

BRIEFING NOTE

Regulatory charges on tobacco suppliers

Government programs to reduce smoking are costly, and there are many approaches that can be used to ensure that tobacco control is adequately funded without diverting money from other needed health objectives.

Some governments have given their health authorities the right to impose user fees on tobacco companies based on their market share. Others have required manufacturers to contribute to regulatory costs on the basis of their revenues. As discussed below, the United States is an example of the first approach and France has adopted the second.

Another approach frequently used is to set aside some of the taxes collected on the sale tobacco products, and to use these revenues for health purposes. This approach is used by the State of California and Thailand, among others.

The World Health Organization and the Framework Convention on Tobacco Control recommend that governments consider such options as they establish national controls on the tobacco industry and national programs to support non-smoking.¹

Canada's leading health agencies have called for the federal government to establish a financing mechanism to ensuring stable and sustainable funds for tobacco control. The method they favour is the use of a regulatory charge (such as a licence or cost recovery fees) on tobacco manufacturers and distributors.

This approach is consistent with the powers of government under the constitution and tax laws. Generally speaking, federal, provincial and municipal governments have the right to recover the entire costs of their tobacco control measures from suppliers. There is no legal limit on how much can be collected through such a mechanism, provided that the sums are used as part of a government's 'regulatory scheme'.

Cost recovery is based on the principle that the public should not bear the costs of government activities when private parties derive the primary benefit from these government activities and services.

HEALTH CANADA PROPOSED APPROACH TO COST RECOVERY FOR THE REGULATION OF CANNABIS. 2018. ²

Recommendation 119: *Implement an annual cost recovery fee on the tobacco industry to recover the cost of the federal government's tobacco control strategy*

HOUSE OF COMMONS FINANCE COMMITTEE, 2021³

"...the Government of Canada recognizes the responsibility of users and producers in relation to toxic substances and pollutants and wastes, and has adopted the "polluter pays" principle."

CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999.

Regulatory fees on tobacco suppliers can be imposed by:

- Federal governments
- Provincial governments
- Most municipal governments.

1 WHO Framework Convention on Tobacco Control. Guidelines for implementation of Article 6 of the WHO FCTC.

2 Health Canada. Proposed Approach to Cost Recovery for the Regulation of Cannabis. 2017.

3 House of Commons. Standing Committee on Finance. Investing in Tomorrow: Canadian Priorities for Economic Growth and Recovery. February 2021.

WHY TOBACCO SUPPLIERS SHOULD PAY A REGULATORY CHARGE

TOBACCO COMPANIES ARE NOT LIKE OTHER MANUFACTURERS. THEIR PRODUCTS CAUSE 1 IN 6 CANADIAN DEATHS.

- Tobacco use is the leading preventable cause of disease and death in Canada, killing 50,000 Canadians annually, including about 30% of all cancer deaths.⁴

SUSTAINED AND SUFFICIENT FUNDING IS NEEDED TO REDUCE TOBACCO USE

- Cost recovery mechanisms allow government to develop budgets without the constraint of competing needs or limited resources. The U.S. Food and Drug Authority currently recovers USD 712 million in cost recovery fees from tobacco manufacturers (equivalent of CAD 900 million).

A REGULATORY FEE HELPS MAKE THE TOBACCO INDUSTRY ACCOUNTABLE FOR THEIR ACTIVITIES.

- Cost recovery through regulatory fees would make the manufacturers financially accountable for the regulatory costs to government created by their trade. Without such a mechanism, regulatory costs are borne by the taxpayer. Although excise taxes are collected on the sale of tobacco products, these taxes are paid by smokers, not suppliers.

A REGULATORY FEE HELPS MAKE GOVERNMENTS ACCOUNTABLE FOR PROTECTING THE PUBLIC

- The federal governments is required to account for its use of money collected through regulatory or cost recovery fees. Without a regulatory fee to assure revenues, the health ministry can be pressured to reallocate money provided for tobacco control to other objectives.

