

**PERSONAL INCOME TAX SHARING AGREEMENT**

**Between**

**THE GOVERNMENT OF THE YUKON**

**and**

**THE TA'AN KWACH'AN COUNCIL**

## PERSONAL INCOME TAX SHARING AGREEMENT

BETWEEN:

THE GOVERNMENT OF THE YUKON, as represented by  
the Yukon Minister of Finance (the "Yukon"),

and

THE TA'AN KWACH'AN COUNCIL, as represented by the  
duly authorized representative of the Ta'an Kwach'an Council  
(the "First Nation"),

being the Parties (collectively referred to as the "Parties") to  
this Agreement.

### BACKGROUND

The First Nation desires to exercise its power of direct taxation under section 14.1 of its Self-Government Agreement, given effect by the *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35 and by the *First Nations (Yukon) Self-Government Act*, S.Y. 1993, c. 5;

The First Nation intends to enact legislation that imposes tax on the income of individuals who are resident within Settlement Land and that provides that the First Nation may enter into a tax collection agreement with the Government of Canada;

The First Nation wishes to enter into an agreement with Yukon under which Yukon will share personal income tax room with the First Nation;

Section 14.8 of the First Nation Self-Government Agreement provides that the Yukon Minister of Finance may enter into taxation agreements with the First Nation; and

The Parties wish to enter into an agreement in respect of the sharing of personal income tax room and to co-ordinate the First Nation income tax legislation with Yukon's *Income Tax Act*, R.S.Y. 1986, c. 90.

The Parties agree as follows:

## DEFINITIONS

1. In this Agreement:

“**Citizen**” has the same meaning as in the Self-Government Agreement;

“**collection agreement**” means the agreement entered into between Canada and the First Nation for the collection of income tax;

“**federal Act**” means the *Income Tax Act*, R.S.C. 1985, (5th supp.), c. 1 and includes regulations established under that Act;

“**the First Nation Income Tax Act**” means the First Nation’s income tax law enacted under section 14.1.2 of the Self-Government Agreement, and includes regulations established under that Act;

“**Financial Transfer Agreement**” means the agreement referred to in section 16.0 of the Self-Government Agreement;

“**fiscal year**” means the period of twelve months commencing on the 1st day of April and ending on the 31st day of March next following;

“**income tax**” means the individual income tax imposed on an individual by the First Nation Income Tax Act;

“**individual**” means a person other than a corporation and includes a trust or an estate as defined in section 104(1) of the federal Act;

“**Non-Citizen**” means an individual who is a resident of the Yukon but is not a Citizen of the First Nation;

“**Self-Government Agreement**” means an agreement concluded by a First Nation with the Government of the Yukon and the Government of Canada respecting government by and for the First Nation;

“**Settlement Land**” means the settlement land of the First Nation under the First Nation Final Agreement, the *Yukon First Nations Land Claims Settlement Act*, S.C. 1994, c.34, and *An Act Approving Yukon Land Claims Final Agreements*, S.Y. 1993, c.19;

**“tax payable under the territorial Act”**, by a Citizen or Non-Citizen resident within Settlement Land in respect of a taxation year, means the amount that would be the tax payable under the territorial Act by the Citizen or Non-Citizen for the year in respect of which the expression is being applied, computed as if the Citizen or Non-Citizen were not entitled to a deduction under section 5 or section 5.1 of the territorial Act and, for greater certainty, includes the surtax imposed under the territorial Act;

**“taxation year”** has the meaning given to that expression in subsection 249(1) of the federal Act;

**“territorial Act”** means Yukon’s *Income Tax Act*, R.S.Y. 1986, c. 90 and includes regulations established under that Act;

**“year”**, unless the context otherwise requires, means the calendar year; and

**“Yukon Minister”** means the Yukon Minister of Finance and, where circumstances require, the Deputy Minister or any officer or class of officers authorized by the Yukon Minister of Finance.

2. Words in the singular include the plural and words in the plural include the singular.
3. Words and expressions not specifically defined in this Agreement shall, where they are defined in the federal Act, have the meaning given to them in the federal Act.
4. In this Agreement, where reference is made to an Act of the Parliament of Canada, an Act of the Yukon or an Act of the First Nation, the reference shall be deemed to be a reference to the Act or legislation as amended from time to time whether such amendment is made before or after the execution of this Agreement.

