacco and the protection against loss of tax revenue while providing an opportunity for new ESRDs.

BAND TOBACCO TAX

The Ministry is not proposing legislative change related to the band tobacco tax.

Band tobacco tax is a tax imposed by a Band Council Bylaw that is payable by consumers of tobacco who are exempt from paying the provincial tobacco tax. A First Nation that has imposed a band tobacco tax may enter into a tax collection agreement with the British Columbia government. The tax collection agreement minimizes the complexity of the tax administration for tobacco wholesale and retail dealers. Under authority of the agreement and the *Tobacco Tax Act*, the director acts on behalf of the First Nation to collect their band tobacco tax using procedures in place for the collection of the provincially imposed tobacco tax.