

**TLA'AMIN NATION**

**TAX TREATMENT AGREEMENT**


**Tla'amin Nation  
Canada  
British Columbia**




## TLA'AMIN TAX TREATMENT AGREEMENT

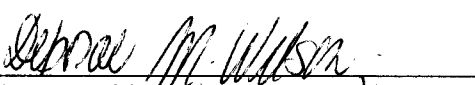
This page, signed in Sliammon, British Columbia this 21<sup>st</sup> day of October, 2011, signifies the intent of the Negotiators for the Tla'amin Nation, Canada and British Columbia to recommend that the Tla'amin Tax Treatment Agreement be signed by the Parties.


### FOR TLA'AMIN NATION

  
Witnessed by: *Tom Falconer*

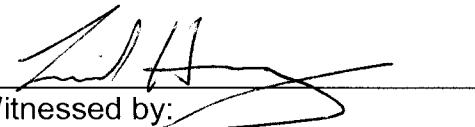
  
Roy Francis  
Chief Negotiator, Tla'amin Nation

### FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA

  
Witnessed by: *Deborah Wilson*

  
Neil Mitchell  
Tax Negotiator, Finance Canada

### FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

  
Witnessed by: *Lincoln Heaney*

  
Tom Ethier  
Chief Provincial Negotiator

The Parties agree that after signing this page, and before signing of the Tla'amin Final Agreement, the Tla'amin Tax Treatment Agreement may be subject to review and amendment by agreement of the Parties. Technical revisions to this Tax Treatment Agreement, consistent with the principles set out in the attached text in relation to sales tax relief, may be considered by the Parties in order to reflect transitional matters relating to the Harmonized Sales Tax and provincial sales tax in British Columbia. Any necessary revisions agreed upon by the Parties will be incorporated into the final text as soon as practicable.



**TLA'AMIN TAX TREATMENT AGREEMENT**

THIS AGREEMENT made \_\_\_\_\_, 20\_\_,

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented  
by the Minister of Finance**

("Canada")

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as  
represented by the Minister of Finance**

("British Columbia")

AND:

**TLA'AMIN NATION, as represented by the Tla'amin Government**

("Tla'amin Nation")

WHEREAS:

- A. Paragraph 22 of the Taxation Chapter of the Tla'amin Final Agreement provides that the parties shall enter into a tax treatment agreement; and
- B. This agreement is the tax treatment agreement referred to in recital A and shall be called the "Tla'amin Tax Treatment Agreement".

NOW THEREFORE, the parties agree as follows:

**1 INTERPRETATION**

1 (1) In this agreement:

**“claimant”** means:

(a) in the definition of “specified activity”, “permanent establishment” and section 4:

(i) the Tla'amin Nation; or

(ii) a person, other than a financial institution, that is:

(A) a trust, Tla'amin Settlement Trust, board, commission, tribunal or similar body, established by the Tla'amin Nation;

(B) an eligible corporation incorporated under federal or provincial laws; or

(C) a partnership each member of which is a person described in subparagraph (i) or clause (A) or (B); and

(b) in section 5, a person that would be referred to in paragraph (a) if subparagraph (a)(ii) were read without reference to the words “other than a financial institution”;

**“Cultural Property Export and Import Act”** means the *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51;

**“eligible corporation”** means:

(a) a corporation, all of the shares of which, except directors' qualifying shares, or capital of which are owned by the Tla'amin Nation, a Tla'amin Settlement Trust, or any combination of those persons; or

(b) a corporation, all of the shares of which, except directors' qualifying shares, or the capital of which, are owned by:

(i) the Tla'amin Nation or a Tla'amin Settlement Trust;

(ii) a corporation that itself is an eligible corporation; or

(iii) any combination of the persons referred to in subparagraphs (i) and (ii);

“**Excise Tax Act**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15;

“**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> supp);

“**Interpretation Act**” means the *Interpretation Act*, R.S.C. 1985, c. I-21;