## **YUKON’S UNDERTAKINGS**

5. For the purposes of 14.1.2 and 14.5.2 of the Self-Government Agreement, the Yukon agrees that the First Nation may exercise its power of direct taxation to levy personal income tax in respect of Non-Citizens who are resident within Settlement Land in respect of a taxation year.
6. The Yukon agrees that, during this Agreement, a Citizen or Non-Citizen who resided within Settlement Land on the last day of a taxation year, or, in the case of a part-year resident, on the last day that they are resident in Canada, within Settlement Land, as the case may be, shall deduct from the tax otherwise payable by the individual under the territorial Act an amount equal to 95% of such tax and, for this purpose, the Yukon agrees to amend the territorial Act to prescribe the First Nation as a “prescribed Yukon First Nation” for the purposes of section 5.1 of the territorial Act.

## **FIRST NATION'S UNDERTAKINGS**

7. The First Nation agrees that, during the term of this Agreement, the First Nation shall impose income tax under the First Nation Income Tax Act on each Citizen or Non-Citizen who resided in the Yukon within Settlement Land of the First Nation on the last day of the taxation year, or, in the case of a part-year resident, on the last day that they are resident in Canada within Settlement Land, as the case may be, provided that:
  - (a) Non-Citizens shall not be subject to such tax, or any other requirement connected with such tax, which is other than or more burdensome than the taxation and connected requirements under the First Nation Income Tax Act to which Citizens are or may be subject in the same circumstances; and
  - (b) except as provided for in this Agreement, in its application to Citizens and Non-Citizens for a taxation year, the aggregate federal, Yukon and First Nation personal income tax to which Citizens and Non-Citizens are or may be subject to for the year will not result in the Citizens and Non-Citizens being subject to an aggregate personal income tax burden for the year which is other than, or more burdensome or more favourable than, the aggregate federal and Yukon personal income tax to which individuals resident in the Yukon on non-Settlement Land are or may be subject to in the same circumstances.
8. The First Nation agrees that, during this Agreement, the First Nation shall ensure that the collection agreement is in full force and effect.

## **ADMINISTRATION OF THIS AGREEMENT**

9. Where, in the opinion of the Yukon Minister or the First Nation, an amendment to the First Nation Income Tax Act, the territorial Act, the collection agreement or this Agreement would improve the effective administration, collection or enforcement of the First Nation Income Tax Act or the territorial Act, the Yukon Minister and the First Nation shall meet and discuss the issue.
10. If, after the discussions referred to in section 9, the Parties reach a solution, Yukon and the First Nation agree to take whatever steps are within their respective powers, subject to any necessary approvals, authorizations or legislative requirements, to effect the solution.
11. The First Nation shall, on or before the 31st day of March of each year following each fiscal year in which payments are made to the First Nation, supply to the Yukon a statement prepared by the Department of National Revenue showing:
  - (a) the income tax assessed prior to the 31st day of December next following the close of that fiscal year in respect of the immediately preceding year, or other

preceding year where the assessment was not included in a previous statement supplied under this section; and

- (b) the amount, as determined by the Minister of Finance for Canada on the 31st day of December next following the close of that fiscal year, that is due to the First Nation in respect of amounts deducted at source from employees in accordance with the territorial Act in respect of the preceding years during the term of the collection agreement that were not applied in respect of individual income tax payable by such employees under the First Nation Income Tax Act in respect of such years because of their failure to file returns for those years.

### **AMENDMENT**

- 12. Amendments to this Agreement may be made through the exchange of letters between the First Nation and the Yukon Minister.
- 13. An amendment agreed to by the Parties shall come into effect for the taxation year following the year in which the amendment was agreed to, or at any other such time as the Parties may decide.

### **REVIEW**

- 14. If Yukon's sharing of personal income tax room under this Agreement results in a net fiscal loss to the Yukon in any particular fiscal year under the Yukon-Canada Formula Financing Agreement,
  - (a) Yukon shall give notice in writing to the First Nation that it intends to reconsider its ability to share personal income tax room; and
  - (b) Yukon and the First Nation together shall review the circumstances and options available to address the situation, prior to Yukon making a determination that it will reduce its commitment to the sharing of personal income tax room.
- 15. Yukon and the First Nation acknowledge that adjustment of the amount of the deduction from Yukon tax provided in section 6 of this Agreement, and the transfer of program and service responsibilities from Yukon to the First Nation, are options that may be considered in the process set out in section 14.
- 16. If Yukon determines under section 14 that it will reduce the percentage of personal income tax room it has shared, the Parties together shall identify the steps required to manage the transition in a manner that mitigates the impact of the reduction on the First Nation.

