

CHAPTER 16 TAXATION

DIRECT TAXATION

1. Nisga'a Lisims Government may make laws in respect of direct taxation of Nisga'a citizens on Nisga'a Lands in order to raise revenue for Nisga'a Nation or Nisga'a Village purposes.
2. Nisga'a Lisims Government powers provided for in paragraph 1 will not limit the powers of Canada or British Columbia to impose or levy tax or make laws in respect of taxation.

OTHER TAXATION AND TAX ADMINISTRATION AGREEMENTS

3. From time to time Canada and British Columbia, together or separately, may negotiate with the Nisga'a Nation, and attempt to reach agreement on:
 - a. the extent, if any, to which Canada or British Columbia will provide to Nisga'a Lisims Government or a Nisga'a Village Government direct taxation authority over persons other than Nisga'a citizens, on Nisga'a Lands; and
 - b. the coordination of Nisga'a Lisims Government or Nisga'a Village Government taxation, of any person, with existing federal or provincial tax systems.
4. Nisga'a Lisims Government and Nisga'a Village Governments may make laws in respect of the implementation of any taxation agreement entered into with Canada or British Columbia.

SECTION 87 EXEMPTION

5. Subject to paragraph 6, section 87 of the *Indian Act* applies to Nisga'a citizens only to the extent that an Indian other than a Nisga'a citizen, or the property of that Indian, would be exempt from taxation in similar circumstances by reason of the applicability of section 87 of the *Indian Act*.
6. Section 87 of the *Indian Act* will have no application to Nisga'a citizens:
 - a. in respect of transaction taxes, only as of the first day of the first month that starts after the eighth anniversary of the effective date; and
 - b. in respect of all other taxes, only as of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.

REMISSION ORDERS

7. Subject to paragraphs 8 and 9, as of the effective date, Canada and British Columbia will each grant a remission of, respectively, federal and provincial tax imposed or levied in respect of:
 - a. the estate or interest of an Indian in lands described in subparagraph 2 (b) of the Lands Chapter that are within Nisga'a Lands;
 - b. the personal property of an Indian situated on lands described in subparagraph 2 (b) of the Lands Chapter that are within Nisga'a Lands; and
 - c. an Indian's ownership, occupation, possession or use of any property referred to in subparagraph (a) or (b).
8. A remission of tax under paragraph 7 will be granted only where the property referred to in subparagraph 7 (a) or (b), or the Indian in respect of the ownership, occupation, possession or

use of the property referred to in subparagraph 7 (a) or (b) would, but for this Agreement, be exempt from taxation by reason of the applicability of section 87 of the *Indian Act*.

9. The orders authorizing the remissions of tax referred to in paragraph 7 will cease to be effective:
 - a. in respect of transaction taxes, as of the first day of the first month that starts after the eighth anniversary of the effective date; and
 - b. in respect of all other taxes, as of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.

VALUATION TIME

10. In paragraphs 11 and 12:
 - a. **“eligible individual”** means an Indian who, at the valuation time, holds an eligible interest;
 - b. **“eligible interest”** means any estate or interest in specified lands or in personal property situated on specified lands;
 - c. **“specified lands”** in respect of an Indian means:
 - i. lands described in subparagraph 2 (b) of the Lands Chapter that are within Nisga’a Lands, and
 - ii. if the Indian is a Nisga’a citizen, a reserve as defined in the *Indian Act*; and
 - d. **“valuation time”** means the beginning of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.
11. For the purposes of the *Income Tax Act* and the *Income Tax Act* (British Columbia), if an eligible individual elects as described in paragraph 12 to have this paragraph apply:
 - a. the individual is deemed to have disposed of each of the individual’s eligible interests, at the time that is immediately before the time that is immediately before the valuation time, for an amount equal to its fair market value at that time, and to have reacquired the eligible interest at the valuation time at a cost equal to that fair market value;
 - b. for greater certainty, it is understood that the deemed disposition and reacquisition described in subparagraph (a) apply to all eligible interests owned by the eligible individual at the valuation time; and
 - c. 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*, the individual will be deemed not to have owned an eligible interest referred to in subparagraph (a) at any time before the time it was deemed to have been reacquired by the individual under that subparagraph.
12. Paragraphs 10 and 11 apply to any eligible individual who so elects in writing in the individual’s return of income under Part I of the *Income Tax Act* for the year that starts at the valuation time.

NISGA'A LANDS

13. Neither the Nisga'a Nation nor any Nisga'a Village is subject to capital taxation, including real property taxes and taxes on capital or wealth, in respect of the estate or interest of either the Nisga'a Nation or any Nisga'a Village in Nisga'a Lands on which there are no improvements or on which there is a designated improvement.
14. In paragraph 13, "**designated improvement**" means:
 - a. a residence of a Nisga'a citizen;
 - b. an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
 - i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Nisga'a cultural or spiritual purposes,
 - ii. works of public convenience constructed or operated for the benefit of Nisga'a citizens, occupiers of Nisga'a Lands or persons visiting or in transit through Nisga'a Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks, and public parking lots, or
 - iii. similar improvements;
 - c. an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a forestry, fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and
 - d. forest resources and forest roads.
15. In paragraph 14 (b), "public purpose" does not include the provision of property or services primarily for the purpose of profit.
16. Paragraph 13 does not affect the taxation of a person, other than the Nisga'a Nation or a Nisga'a Village, in respect of an estate or interest in Nisga'a Lands, or exempt from taxation a disposition of capital by the Nisga'a Nation or any Nisga'a Village.
17. If, within 20 years after the effective date, Canada or British Columbia enacts legislation giving effect to another land claims agreement applicable in northwest British Columbia that:
 - a. provides that all of the lands that were set apart as reserves of an Indian band whose members were represented by a party to the agreement cease to be reserves; and
 - b. provides a tax exemption, not provided in paragraph 13, in respect of an estate or interest in settlement lands

Canada and British Columbia, upon request of Nisga'a Nation, will negotiate and attempt to reach agreement on the provision of a similar tax exemption for the Nisga'a Nation and Nisga'a Villages.

NISGA'A CAPITAL

- 18.** A transfer, or recognition of ownership, under this Agreement, of Nisga'a capital is not taxable.
- 19.** For the purposes of paragraph 18, an amount paid to a Nisga'a participant will be deemed to be a transfer of Nisga'a capital under this Agreement if the payment:
 - a. reasonably can be considered to be a distribution of a capital transfer received by the Nisga'a Nation; and
 - b. becomes payable to the Nisga'a participant within 90 days, and is paid to the Nisga'a participant within 270 days, after the Nisga'a Nation receives the capital transfer.
- 20.** For the purposes of the *Income Tax Act* and the *Income Tax Act* (British Columbia), Nisga'a capital transferred to, or recognized as owned by, the Nisga'a Nation or any Nisga'a Village under this Agreement will be deemed to have been acquired by the Nisga'a Nation or the Nisga'a Village, as the case may be, on the latest of the effective date, the date of transfer or the date of recognition, at a cost equal to its fair market value on that date.

TAXATION AGREEMENT

- 21.** On the effective date, the Parties will enter into a Taxation Agreement. The Taxation Agreement does not form part of this Agreement.
- 22.** The Taxation Agreement is not intended to be a treaty or land claims agreement, and is not intended to recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 23.** Canada and British Columbia will recommend to Parliament and the Legislature, respectively, that the provisions of the Taxation Agreement be given effect under federal and provincial law.