“**Mineral Land Tax Act**” means the *Mineral Land Tax Act*, R.S.B.C. 1996, c. 290;

“**Mineral Tax Act**” means the *Mineral Tax Act*, R.S.B.C. 1996, c. 291;

“**Motor Fuel Tax Act**” means the *Motor Fuel Tax Act*, R.S.B.C. 1996, c. 317;

“**permanent establishment**” of a claimant means:

(a) a fixed place of business of the claimant and includes:

(i) a place of management, a branch, an office, a factory, a workshop or other site; and

(ii) a mine, an oil or gas well, a quarry, timberland or any other place of extraction of natural resources;

(b) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the ordinary course of business or any person established by the claimant) who is acting on behalf of the claimant;

(c) a place at which the claimant uses substantial machinery or equipment; or

(d) any real property owned, or supplied on a regular or continuous basis, by the claimant;

“**Petroleum and Natural Gas Act**” means the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361;

“**Property Transfer Tax Act**” means the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378;

“**Social Service Tax Act**” means the *Social Service Tax Act*, R.S.B.C. 1996, c. 431;

“**specified activity**” of a claimant means:

(a) a business or other activity that has the primary purpose of providing

property or services to other claimants, Tla'amin Citizens, or individuals resident on the Tla'amin Lands or any combination of those persons; or

- (b) any other business or activity that Canada and the Tla'amin Nation agree is a specified activity;

**“Tla'amin Final Agreement”** means the Tla'amin Final Agreement between and signed by Canada, British Columbia and the Tla'amin Nation, as amended from time to time; and

**“Tla'amin Settlement Trust”** at any time means a trust that has been designated before that time by the Minister of National Revenue pursuant to subsection 9(1) as a Tla'amin Settlement Trust and that is at that time designated as a Tla'amin Settlement Trust.

- (2) The *Interpretation Act* applies to this agreement as if it were an enactment, except that the definition of “government” in subsection 123(1) of the *Excise Tax Act* does not apply for the purposes of section 4.
- (3) Except as provided in subsections (1) and (4), the definitions in the Tla'amin Final Agreement, other than the definitions “agreement”, “director”, and “disagreement”, apply to this agreement.
- (4) The definition of “person” in the Tla'amin Final Agreement does not apply in the definition of “permanent establishment”.

## **2 GENERAL**

- 2 (1) This agreement does not form part of the Tla'amin Final Agreement.
- (2) This agreement is not a treaty or a land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- (3) This agreement enures to the benefit of and is binding upon the parties and their respective successors.
- (4) Nothing in this agreement affects any entitlement of Tla'amin Citizens, the Tla'amin Nation or a Tla'amin Settlement Trust to any benefit available under any legislation.
- (5) No provision of this agreement, or performance by a party of an obligation under this agreement, may be waived unless the waiver is in writing and signed by the parties giving the waiver.



- (6) No written waiver of a provision of this agreement, of performance by a party of an obligation under this agreement, or of default by a party of an obligation under this agreement, is deemed to be a waiver of any other provision or obligation, or of any subsequent default.
- (7) This agreement may not be assigned, either in whole or in part, by any party.
- (8) This agreement may be executed at one or more times and in one or more places. Each counterpart is deemed an original instrument as against any party who has signed it, and the aggregate of the counterparts are deemed to constitute a single executed document.
- (9) If any provision of this agreement is declared or held to be void, voidable, invalid, illegal, or unenforceable for whatever reason, the provision will be severed from the remainder of this agreement but all other provisions of this agreement will remain in full force and effect and will be construed as if this agreement had been executed without the invalid, illegal or unenforceable portion.
- (10) Time is of the essence in this Agreement.