17. If, following the process set out in sections 14 and 15 of this Agreement, the Yukon continues to suffer a net fiscal loss resulting from this Agreement, the Yukon may terminate this Agreement in accordance with sections 19 and 20.

### **DISPUTE RESOLUTION**

18. In the event of a dispute between the First Nation and the Yukon arising out of the interpretation of this Agreement, except sections 14 to 17, 19 and 20, the Parties agree to use the following procedure prior to pursuing any other legal remedy:
- (a) Within thirty (30) days of either Party receiving written notice from the other of a dispute under this Agreement, a meeting shall be held between the Parties to attempt to settle the dispute.
  - (b) If, within sixty (60) days after this meeting, the Parties have failed to resolve the dispute, they agree to submit the dispute to mediation. The Parties shall jointly select a mediator and shall equally bear the costs of that mediation.
  - (c) If, after thirty (30) days, the Parties are unable to agree upon the choice of a mediator, the Parties shall jointly apply to a judge of the Supreme Court of the Yukon Territory for the selection of a mediator by the Court.
  - (d) The Parties agree to participate in the mediation process for at least sixty (60) days.
  - (e) The Parties may mutually choose time periods other than those referred to in (a) to (d).

### **TERMINATION**

19. A notice to terminate this Agreement shall be given:
- (a) by notice in writing from one Party to the other; and
  - (b) prior to July 1 in a year
- and shall take effect as of December 31 of that year.
20. A notice to terminate this Agreement shall, with respect to any year following its termination, terminate the obligations of the Parties, provided that
- (a) such termination shall not affect the operation of any provision of this Agreement in respect of the years comprising the term of this Agreement prior to or ending at the time of termination of the said obligations; and

(b) upon such termination, the provisions of this Agreement shall apply *mutatis mutandis* in respect of the said years as if this Agreement had been entered into only for the period of those years.

21. Where, in the opinion of the Yukon Minister, the First Nation Income Tax Act imposes income tax in breach of the First Nation's obligations under this Agreement, the Minister shall notify the First Nation in writing of the particulars of the breach.
22. If, in the opinion of the Yukon Minister, the First Nation has not undertaken reasonable efforts within 90 days after the notice in writing in section 21 is given, or in the event that the collection agreement is terminated for any reason, the Yukon Minister may give notice to terminate this Agreement in the manner described in section 19.
23. Either Party may give notice to terminate this Agreement under section 19 pursuant to section 17, section 22 or by virtue of the Parties' common law rights and remedies.

#### **GENERAL**

24. Nothing in this Agreement shall limit or restrict, or be construed to limit or restrict, Yukon's right to alter or vary, in such manner as the Yukon may determine, the territorial Act.
  - 24.1 If Yukon conducts public consultations on personal income tax policy, the First Nation will be consulted.
25. Nothing in this Agreement shall be deemed to vary or terminate any of the rights or obligations of the First Nation or the Yukon under any agreement previously entered into between them, or to limit their authority to enter into any agreement in addition to or by way of amendment to this Agreement.

#### **TERMS**

26. This Agreement shall come into effect as of January 1, 2003 and, except as otherwise specifically provided in this Agreement, shall continue in effect until December 31, 2012.
27. At least 18 months prior to December 31, 2012, the Parties shall jointly review the terms of this Agreement with a view to extending the term of this Agreement for a further period under such terms and conditions as the Parties may agree.



28. At any time during the term of this Agreement, the Parties shall, at the request of either Party, review the terms of this Agreement if there has been a material change in the fiscal circumstances of one or both Parties that is relevant to this Agreement.

This document may be signed in counterpart. Each signature below shall be deemed to be an original and all of the signatures together shall constitute one and the same document as of the date on which the last party signs.

**Signed by the Parties on the dates indicated below:**



Chairperson,  
Ta'an Kwach'an Council

Date

*Jan 16/03*



Minister of Finance  
The Government of Yukon

Date

*01.10.03*