“An August 2019 Ipsos national opinion poll found that 91% of Canadians supported “a measure that would make tobacco companies pay the costs of Health Canada’s programs to reduce youth smoking.”

Canadian Cancer Society, 2020⁵

“Industry accountability must be front and centre to a federal tobacco strategy. This includes implementing mechanisms for the industry to make a direct contribution toward the costs of tobacco control and public health activities, of which they are the cause.”

Canadian Lung Association, 2020⁶

Heart & Stroke is concerned that the costs of tobacco control and tobacco-related diseases are not sufficiently being offset by the tobacco companies that profit from these toxic products. These costs should be recovered from tobacco companies based on market share, similar to the cost-recovery measures found in federal cannabis regulations

Heart and Stroke, 2020⁷

By imposing a fair regulatory charge on manufacturers, the government can ensure adequate funding for tobacco control and can internalize the regulatory burden in the tobacco market instead of imposing it on taxpayers.

Action on Smoking & Health (ASH), Coalition Québécoise pour le contrôle du tabac, Physicians for a Smoke-Free Canada, 2020⁸

4 BGD 2019 Risk Factors Collaborators. Global burden of 87 risk factors in 204 countries and territories, 1990–2019: a systematic analysis for the Global Burden of Disease Study 2019. Lancet 2020.

5 Canadian Cancer Society. Written Submission for the Pre-Budget Consultations in Advance of the Upcoming Federal Budget

6 Canadian Lung Association. Written Submission for the Pre-Budget Consultation in Advance of the Federal Budget

7 Heart and Stroke Foundation. Submission for Pre-Budget Consultations in Advance of the 2021 Budget

8 Action on Smoking & Health, Coalition québécoise pour le contrôle du tabac, Physicians for a Smoke-Free Canada. Submission to the House of Commons Standing Committee on Finance Pre-Budget Consultation.

REGULATORY CHARGES ARE NOT TAXES.

License fees, regulatory charges and taxes are all sources of revenue for governments. Canadian law sets different rules for how these can be established.^{9 10}

TAXES CAN ONLY BE IMPOSED BY LEGISLATURES:

Taxes can only be established or amended by parliament directly, and not through regulations or orders in council. In the federal system, tax proposals must be initiated by “the Crown” (the government) and must originate in the House of Commons. Senators, back bench members of parliament may not propose taxes. In the provinces, taxes are generally imposed by the provincial legislature; cities have limited tax authority.¹¹

In Canada a tax is defined as a charge which is (1) enforceable by law, (2) imposed under the authority of the legislature, (3) levied by a public body and (4) intended for a public purpose.

LEVIES AND REGULATORY CHARGES CAN BE IMPOSED BY GOVERNMENT DEPARTMENTS (IF LINKED TO A PURPOSE):

A regulatory charge is not considered a tax if it is established as part of a regulatory scheme which meets the following conditions:

- (1) a complete, complex and detailed code of regulation;*
- (2) a regulatory purpose which seeks to affect some behaviour;*
- (3) the presence of actual or properly estimated costs of the regulation;*
- (4) a relationship between the person being regulated and the regulation, where the person being regulated either benefits from, or causes the need for, the regulation.¹²*

Regulator charges can be assessed on the broader costs related to that activity (the ‘regulatory scheme’), and are not limited to the direct costs of regulating.

USER FEES MAY NOT EXCEED THE COSTS OF SPECIFIC SERVICES:

User fees are fees charged by government for the use of services or facilities. The amount a government can charge for a **user fee** generally should not exceed the cost of providing that service.

ILLUSTRATIVE EXAMPLE:

Taxes, levies and user fees are applied in Canada’s Broadcasting system:¹³

Taxes paid by broadcasters:

Broadcasters pay corporate income taxes on their earnings, as well as paying provincial and federal sales taxes, property and other taxes.

Regulatory fees paid by broadcasters:

Broadcasters pay a regulatory charge which is assessed on the basis of their advertising revenue. These funds are used to support the federal government’s investment in the Canadian broadcasting system. The money helps pay for the Canadian Media Fund, Telefilm and the Canadian Broadcasting Corporation.