**3 INCOME TAX ACT STATUS OF THE TLA'AMIN NATION**

- 3 (1) For the purpose of paragraph 149(1)(c) of the *Income Tax Act*, the Tla'amin Nation is deemed to be a public body performing a function of government in Canada.
- (2) For the purposes of paragraphs 149(1)(d) to 149(1)(d.6) and subsections 149(1.1) to 149(1.3) of the *Income Tax Act*, the Tla'amin Nation is deemed to be a municipality in Canada whose geographical boundaries are those of Tla'amin Lands.
- (3) For the purposes of subsections 110.1(1), 118.1(1) and 149.1(1) of the *Income Tax Act*, the Tla'amin Nation is deemed to be a municipality.
- (4) The Tla'amin Nation will be treated as a public authority designated pursuant to subsection 32(2) of the *Cultural Property Export and Import Act*, and any non-profit organization established by the Tla'amin Nation to receive, store and display cultural objects will be treated as an institution designated under that subsection of that Act, if the Tla'amin Nation or the non-profit organization, as the case may be:
  - (a) has:

- (i) a facility that meets the environmental requirements of the Minister of Canadian Heritage in respect of long-term storage and display of cultural objects; or
  - (ii) the use, by virtue of an agreement with a public authority or an institution, as the case may be, that is designated under subsection 32(2) of the *Cultural Property Export and Import Act*, of a facility that meets the environmental requirements of the Minister of Canadian Heritage, until such time as the Tla'amin Nation or the non-profit organization has a facility that meets those requirements; and
- (b) uses either facility to store or display cultural objects, including any that are donated to it and that are included in "total cultural gifts" within the meaning of subsection 118.1(1) of the *Income Tax Act* for purposes of computing the income tax liability of the donor.

#### **4 GST REFUND**

- 4 (1) A claimant who acquires or imports property or a service in respect of which it pays tax under subsection 165(1) or section 212 or 218 of the *Excise Tax Act* is entitled to a refund of that portion of the tax that is not recoverable as an input tax credit under Part IX of that Act and is not otherwise recovered under any law, if:
- (a) the property or service was not acquired or imported for consumption, use or supply in the course of a business or other activity, other than a specified activity, engaged in by the claimant for profit or gain;
  - (b) the property or service was acquired or imported for consumption, use or supply in the course of performing a function of government under the Tla'amin Final Agreement or other agreement between Canada and British Columbia, together or separately, and the Tla'amin Nation; and
  - (c) the property or service:
    - (i) is a capital property of the claimant acquired or imported for consumption, use or supply, at any place, primarily in the course of engaging, on Tla'amin Lands, in a business or other activity of the claimant;
    - (ii) is a service in respect of capital property referred to in subparagraph (i) or is property supplied in conjunction with a service in respect of capital property referred to in subparagraph (i);

- (iii) in the case of property or a service referred to in neither subparagraph (i) nor subparagraph (ii), was acquired or imported for consumption, use or supply, at any place, exclusively in the course of engaging, on Tla'amin Lands, in a business or other activity of the claimant; or
  - (iv) is land that has been added to Tla'amin Lands pursuant to the Tla'amin Final Agreement.
- (2) For the purposes of paragraph 4(1)(c), where a claimant is engaging in a business or other activity partly on Tla'amin Lands and partly at or through one or more permanent establishments of the claimant that are not located on Tla'amin Lands, the claimant is deemed not to be engaging, on Tla'amin Lands, in the business or activity:
  - (a) in the case of a business or activity that involves the making of supplies of real property on a regular or continuous basis by way of lease, licence or similar arrangement, if the property is not, and is not intended to be, located on Tla'amin Lands; and
  - (b) in any other case, to the extent to which the claimant is engaging in the business or activity at or through one or more permanent establishments of the claimant that are not located on Tla'amin Lands.
- (3) Despite paragraph 141.1(1)(b), subsection 200(3), section 1 of Part V.1 of Schedule V and sections 2 and 25 of Part VI of that Schedule, of the *Excise Tax Act*, and despite subsection 2(4) of this agreement, if a claimant makes a supply by way of sale of property that is capital property of the claimant and in respect of which the claimant was entitled to receive a refund under subsection 4(1), the supply is deemed, for the purposes of Part IX of that Act, to be made in the course of a commercial activity of the claimant.
- (4) A refund of tax under subsection 4(1) will not be paid unless an application for the refund is filed with the Minister of National Revenue within four years after the tax was paid.
- (5) The provisions of Part IX of the *Excise Tax Act* apply, with such modifications as the circumstances require, in respect of claims under subsection 4(1) and in respect of amounts paid or payable as a refund under that section, as though the refund provided for under that section were a rebate provided for under Division VI of Part IX of the *Excise Tax Act*.

