

calculation. However, a recent court decision (*Vanguard Coatings and Chemicals Ltd. v. MNR*, [1986] 2 CTC 431) set aside the power of the Minister in this regard, further promoting the establishment of separate marketing companies.

6.94 The Government proposes in the White Paper to address this problem by requiring: "that where a manufacturer sells goods primarily through a related person, that person will be deemed to be the manufacturer of all such goods sold by him and will be liable for tax on his sale price". The new rules would apply to:

- products of domestic manufacturers making sales in Canada to one or more distributors related to the manufacturer;
- imported products where the primary distributors are related to the foreign manufacturer; and
- imported products where the primary distributors are related to the foreign exporter and the product bears the brand or trade name of that exporter, or is produced under a patent, copyright or industrial design of, or used by, such person.

6.95 In their submission to this Committee, the Commodity Taxation Committee of the Canadian Bar Association and the Commodity Taxation Committee of the Canadian Institute of Chartered Accountants pointed out that these rule changes would place integrated Canadian manufacturers at a competitive disadvantage. Marketing companies related to manufacturers would be deemed to be manufacturers and taxed on the selling price inclusive of distribution and marketing costs while independent marketing companies would be taxed only on the manufacturers' selling price.

6.96 Similarly, under the proposed rules, importing distributors, which are related to foreign exporters or manufacturers, would be deemed to be manufacturers and taxed on a base inclusive of marketing and distribution costs while independent importers would be taxed only on the duty paid value. Again, non-integrated companies would gain an advantage over those which are inter-related.

6.97 The Committee takes the view that although the establishment of related marketing companies is likely to erode the sales tax base, the proposed marketing company rules will create further inequities in the sales tax system and increase the incentive for companies to separate their marketing and distribution systems.