User fees paid by broadcasters:

Broadcasters pay user fees to the Canadian Radio-Television and Telecommunications Commission (CRTC) to defray the costs to the CRTC of issuing their licenses. This revenue is no greater than the CRTC’s costs.

9 Farish, KIE and Tedds, LM. User Fee Design by Canadian Municipalities: Considerations Arising from the Case Law. Canadian Tax Journal. 2014

10 McIsaac, BA et al. Canada: Distinguishing Between A Tax and A Regulatory Charge And The Return Of Improperly Collected Money. Mondaq. July 2008.

11 Toronto. City Solicitor. Powers of Canadian Cities – the Legal Framework. 2001.

12 620 Connaught Ltd. v. Canada (Attorney General). [2008] 1 SCR 131

13 Canada Gazette. Part II. Vol. 154, No. 26. Remission Order in Respect of Part II Licence Fees Paid or Payable Under the Broadcasting Licence Fee Regulations, 1997

REGULATORY CHARGES ARE EARMARKED FUNDS

Regulatory fees are one way of achieving the objectives of an earmarked tax when governments do not favour earmarking tax revenues.

The World Health Organization and other health leaders recommend allocating a portion of tobacco excise tax revenues to health activities. As discussed below, this practice is in place in many countries, including high, medium and low-income nations.

Hypothecating (earmarking) taxes can strengthen support for public financing of health:¹⁴

- It can increase trust in government, by providing a built-in accountability for how tax revenues are spent.
- It can increase transparency about how much certain services cost.
- It can provide long-term funding and sustainability for issues vulnerable to defunding.

Some countries, however, are reluctant to earmark or otherwise hypothecate taxes for specific purposes, as this reduces the flexibility of governments to respond to changing priorities.

The government of Canada has adopted a few earmarked tax systems, including the recent carbon tax, implemented through the *Greenhouse Gas Pollution Pricing Act*.¹⁵ This law returns direct proceeds to the jurisdiction in which they were collected.

SPECIFIED PURPOSE FUNDS

One mechanism used in Canada to provide transparency in the protection of revenues (such as those which result from earmarked taxes, endowments, and special levies) is the establishment of specified purpose accounts. Several of these have been established by the federal government, including research funds for the National Research Council and the Canadian Institutes for Health Research, the directed use of transportation fines, and environmental research. Transactions through specified funds in 2020 were about \$22 billion, or about 7% of total expenses.¹⁶ As it is not necessary for dedicated revenues to be managed through specified funds, these were only a subset of revenues that were dedicated user fees, license fees and other regulatory charges.

"[T]obacco excise taxes provide a potential source of financing for tobacco control. Parties could consider, while bearing in mind Article 26.2 of the WHO FCTC, and in accordance with national law, dedicating revenues to tobacco-control programmes. Some Parties dedicate tobacco tax revenues to tobacco-control programmes, while others do not apply such an approach."

***WHO Framework Convention on Tobacco Control
Article 6 Guidelines***

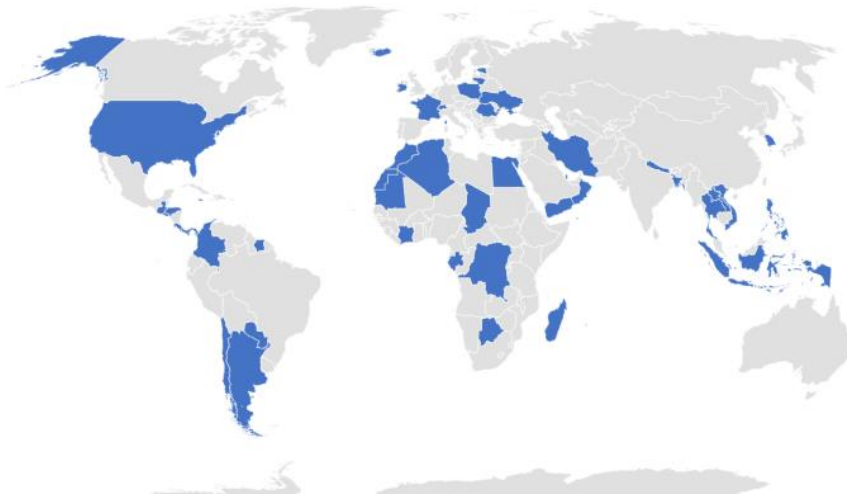
14 Doetinchem, Ole. Hypothecation of tax revenue for health. World Health Report (2010) Background Paper, 51.