**5 SOCIAL SERVICE TAX AND MOTOR FUEL TAX**

- 5 (1) Subject to subsections 5(2) to 5(5), a claimant is entitled to a refund of:
- (a) tax, other than tax on the purchase of liquor, paid by the claimant under the *Social Service Tax Act*, or
  - (b) tax paid by the claimant under the *Motor Fuel Tax Act*
- in respect of property, service or fuel:
- (c) acquired or leased at any place; or
  - (d) consumed or used at any place.
- (2) A claimant is entitled to a refund under subsection 5(1), to the extent that the tax is not otherwise recoverable by the claimant under any law, if:
- (a) the property, service or fuel was not acquired or leased for consumption or use in the course of a business or other activity for profit or gain; and
  - (b) substantially all of the property, service or fuel is consumed or used in respect of performing:
    - (i) a function of government within Tla'amin Lands; or
    - (ii) Tla'amin Nation fisheries management within the Tla'amin Fishing Areaunder the Tla'amin Final Agreement or other agreement between Canada and British Columbia, together or separately, and the Tla'amin Nation.
- (3) A claimant must pay a tax at the time of a change of use as required by the *Social Service Tax Act* if:
- (a) the claimant has received a refund under subsection 5(1); and
  - (b) the use of the property or services in respect of which the refund was made changes to a use for which the claimant would not be entitled to a refund under subsection 5(1).
- (4) The *Social Service Tax Act*, the *Motor Fuel Tax Act* and any other relevant law of British Columbia apply to subsections 5(1) to 5(3) to the extent that they are not inconsistent with those paragraphs.

- (5) For all purposes, a refund made under subsection 5(1) is deemed to be made under the *Social Service Tax Act* or the *Motor Fuel Tax Act*, as the case may be.

## **6 PROPERTY TRANSFER TAX**

- 6 (1) The Tla'amin Nation and Tla'amin Public Institutions are not subject to tax under the *Property Transfer Tax Act* in respect of Tla'amin Lands.
- (2) A Tla'amin Citizen is not subject to tax under the *Property Transfer Tax Act* in respect of the registration of the Tla'amin Citizen's interest in Tla'amin Lands:
- (a) while the exemption under paragraph 16 of the Taxation Chapter of the Tla'amin Final Agreement applies for tax under the *Property Transfer Tax Act*; or
  - (b) if it is the first registration after the Effective Date of an interest in those particular Tla'amin Lands by a person other than the Tla'amin Nation or a Tla'amin Public Institution.

## **7 REAL PROPERTY TAX**

- 7 (1) No estate or interest of the Tla'amin Nation or an eligible corporation in Other Tla'amin Lands referred to in paragraph 2 of the Lands Chapter of the Tla'amin Final Agreement and set out in Appendix D of the Tla'amin Final Agreement, is subject to real property taxation under British Columbia legislation, except for an estate or interest in a parcel of such lands when the parcel is used for a purpose other than:
- (a) government activities; or
  - (b) not for profit activities.
- (2) Tla'amin Lands held or occupied by a person for the purpose of harvesting timber on those lands under a licence or permit issued by, or an agreement entered into with, the Tla'amin Nation are exempt from real property taxes except real property taxes imposed by the Tla'amin Government.
- (3) Tla'amin Lands and improvements that are:
- (a) owned by the Tla'amin Nation or a Tla'amin Public Institution or an eligible corporation; and

(b) rented by the Tla'amin Nation or a Tla'amin Public Institution or an eligible corporation as social housing to persons who, applying the test established for this purpose by the Canada Mortgage and Housing Corporation or a comparable objective test, are determined to be in core housing need

are exempt from real property tax, other than real property taxes imposed by the Tla'amin Government.

