



April 30, 2021

Hon. Donna Harpauer
Deputy Premier and Minister of Finance
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RE: Application of Vapour Products Tax (VPT) on Cannabis

Dear Minister Harpauer,

I wish to commend you and your government for your persistent efforts to safeguard Saskatchewan during these unprecedented times. Your stewardship over the province's economy has made a material difference to the operations of the 30+ licensed cannabis producers and processors, the 60+ cannabis retailers and the hundreds of employees and their families working in Saskatchewan's cannabis industry. Saskatchewan's cannabis industry plays an important part in the legal cannabis industry's \$14 billion contribution to Canada's GDP.

On behalf of the members of the Cannabis Council of Canada who supply and service the Saskatchewan recreational and medical cannabis markets, we ask that you reconsider the application of the VPT on cannabis vaping products and that during this period you commit to delaying the coming into force of the sections of *An Act respecting a Tax on Vapour Products and making consequential amendments to The Revenue and Financial Services Act* pertaining to cannabis vapour products.

We respectfully submit that the proposed VPT contradicts each of the key public policy objectives of cannabis legalization, namely restricting youth access to cannabis products and eliminating the illicit market. Additionally, we draw your attention to the Government of Canada's Budget 2021 commitment to not tax cannabis vaping products because they are already subject to an Excise Tax, (75% of which goes to the Saskatchewan government). We submit that the Government of Canada's decision should serve as a precedent for Saskatchewan's approach to the taxation of cannabis vapes. Finally, we point to the Coordinated Cannabis Taxation Agreement (CCTA) to which Saskatchewan is a signatory. The CCTA precludes additional provincial tax measures specifically targeting cannabis products.



VPT Public Policy Implications

While public awareness and concern about the nicotine vaping crisis impacting youth and the US-based crisis in illegal and unregulated vaping cartridges coincided, the similarities end there.

Canadian cannabis vape products are regulated, tested, and taxed, and made available to adults within a distribution framework that was purposely built to restrict youth access to cannabis. Strict regulations prohibit the marketing of any cannabis products to persons under the age of 18 and severely constrain the marketing of cannabis products to adults in adults only settings. Under CannaSell SK, cannabis retail staff are trained to “ensure(s) that cannabis sales are conducted with integrity and in a socially responsible manner” and that young persons are unable to purchase cannabis vaping products from legal retailers. Minors are not allowed to enter cannabis retail outlets in Saskatchewan. Keeping cannabis out of the hands of minors and eliminating illicit market participation in cannabis are the core mandates of Saskatchewan’s and Canada’s legal cannabis industry.

The success of Canada’s approach to regulating cannabis products was recently underscored by Statistics Canada’s *Looking back from 2020, how cannabis use and related behaviours changed in Canada*. Results to date demonstrate that there has been no increase in youth consumption of cannabis as a result of legalization:

In 2020, over one-third (35.6%) of 18- to 24-year-olds reported having consumed cannabis in the past three months, unchanged from 2018 and 2019

Health Canada’s *Canadian Cannabis Survey 2020* noted that legalization of cannabis has not negatively impacted the age of first cannabis use:

The average age of initiating cannabis use was 20.0 years, a small increase from 19.2 years in 2019.

Further increasing the price disadvantage of already fully taxed cannabis vape products (Excise Tax, Harmonized Sales Tax) will result in numerous unintended consequences, all of which lead to increased public health and public safety risks. We understand that that the policy objective behind the VPT is to deter youth from vaping, on the premise that youth are more price-sensitive than adult consumers. This approach may work for nicotine vapes in Canada which face limited competition from illicit sources. However, using higher prices as a deterrent will fail in the cannabis market, where illicit market producers maintain a substantial market share. Unlike legal cannabis, illicit producers use online sales channels to market branded cannabis products to underage consumers.

Saskatchewan’s VPT will encourage price-sensitive youth to seek those lower-cost, unregulated, unsafe vapes from the illicit market, and further the risk of youth exposure to narcotics and criminal activities. We respectfully submit that the VPT runs contrary to the policy objectives of cannabis legalization.



Federal Government Vape Taxation Precedent

The Government of Canada's 2021 budget approach to the taxation of vaping distinguishes the fact that cannabis vaping products are already subject to a specific excise tax, whereas nicotine vaping products are not.

Cannabis-based vaping products would be explicitly exempt from this framework [Excise Duty on Vaping Products], as they are already subject to cannabis excise duties under the Act.

- A RECOVERY PLAN FOR JOBS, GROWTH, AND RESILIENCE, Budget 2021, p. 656

The federal government's approach to cannabis vape taxation supports our position regarding Saskatchewan's obligations under the Coordinated Cannabis Taxation Agreement (CCTA).

CCTA Implications

Provinces and the federal government entered into Coordinated Cannabis Tax Agreements (CCTAs) to ensure a coordinated and stable approach to cannabis taxation. Coordinating reasonable cannabis taxation policies would help achieve the Government of Canada's objectives of "restricting access to cannabis to keep it out of the hands of youth, and profits out of the hands of criminals."

The CCTAs set out the excise taxes to be imposed on cannabis and the share of such taxes to be allocated to the federal government and to each province. The agreed-upon tax is imposed under the federal Excise Act, 2001, with the provinces and federal government agreeing to maintain a common tax base.

Pursuant to section 60 the CCTA agreement, the signatory province agrees not to tax or impose a fee specific to cannabis products:

60. Subject to clause 15, the Province will take, throughout the term of this Agreement, all actions necessary to ensure that a tax, fee or similar revenue-generating instrument specifically related to cannabis products and legislated or authorized by the Province or by Her Majesty in right of the Province will not be imposed or levied in respect of the production, distribution, consumption, use, sale or bringing into the province of cannabis products.ⁱ



Under s. 15 of the CCTA, if a Province distributes cannabis products at the wholesale or retail level (or uses Crown corporations or agents to do so), the province's margins and mark-ups are required to "be reasonable and shall only be applied to cover operating costs and capital expenses and to generate a normal rate of return comparable to what would be expected in the private sector."

Based on our reading of the CCTA, we respectfully submit that the VPT is a tax that is specifically related to the sale of cannabis products and is therefore in breach of Saskatchewan's obligations under section 60 of the CCTA. The VPT is a tax specifically targeting cannabis and nicotine vape products rather than a broad-based tax, and consequently, we believe the introduction of the VPT constitutes a breach of the CCTA.

Conclusion

We recognize and share the Government of Saskatchewan's commitment to the public health and safety objectives of cannabis legalization and to keeping cannabis out of the hands of underage consumers (persons below the age of 19.) However, the VPT will serve to drive young people to the illicit market and to unsafe and unregulated cannabis vaping products. In conclusion, we ask that you reconsider the application of the VPT on cannabis vaping products and that during this period you commit to delaying the coming into force of the sections of *An Act respecting a Tax on Vapour Products and making consequential amendments to The Revenue and Financial Services Act* pertaining to these products.

Thank you for your consideration of our request.

Sincerely yours,

George Smitherman
President and CEO
Cannabis Council of Canada

c.c. Hon. Chrystia Freeland, Deputy Prime Minister and Minister of Finance