15 Canada. Greenhouse Gas Pollution Pricing Act.

16 Canada. Public Accounts. 2020. Vol. I, S. 4

MANY COUNTRIES HAVE DEDICATING FUNDING FOR TOBACCO CONTROL.

In 2018, 33 of the 182 members of the Framework Convention on Tobacco Control reported that their national governments earmark a portion of tobacco taxes for health purposes.¹⁷ In its 2019 review of the Global Tobacco Epidemic, the World Health Organization identified additional non-FCTC members which allocated a portion of tobacco taxes to tobacco control or public health at the national or sub-national levels.¹⁸



Examples of dedicated taxes

CALIFORNIA

Two plebiscites resulted in specific taxes being applied to cigarettes and electronic cigarettes in California. Proposition 99 (in 1988) and Proposition 56 (in 2016) increased taxes by \$0.25 and \$2 per pack of 20 cigarettes. This tax is used to fund specific health care initiatives (such as providing physicians and dentists in low-served areas) and also tobacco control. In 2019-20, the California state budget for tobacco control was USD 207 million.¹⁹

THAILAND

In 2001, the Thai government established the Health Promotion Foundation, allocating 2% of the total national tobacco and alcohol tax revenues for its purposes. In recent years, the Foundation has received about USD 132 million per year in funding. These revenues are used to support comprehensive public health efforts to address the harmful use of alcohol, tobacco, unhealthy diets and sedentary behaviour.²⁰

SOUTH KOREA

Since 1997, the Republic of Korea has assessed a National Health Promotion Charge on cigarettes. The amount was

originally set quite low (2 Korean won per pack), but is now set at a significant amount (841 Korean won per pack, equivalent to CAD 0.96). Lesser amounts are charged for other tobacco products, including e-cigarettes (525 Korean won per milliliter, equivalent to CAD 0.60) and heat-not-burn sticks (750 Korean won per 20 sticks, equivalent to CAD 0.85). The National Health Promotion Fund receives CAD 170 million in revenues from this tax, which it applies to a variety of public health initiatives including tobacco control.²¹

SWITZERLAND

Switzerland earmarks a relatively small amount of the excise tax collected on cigarettes to a Tobacco Control Fund (CHF 0.026 per pack, equivalent to CAD 0.037), producing revenues of CHF 13.5 million (CAD 19.45 million). The tax has been in place since 2004.²²

IRELAND

Since 1999, Ireland has effectively earmarked a portion of excise taxes collected on tobacco products to tobacco control efforts, transferring 168 million euros a year as an Appropriation-in-Aid.²³

17 WHO Framework Convention on Tobacco Control. Indicator Report B85. Tobacco tax earmarking.

18 FCTC Party Reports 2018 / WHO Global Tobacco Control Report 2019

19 California Department of Public Health Funding for the Tobacco Control Branch. Fiscal Year 2019-2020

20 Pongutta, S. et al. Lessons from the Thai Health Promotion Foundation. Bulletin of the World Health Organization. December 2018.