(4) If an improvement is not a designated improvement within the meaning of paragraph 8 of the Taxation Chapter of the Tla'amin Final Agreement and the Tla'amin Nation uses a portion of the improvement for a public purpose or a purpose ancillary or incidental to a public purpose, paragraph 7 of the Taxation Chapter of the Tla'amin Final Agreement applies in respect of the portion, as if that portion were a designated improvement.

(5) For the purpose of paragraph 7 of the Taxation Chapter of the Tla'amin Final Agreement, an improvement owned by the Tla'amin Nation and not in use is deemed to be a designated improvement.

## **8 RESOURCE TAXES**

8 (1) Subject to subsection 8(2), no person is subject to tax under:

(a) the *Mineral Tax Act*, or

(b) the *Petroleum and Natural Gas Act*

in respect of, and only to the extent of, the fee simple interest of the Tla'amin Nation or an eligible corporation in a mineral resource on or under Tla'amin Lands, or in respect of minerals, petroleum and natural gas extracted from Tla'amin Lands.

(2) Subsection 8(1) applies to a person only to the extent that:

(a) the mine or quarry in respect of which the tax is imposed under the *Mineral Tax Act* is on or under Tla'amin Lands; or

(b) the petroleum or natural gas in respect of which a tax is imposed under the *Petroleum and Natural Gas Act* is produced and disposed of from Tla'amin Lands.

(3) Neither the Tla'amin Nation nor an eligible corporation is subject to tax under the *Mineral Land Tax Act* on Tla'amin Lands.

**9 TLA'AMIN SETTLEMENT TRUST**

- 9 (1) On written application, the Minister of National Revenue shall designate, as a Tla'amin Settlement Trust, any trust whose terms provide the following:
- (a) the trust shall be resident in Canada;
  - (b) the beneficiaries of the trust are limited to the following:
    - (i) the Tla'amin Nation;
    - (ii) another Tla'amin Settlement Trust;
    - (iii) one or more Tla'amin Citizens;
    - (iv) any registered charity or non-profit organization, within the meaning of the *Income Tax Act*, that in the reasonable opinion of the trustees directly or indirectly benefits at least one or more Tla'amin Citizens; and
    - (v) any combination of the entities and persons referred to in subparagraphs (i) to (iv).
  - (c) investment of the trust's funds is restricted to:
    - (i) investment instruments that are described as qualified investments for a trust governed by a registered retirement savings plan within the meaning of section 146 of the *Income Tax Act* or in any other investments that may be agreed upon from time to time among the Tla'amin Nation, Canada, as represented by the Minister of Finance, and British Columbia;
    - (ii) loans to Tla'amin Citizens, the Tla'amin Nation, Tla'amin Public Institutions, or an eligible corporation, at a rate of interest equal to the rate prescribed under paragraph 4301(c) of the *Income Tax Regulations* in effect at the time the loan was made or last renewed;
    - (iii) investments in shares of an eligible corporation where the average annual rate of dividends on the shares over any five-year period cannot exceed the rate prescribed under paragraph 4301(c) of the *Income Tax Regulations* at the beginning of the five-year period, and on condition that the amount receivable on redemption of the shares or on liquidation of the eligible corporation is limited to the

amount of the consideration for which the shares were originally issued;

(iv) loans, that are interest free or at a rate of interest less than that referred to in subparagraph (ii), to Tla'amin Citizens, or partnerships or trusts in which no persons other than Tla'amin Citizens hold the interests as partners or beneficiaries where, at the time the loan was made, arrangements were made for repayment of the loan and where the purpose of the loan is to assist the borrower, or where the borrower is a partnership or a trust, to assist a partner or a beneficiary, to:

- (A) acquire, construct or renovate a residential property in British Columbia for his or her own habitation;
- (B) attend courses to further his or her education, technical or vocational skills, or attend courses in native studies, culture or language programs;
- (C) acquire funding for purposes of carrying on a business within Tla'amin Lands where the borrower is unable to borrow from ordinary commercial lenders at normal commercial rates; or
- (D) participate in Tla'amin Right to Harvest Fish; and

(v) an investment described in paragraph (h).

(d) the trust is not permitted to:

- (i) carry on a business; or
- (ii) acquire any beneficial interest in a trust engaged in a business where one or more of the Tla'amin Nation, Tla'amin Settlement Trusts or Tla'amin Citizens, either alone or in combination, hold more than ten percent of all of the beneficial interests in the trust;

(e) the trust is not permitted to borrow money except as required to finance the acquisition of its investments or to carry out its operations;

(f) contributions to the trust are limited to:

- (i) contributions by the Tla'amin Nation of amounts which reasonably can be considered to be:

(A) capital transfer payments received by the Tla'amin Nation under



the Capital Transfer and Negotiation Loan Repayment Chapter of the Tla'amin Final Agreement; or

(B) resource revenue sharing payments received by the Tla'amin Nation under the Resource Revenue Sharing Chapter of the Tla'amin Final Agreement; or

(ii) amounts received from another Tla'amin Settlement Trust where substantially all of the funds of that contributing trust reasonably can be considered to have been derived from a contribution to a Tla'amin Settlement Trust by the Tla'amin Nation of amounts described in clause (A) or (B) and income and gains derived therefrom;

(g) the trust is not permitted to make any distributions other than to one or more beneficiaries under the trust, or to another Tla'amin Settlement Trust; and

(h) the trust may not acquire an investment or property not described in paragraph 9(1)(c) except by way of realization of a security interest in the course of carrying on a permitted activity, in which case such investment or property shall be disposed of within a reasonable period, not to exceed two years, of its acquisition.

(2) Any refusal by the Minister of National Revenue to designate a trust as a Tla'amin Settlement Trust under subsection 9(1) is subject to the same right of appeal as applies to a refusal to register an applicant for registration as a registered charity under the *Income Tax Act*, with such modifications as the circumstances require.

(3) A Tla'amin Settlement Trust, a beneficial interest in a Tla'amin Settlement Trust and any amount contributed to a Tla'amin Settlement Trust or distributed as income or capital by a Tla'amin Settlement Trust to a beneficiary shall not be taxable except that:

(a) any amount of income or capital distributed in a particular year to a beneficiary who is a Tla'amin Citizen shall be deemed for purposes of subsection 104(13) of the *Income Tax Act* to be income of the trust that was payable to the beneficiary in the particular year;

(b) a Tla'amin Settlement Trust shall be subject to tax under Part I of the *Income Tax Act* and for that purpose its taxable income for a taxation year will be calculated as the total of:

(i) the amount of taxable income that would be determined under the *Income Tax Act* for the taxation year in respect of its properties, or

its dispositions of properties, that were not investments referred to in paragraph 9(1)(c) and that were not acquired in the course of carrying on a permitted activity of the Tla'amin Settlement Trust; and

(ii) any amount contributed to the Tla'amin Settlement Trust that is not permitted under the terms of the Tla'amin Settlement Trust; and

(c) goods and services tax or similar taxes may be imposed on goods or services consumed by the Tla'amin Settlement Trust or the trustee.