21 Korea Health Promotion Institute. National Tobacco Control Center. Tobacco Taxation in Korea.

22 Switzerland. Fonds de prévention du tabagisme.

23 Irish Heart Foundation. Pre-Budget Submission 2020.

Examples of regulatory fees

UNITED STATES

User Fees. The U.S. *Tobacco Control Act* authorizes the FDA to assess and collect user fees from tobacco manufacturers and importers.²⁴ The act specifies the exactly the amount that can be collected in each fiscal year, growing from \$85 million when the law was passed in 2009 to \$712 million for 2019 and subsequent years.²⁵ These fees can be used for the FDA's tobacco regulation activities, including direct regulatory costs, and also programmatic costs such as those involving educating the public about tobacco products and preventing youth tobacco use. The amount required is levied on manufacturers and importers based on their market share in each product category. Most (88%) of the money collected is based on cigarette sales. In 2019, the President's 2020 budget proposed extending the user fee to manufacturers and importers of e-cigarettes, and in January 2020 legislation to this effect was introduced in both the Congress and Senate.²⁶ A 2014 review of the use of the funds noted that in the first years of use, one-third had been spent on regulatory research (\$478 million), one third on public education (\$508 million), and one third by the FDA on compliance and enforcement and other regulatory issues.²⁷

VIETNAM

A social contribution based on sales revenues. Vietnam's Tobacco Control Fund was legally established in 2012 and began operations in 2013. The fund receives compulsory contributions from tobacco producers, currently set at 2% of the taxable price, which is reported to be equivalent to 1% of the factor price.²⁸ The fund provides support to tobacco control activities managed by provinces, cities and social organizations. These include mass media, local policies, smoking cessation, research,

and capacity-building. In 2016 the fund provided USD 15 million in grants.²⁹

FRANCE

A social contribution from wholesale revenues. In 2016, the French government included a charge of 5.6% on the revenues of tobacco wholesale distributors as part of its budgetary measures.³⁰ The revenue was assigned to a new tobacco control fund, and made available for a variety of tobacco-control activities.³¹ Since 2019, the work of the fund has been extended to include other addictions. Approximately 120 million euros in annual funding is available for community projects aimed at preventing smoking and substance abuse, helping smokers quit and reducing consumption of other psychoactive substances, addressing related social inequalities and supporting research.³²

IRELAND

Cost recovery financed through excise taxes. Since 1999, Ireland has effectively earmarked a portion of excise taxes collected on tobacco products to tobacco control efforts, transferring 168 million euros a year as an Appropriation-in-Aid.³³ Appropriations-in-Aid is the system used in Ireland for cost recovery and licence, and is applied to Broadcasting Licence Fees, passport services, health service premiums, etc.³⁴ In 1999, the earmarking of tobacco taxes was an acknowledgement of "the services and purposes connected with the performance by the [Minister for Health and Children] of his or her functions."

UNITED KINGDOM..

The U.K. government rejected a tobacco levy in 2-2015,³⁵ but there are indications that this options is being reconsidered. ^{36 37}

24 U.S. Food and Drug Administration. Tobacco User Fees.

25 United States Government Accountability Office. Tobacco User Fees. Further action needed to ensure calculations are based on complete and accurate data. October 2019.

26 United States Congress. Resources to Prevent Youth Vaping Act. HR 5721.

United States Congress. Resources to Prevent Youth Vaping Act. S 3223.

27 United States Government Accountability Office. Tobacco Product Regulation. Most FDA spending funded public education, regulatory science and compliance and enforcement activities.

28 World Health Organization. Earmarked Tobacco Taxes. Lessons learnt from nine countries. 2016.

29 Ngan, TT et al. Establishing a tobacco control fund in Vietnam: some learnings for other countries. Tobacco Control. 2019.

30 France. Loi n° 2016-1827 du 23 décembre 2016 de financement de la sécurité sociale pour 2017

Article 28. Contribution sociale à la charge des fournisseurs agréés de produits du tabac.

31 France. Ministère des Solidarités et de la Santé. Fonds de lutte contre le tabac. June 2018.

32 France. Ministère des Solidarités et de la Santé. Fonds de lutte contre les addiction. June 2020.

33 Irish Heart Foundation. Pre-Budget Submission 2020.

34 Ireland. Houses of the Oireachtas. Parliamentary Budget Office. Appropriations-in-Aid in the revised estimates for public services. 2018.

35 U.K. HM Treasury. Tobacco levy: Response to the Consultation. September 2015.

36 Smokefree Action Coalition. Roadmap to a Smokefree 2030

37 All Party Parliamentary Group on Smoking and Health. Delivering the vision of a 'Smokefree Generation'. The All Party Parliamentary Group on Smoking and Health response to 'Prevention is better than cure'. February 2019.

CANADIAN ATTEMPTS TO RECOVER TOBACCO-RELATED COSTS

S-15. TOBACCO YOUTH PROTECTION ACT

In 1999, Senator Colin Kenny introduced legislation to impose a \$0.50 per carton levy on cigarettes to fund a \$120 Canadian Anti-Smoking Youth Foundation, (*The Tobacco Industry Responsibility Act*).³⁸ The Act was ruled out of order by the House of Commons in December 1998. Subsequently, a somewhat modified version of the Act was introduced in the Senate,³⁹ but it too was ruled as being out of order and inconsistent with constraints on the Senate's power to introduce money bills.⁴⁰

BRITISH COLUMBIA TOBACCO FEE ACT

In 1998, the British Columbia passed the *Tobacco Fee Act*. This law established a licensing system on manufacturers including a charge equal to their share of the target fee based on their value share of the British Columbia tobacco market. In 1998 total revenue set for collection was \$20 million.⁴¹ A second provision of the Act imposed a form of price controls aimed at ensuring that the cost was not passed on to consumers. The law specified that the "the revenue from these annual fees will be used to help defray the Provincial government's costs in developing and implementing a comprehensive tobacco consumption reduction strategy." The companies objected particularly to the price control element of the legislation, threatening to challenge it in court.⁴² The legislation was not proclaimed, and in 2002 was repealed.⁴³

THE FEDERAL TOBACCO MANUFACTURERS SURTAX

The **Tobacco Manufacturers Surtax (TMS)** was a specific income tax levied on tobacco manufacturers between 1994 and 2017. In announcing the tax, Prime Minister Jean Chrétien said it would provide \$200 million over 3 years and would be used to fund "the biggest anti-smoking campaign in Canadian history".⁴⁴ Originally

imposed as a temporary surtax of 40% additional corporate income tax in 1994, the tax was made permanent and the rate was increased to 50% in 2001.^{45 46} This surtax was unique in Canada: similar taxes were not applied to other categories of manufacturers. The highest level of tax revenue from this measure was reported by Finance Canada in 2001 at \$80 million. The surtax did not apply to imported cigarettes, and after Imperial Tobacco relocated its production to Mexico tax revenues were significantly decreased.⁴⁷ The surtax was repealed in the 2017 federal budget.^{48 49}

TOBACCO DAMAGES AND HEALTH CARE COST RECOVERY LAWSUITS

Each of Canada's provinces has adopted legislation to permit it to seek recovery of the costs of treating those diseases that resulted from wrongful actions of the tobacco industry. The oldest of these lawsuits dates from the turn of the century and the most recent one was filed in 2012. These suits are now suspended following the companies' successful application for protection under the *Companies' Creditors Arrangement Act*.⁵⁰

QUEBEC SOCIAL FUNDS

For over 40 years the Quebec government has directed some of the revenues collected from excise taxes on cigarettes to specific social purposes. Until 2018, \$20 million from these revenues were allocated to health promotion activities.⁵¹ Today Revenue Quebec is required by law to provide \$70 million from tobacco tax revenues into the Fonds pour le développement du sport et de l'activité physique (Sports and Physical Activity Development Fund) and other special funds.⁵²