(4) Where the Minister of National Revenue is of the opinion that a Tla'amin Settlement Trust has failed to comply with the terms referred to in paragraphs 9(1)(a) to (h):

(a) the Minister may notify the Tla'amin Settlement Trust of the default and request a remedy to address the default;

(b) if within 100 days after the registered mailing of the notice referred to in paragraph 9(4)(a) the Tla'amin Settlement Trust does not address the default to the satisfaction of the Minister, then the Minister may, by registered mail, give notice that the Minister proposes to revoke the designation of the Tla'amin Settlement Trust as a Tla'amin Settlement Trust; and

(c) the Minister may, after the later of:

(i) 30 days from the date of mailing of the notice; and

(ii) the expiration of such extended period as may apply pursuant to subsection 9(5),

revoke the designation of the Tla'amin Settlement Trust as a Tla'amin Settlement Trust.

(5) Any notice or revocation under subsection 9(4) is subject to the same rights of appeal and is subject to the same procedural rules, including applications for extended time periods, as may be available under Canadian law in respect of a revocation of, or a notice of a proposal to revoke, the registration of a charity that is registered under the *Income Tax Act*, with such modifications as the circumstances require.

(6) If the Minister of National Revenue revokes the designation of a Tla'amin Settlement Trust, the taxation year of the trust that would otherwise have included the time of revocation shall be deemed to end immediately before the time of the revocation, and the Tla'amin Settlement Trust shall be deemed to have disposed of each of its assets immediately before that

time for proceeds equal to its fair market value, and to have re-acquired the asset at the time of revocation at a cost equal to its fair market value at that time, and for the purposes of calculating the taxable income of the Tla'amin Settlement Trust under paragraph 9(3)(b), the amount by which the fair market value of the asset exceeds (or is less than) the cost amount of the asset shall be deemed to be a capital gain (or capital loss) from the disposition of property that was not an investment referred to in paragraph 9(1)(c) and that was not acquired in the course of carrying on a permitted activity of the Tla'amin Settlement Trust.

(7) For purposes of subsection 9(4), the distribution by a Tla'amin Settlement Trust of any amount to a beneficiary of the Tla'amin Settlement Trust in respect of the beneficiary's interest in the Trust shall not be considered to be cause for the revocation of the designation of the Tla'amin Settlement Trust.

(8) The rule against perpetuities does not apply to a Tla'amin Settlement Trust.

## **10 TLA'AMIN CAPITAL**

10 (1) Any transfer of Tla'amin Capital, other than cash, between the Tla'amin Nation and any eligible corporation or Tla'amin Public Institution or registration of an interest in such property shall not be taxable.

## **11 ELECTION FOR DEEMED DISPOSITION OF CAPITAL PROPERTY**

11 (1) In this section,

“eligible individual” means an individual who, at the valuation time, is an Indian and who, at that time, holds an eligible interest;

“eligible interest” means any estate or interest in:

(a) specified lands, Surrendered Lands or Tla'amin Lands that were, on the day before the Effective Date, Surrendered Lands, or

(b) capital property or eligible capital property situated on specified lands;

“specified lands” means:

(a) in the case of an eligible individual who is a Tla'amin Citizen, a reserve or Tla'amin Lands that were, on the day before the Effective Date, a reserve, and

(b) in the case of an eligible individual who is not a Tla'amin Citizen,

Tla'amin Lands that were, on the day before the Effective Date, a reserve; and

“valuation time” means, in respect of an eligible interest, the beginning of January 1 of the first calendar year that starts after the twelfth anniversary of the Effective Date, except that if the Tla'amin Government exercises its power to impose an income tax in respect of the eligible interest before that date pursuant to the Taxation Chapter of the Tla'amin Final Agreement and such tax applies to the eligible individual who holds the eligible interest, the valuation time shall be the effective application date of such tax.