38 S-13. An Act to incorporate and to establish an industry levy to provide for the Canadian Anti-Smoking Youth Foundation, 1998
39 S-20 and S-15. Tobacco Youth Protection Act. 2000
40 House of Commons procedure and practice. Second edition, 2009. The Commons, claim to predominance in financial matters.
41 British Columbia Tobacco Fee Act. 1998.
42 October 1998. Reuters. "Canadian Tobacco CEO Attacks New Regulation." (page 2)
43 British Columbia. Deregulation Statutes Amendment Act, 2002.
44 Canada. House of Commons. Hansard. February 8, 1994.
45 Tobacco Tax Amendments Act, 2001. SC 2001, c. 16.
46 Implemented in 1994. Bill C-32 An Act to amend the Excise Tax Act, the Excise Act and the Income Tax Act, SC 1994, c. 29.
47 Physicians for a Smoke-Free Canada. Shell games with tobacco taxes. March 2017.
48 Federal Budget 2017. <https://www.budget.gc.ca/2017/docs/plan/budget-2017-en.pdf>
49 The surtax was repealed as part of the 2017 federal budget. Budget 2017. Building a strong middle class
50 Physicians for a Smoke-Free Canada. Canada's Tobacco companies and their use of insolvency protection. February 2020.
51 Act to establish the Fund for the promotion of a healthy lifestyle, CQLR c F-4.0021. Repealed 2018.
52 Loi instituant le fonds pour le développement du sport et de l'activité physique, RLRQ c F-4.003. Article 5. <https://www.canlii.org/fr/qc/legis/lois/rlrq-c-f-4.003/derniere/rlrq-c-f-4.003.html>

REGULATORY FEES IN CANADA

About 4% of federal government revenues are received from licenses and regulatory charges. In 2020, Health Canada received \$72 million in regulatory charges (of which the Cannabis fees were the largest), \$90 million in user fees associated with regulatory responsibilities, and a further \$101 million from non-regulatory service payments.⁵³

BROADCAST LICENSE FEES

For decades, Canada has imposed a revenue-based license fee on commercial broadcasters (Bell TV, etc), and used those funds to support public broadcasting. The funds are managed through the Consolidated Revenue Fund:

Broadcasters must pay two fees:⁵⁴

- An annual Part I licence fee, which is based on the costs to the CRTC of regulating the license.
- An annual Part II licence fee which contributes to Canada's investment in the Canadian broadcasting system (the Canada Media Fund and Telefilm, Canadian Broadcasting Corporation).

In 2010, the government agreed to cap these fees at \$100 million per year, as adjusted for inflation. In 2019, the fees collected totaled \$116.6 million.⁵⁵

CANNABIS REGULATORY FEE

Canada requires commercial cannabis operators to be licensed, applying two forms of license fees. The first fees are standard across all applicants, and are related to the costs of being issued a license (application screening fees, security clearance fees, etc). These application fees are user fees, comparable to those charged by Health Canada for approval of pharmaceutical products and medical devices.

A second type of fee payable by cannabis producers is the annual regulatory fee, which is set as a portion of their revenues from cannabis sales or activities. Small operators

are charged 1% of cannabis revenue, others are charged 2.3%.^{56,57}

Revenues from these two fees offset the department's costs for cannabis-related policy, inspections, compliance and enforcement, public education, and program management and oversight. (Reported as \$66 million in 2019-2020).⁵⁸ In 2020, citing COVID-19 concerns, the department allowed producers a deferral on the annual fee payment.⁵⁹ Revenue Canada collected \$52 million in cannabis taxes in the same year.⁶⁰

Provincial governments (and municipalities) may levy regulatory fees on cannabis: The Manitoba government introduced legislation to impose a social responsibility fee of 6% on cannabis retail revenues.⁶¹

REGULATORY CHARGE ON FOSSIL FUELS

In 2018 the federal government established a carbon pricing system for Canada which is aimed at reducing carbon emissions. Provinces and territories that do not have adequate climate pricing plans are subject to backstop measures which include a carbon levy (called a regulatory charge) and an output-based pricing system. This system is designed to be revenue neutral, and to achieve pollution objectives without disproportionate economic impact.⁶²

SHIP-SOURCE OIL POLLUTION

A levy imposed by federal law on shipments of oil was used to create a fund from which those harmed by ship-source pollution can be compensated. The funds are maintained in a special purpose account in the federal Public Accounts. The federal government acknowledges this as an application of the polluter-pay principle.

53 Canada. Public Accounts. 2020. Vol. 2.

54 Canada Gazette. Part II. Vol. 154 (2020). Remission Order in Respect of Part II Licence Fees Paid or Payable Under the Broadcasting Licence Fee Regulations, 1997: SI/2020-771

55 Canadian Radio-television and Telecommunications Commission. Broadcast Order 2019-395

56 Cannabis Fees Order (SOR/2018-198)

57 Cannabis Regulations (SOR/2018-144)

58 Treasury Board. Infobase. Cannabis

59 Canada Gazette Part II, Volume 154, Number 16. Order Amending the Cannabis Fees Order (Extension of Deadline for Payment of 2020-2021 Annual Fee): SOR/2020-170

60 Government of Canada. Public Accounts. 2019-2020, vol. 2.

61 Manitoba. 3rd Session, 42nd Legislature. Bill 5. The Liquor, Gaming and Cannabis Control Amendment Act (Cannabis Social Responsibility Fee")

62 Parliamentary Budget Officer. Reviewing the Fiscal and Distributional Analysis of the Federal Carbon Pricing System. 2020.

PARK FEES

Under the authority of the *Parks Canada Agency Act*, licence fees are required from businesses within national parks. These fees include a percentage of the alcohol sales in some parks.⁶³ Banff operators challenged this charge, arguing that it was in effect a tax. In rejecting the challenge, the Supreme Court ruled that the charge was appropriate as it contributed to the “regulatory scheme” of the parks system.⁶⁴

ENVIRONMENTAL STUDIES RESEARCH FUND LEVIES

Lease-holding oil and gas companies in Canada’s northern frontiers are charged a levy which helps fund environmental and social research.⁶⁵

CHRONOLOGY OF SELECTED EVENTS

Year	Event
1976	Quebec assigns a portion of cigarette taxes to pay for the Olympic Stadium (and also other social funds)
1987	Australia establishes a Health Promotion Foundation with revenues from cigarette taxes
1988	California plebiscite introduces a tax on cigarettes to fund health initiatives (including tobacco control)
1994	Canada imposes an income surtax of 40% on the profits of tobacco companies.
1997	The Republic of Korea imposes a National Health Promotion charge on cigarettes.
1998	British Columbia passes the <i>Tobacco Fee Act</i> , aiming to collect \$20 million from tobacco manufacturers (not passed through to consumers). The law never comes into force.
1999	Ireland begins earmarking a portion of cigarette taxes for tobacco control
1999-2000	The Canadian Senate approves bills to impose a levy on tobacco sales and to apply the revenues to a fund to prevent youth smoking. The proposed law is ruled out of order in the House of Commons.
2001	Thailand directs 2% of tax revenues from alcohol and tobacco to a Health Promotion Fund.
2001	Canada increases Tobacco Manufacturers Surtax to 50%

Year	Event
2002	British Columbia repeals the <i>Tobacco Fee Act</i> .
2004	Switzerland sets aside a portion of tobacco tax revenues for health promotion
2009	U.S. <i>Family Smoking Prevention and Tobacco Control Act</i> (Tobacco Control Act) authorizes the Food and Drug Authority to collect user fees, and sets the amount for subsequent years.
2012	Vietnam establishes a tobacco control fund to which 2% of tobacco industry revenues are applied.
2016	France imposes a social contribution of 5.9% of revenues of tobacco wholesalers. The money is used to support the “Fonds de lutte contre le tabac.”
2016	California plebiscite increases the amount of taxes on cigarettes, directing them to health funds.
2017	Federal government budget replaces <i>User Fees Act</i> with <i>Service Fees Act</i> . It also rescinds the Tobacco Manufacturers Surtax.
2018	Health Canada consults on cost recovery for cannabis regulation and subsequently sets fees.
2019	Health Canada overhauls fees for drugs and medical devices, aiming to set fees at 50% to 100% of costs
2020	Health Canada implements new system of fees for human drugs and medical devices.

63 Canada Gazette. Vol. 144, No. 35. August 28, 2010. Parks Canada master list of fees.

64 620 Connaught Ltd. v. Canada (Attorney General), 2008 SCC 7 (CanLII), [2008] 1 SCR 131

65 Canada. The Environmental Studies Research Fund.