- (2) Subject to subsections 11(3) and 11(4), an eligible individual may elect for the purposes of the *Income Tax Act* to be deemed to have disposed, at the time that is immediately before the time that is immediately before the valuation time, of an eligible interest owned at that time for an amount equal to its fair market value, and to have reacquired it at the valuation time at a cost equal to that same amount.
- (3) An election in respect of an eligible interest shall be made in writing to the Minister of National Revenue and may only be made:
  - (a) once in respect of each eligible interest; and
  - (b) in the eligible individual's return of income under Part I of the *Income Tax Act* for the taxation year that starts at the valuation time or in a separate election filed with the Minister on or before the day that is two years after the eligible individual's filing-due date for that taxation year.
- (4) For the purposes of applying sections 37, 65 to 66.4, 111, subsections 127(5) to 127(26) and section 127.3 of the *Income Tax Act*, an eligible individual who makes an election will be deemed not to have owned the eligible interest at any time before the time it was deemed to have been reacquired by the eligible individual under subsection 11(2).

## **12 DISPUTE RESOLUTION**

- 12 (1) The parties desire and expect that most disagreements will be resolved by informal discussion, between or among the parties, without the necessity of invoking a dispute resolution mechanism.
- (2) Except for a dispute under sections 3 to 11, in the event of a dispute between any of the parties arising under this agreement, the parties involved in the dispute will use the mediation process referred to in Stage 2 of the Dispute Resolution Chapter of the Tla'amin Final Agreement before pursuing any other legal remedy.

**13 TERM OF THIS AGREEMENT**

- 13 (1) This agreement comes into effect on the Effective Date and, unless the parties agree otherwise, terminates at the end of March 31st of the second calendar year following the calendar year in which a party notifies the others that it wants the agreement to terminate.
- (2) A party may not, before the end of the calendar year in which the 15th anniversary of the Effective Date occurs, give notice that it wants this agreement to terminate.
- (3) At least one year before this agreement is expected to terminate, the parties shall use best efforts to negotiate a new tax treatment agreement.

**14 AMENDMENT AND REVIEW**

- 14 (1) Any amendment to this agreement must be in writing and executed by all parties.
- (2) Any party may at any time request the other parties to review this agreement and to consider amendments to this agreement and the other parties will not unreasonably withhold consent to the review.
- (3) For greater certainty, nothing in subsection 14(2) requires any party to agree to amend this agreement.

**15 NOTICES**

- 15 (1) Unless otherwise provided, a notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this agreement must be in writing and may be given or made in one or more of the following ways:
- (a) delivered personally or by courier;
- (b) transmitted by facsimile transmission; or
- (c) mailed by prepaid registered post in Canada.
- (2) A communication will be considered to have been given or made, and received:
- (a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;

**TLA'AMIN TAX TREATMENT AGREEMENT**

---

- (b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day on which it was transmitted; or
  - (c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.
- (3) A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For: **Canada**  
Attention: Minister of Finance  
House of Commons  
Confederation Building  
Ottawa, Ontario K1A 0A6  
Fax: (613) 995-1534

For: **British Columbia:**  
Attention: Minister of Finance  
Parliament Buildings  
Victoria, British Columbia V8V 1X4  
Fax: (250) 387-5594

For: **Tla'amin Nation and any Tla'amin Settlement Trust:**  
Attention: Chief, Tla'amin Nation  
RR #2  
Sliammon Road  
Powell River, British Columbia V8A 4Z3  
Fax: (604) 483-9769

A party may change its address or facsimile number by giving a notice of the change to the other Parties in the manner set out above in subsection 15(1).

**TLA'AMIN TAX TREATMENT AGREEMENT**

---

**For the Government of  
Canada**

**For the Government of  
British Columbia**

**For the Tla'amin Nation**

Signed at \_\_\_\_\_,  
\_\_\_\_\_,  
this \_\_\_ day of \_\_\_\_\_,  
20\_\_.

Signed at \_\_\_\_\_,  
\_\_\_\_\_,  
this \_\_\_ day of \_\_\_\_\_,  
20\_\_.

Signed at \_\_\_\_\_,  
\_\_\_\_\_,  
this \_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
The Hon. Minister of  
Finance

\_\_\_\_\_  
The Hon. Minister of  
Finance

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness