

# Tsawwassen First Nation Tax Treatment Agreement



TSAWWASSEN FIRST NATION  
s̓əwaθən məsteyəx<sup>w</sup>





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**Tsawwassen First Nation  
Tax Treatment Agreement**



## TSAWWASSEN FIRST NATION TAX TREATMENT AGREEMENT

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 Aboriginal Relations and Reconciliation

("the Province")

AND:

TSAWWASSEN FIRST NATION, as represented by the Tsawwassen Government

("Tsawwassen First Nation").

WHEREAS:

1. Clause 22 of Taxation Chapter of the Tsawwassen First Nation Final Agreement provides that the parties shall enter into a tax treatment agreement; and
2. This agreement is the tax treatment agreement referred to in recital 1 and shall be called the "Tsawwassen First Nation Tax Treatment Agreement."

NOW THEREFORE in consideration of the premises and the covenants and agreements set out below, the parties agree as follows:

# TSAWWASSEN FIRST NATION TAX TREATMENT AGREEMENT

## 1 INTERPRETATION

1(1) In this agreement:

**“claimant”** means:

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

(i) Tsawwassen First Nation; or

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

(A) a trust, Tsawwassen Settlement Trust, board, commission, tribunal or similar body, established by Tsawwassen First Nation; or

(B) an eligible corporation incorporated under federal or provincial laws; 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 Tsawwassen First Nation, a Tsawwassen 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) Tsawwassen First Nation or a Tsawwassen Settlement Trust;

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

(iii) any combination of the persons referred to in (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*, RSBC 1996, c. 290;

“**Mineral Tax Act**” means the *Mineral Tax Act*, RSBC 1996, c. 291;

“**Mining Tax Act**” means the *Mining Tax Act*, RSBC 1996, c. 295;

“**Motor Fuel Tax Act**” means the *Motor Fuel Tax Act*, RSBC 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*, RSBC 1996, c. 361;

“**Property Transfer Tax Act**” means the *Property Transfer Tax Act*, RSBC 1996, c. 378;

“**Social Service Tax Act**” means the *Social Service Tax Act*, RSBC 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, Tsawwassen Members, or individuals resident on Tsawwassen Lands or any combination of those persons; or

- (b) any other business or activity that Canada and Tsawwassen First Nation agree is a specified activity.

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

**“Tsawwassen Government Corporation”** means any corporation, commission or association, all of the shares of which, except directors’ qualifying shares, or capital of which are owned by Tsawwassen First Nation or any Tsawwassen Settlement Trust, or any combination of the foregoing, or a wholly-owned corporation subsidiary to any such corporation, commission or association; and

**“Tsawwassen 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 Tsawwassen Settlement Trust and that is at that time designated as a Tsawwassen 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 Tsawwassen First Nation Final Agreement, other than the definitions “agreement”, “director”, “disagreement”, “dispose”, “disposition” and “specified lands”, apply to this agreement.
- (4) The definition of “person” in the Tsawwassen First Nation Final Agreement does not apply in the definition of “permanent establishment”.

## 2 GENERAL

- 2 (1) This agreement does not form part of the Tsawwassen First Nation 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 the Tsawwassen Members, Tsawwassen First Nation or a Tsawwassen Settlement Trust to any benefit available under any legislation.

- (5) No term or condition of this agreement, or performance by a party of a covenant under this agreement, shall be deemed to have been waived unless the waiver is in writing and signed by the party or parties giving the waiver.
- (6) No written waiver of a term or condition of this agreement, of performance by a party of a covenant under this agreement, or of default by a party of a covenant under this agreement, will be deemed to be a waiver of any other covenant, term or condition, 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 shall be severed from the remainder of this agreement but all other provisions of this agreement shall remain in full force and effect and shall 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 TSAWWASSEN FIRST NATION**

- 3 (1) For the purpose of paragraph 149(1)(c) of the *Income Tax Act*, Tsawwassen First 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*, Tsawwassen First Nation is deemed to be a municipality in Canada whose geographical boundaries are those of Tsawwassen Lands.
- (3) For the purposes of subsections 110.1(1), 118.1(1) and 149.1(1) of the *Income Tax Act*, Tsawwassen First Nation is deemed to be a municipality.
- (4) Tsawwassen First 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 Tsawwassen First Nation to receive, store and display cultural objects will be treated as an institution designated under that subsection of that Act, if Tsawwassen First 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 Tsawwassen First 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 Tsawwassen First Nation Final Agreement or other agreement between Canada and the Province, together or separately, and Tsawwassen First 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 Tsawwassen Lands, in a business or other activity of the claimant;
- (ii) is a service in respect of capital property referred to in (i) or is property supplied in conjunction with a service in respect of capital property referred to in (i);

- (iii) in the case of property or a service referred to in neither (i) nor (ii), was acquired or imported for consumption, use or supply, at any place, exclusively in the course of engaging, on Tsawwassen Lands, in a business or other activity of the claimant; or
- (iv) is land that has been added to Tsawwassen Lands pursuant to the Tsawwassen First Nation Final Agreement.
- (2) For the purposes of paragraph 4(1)(c), where a claimant is engaging in a business or other activity partly on Tsawwassen Lands and partly at or through one or more permanent establishments of the claimant that are not located on Tsawwassen Lands, the claimant is deemed not to be engaging, on Tsawwassen 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 Tsawwassen 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 Tsawwassen 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 subsection, as though the refund provided for under that subsection 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 Tsawwassen Lands, or
    - (ii) Tsawwassen government fisheries management within the Tsawwassen Fishing Area,under the Tsawwassen First Nation Final Agreement or other agreement between Canada and British Columbia, together or separately, and Tsawwassen First 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 subsections.

- (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) Tsawwassen First Nation and Tsawwassen Public Institutions, are not subject to tax under the *Property Transfer Tax Act* in respect of Tsawwassen Lands.
- (2) A Tsawwassen Member is not subject to tax under the *Property Transfer Tax Act* in respect of the registration of the Member's interest in Tsawwassen Lands:
- (a) while the exemption under clause 17 of the Taxation Chapter of the Tsawwassen First Nation Final Agreement applies for tax under the *Property Transfer Tax Act*, or
- (b) if it is the first registration of an interest in those particular Tsawwassen Lands by a person other than Tsawwassen First Nation.

## 7 REAL PROPERTY TAX

- 7 (1) No estate or interest of Tsawwassen First Nation or a Tsawwassen Government Corporation, in Other Tsawwassen Lands referred to in subclause 18 (a) of the Lands Chapter of the Tsawwassen First Nation Final Agreement and set out in Appendix E of the Tsawwassen First Nation Final Agreement or in Tsawwassen water lot leases over the Tsawwassen Water Lots as set out in Appendix F of the Tsawwassen First Nation 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) Tsawwassen 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, Tsawwassen First Nation are exempt from real property taxes except real property taxes imposed by the Tsawwassen Government.
- (3) Tsawwassen Lands and improvements that are
- (a) owned by Tsawwassen First Nation, and

(b) rented by Tsawwassen First Nation 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 Tsawwassen Government.

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

(5) For the purpose of clause 7 of the Taxation Chapter of the Tsawwassen First Nation Final Agreement, an improvement owned by Tsawwassen First 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*, and

(b) the *Petroleum and Natural Gas Act*;

in respect of, and only to the extent of, the fee simple interest of the Tsawwassen First Nation or a Tsawwassen Government Corporation in a mineral resource on or under Tsawwassen Lands, or in respect of minerals, petroleum and natural gas, extracted from Tsawwassen 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 Tsawwassen 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 Tsawwassen Lands.

(3) Neither Tsawwassen First Nation nor a Tsawwassen Government Corporation is subject to tax under the *Mineral Land Tax Act* on Tsawwassen Lands.



## 9 TSAWWASSEN SETTLEMENT TRUST

9(1) On written application, the Minister of National Revenue shall designate, as a Tsawwassen 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) Tsawwassen First Nation;
  - (ii) another Tsawwassen Settlement Trust;
  - (iii) one or more Tsawwassen Members;
  - (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 one or more Tsawwassen Members; 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 Tsawwassen First Nation, Canada, as represented by the Minister of Finance, and the Province;
  - (ii) loans to Tsawwassen Members, Tsawwassen First Nation, Tsawwassen Public Institutions, or a Tsawwassen Government 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 a Tsawwassen Government 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 Tsawwassen Government 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 Tsawwassen Members, or partnerships or trusts in which no persons other than Tsawwassen Members 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 own habitation;
- (B) attend courses to further his 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 Tsawwassen Settlement Lands where the borrower is unable to borrow from ordinary commercial lenders at normal commercial rates; or
- (D) participate in Tsawwassen Fishing Rights; 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 Tsawwassen First Nation, Tsawwassen Settlement Trusts or Tsawwassen Members, 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 contributions by Tsawwassen First Nation of amounts which reasonably can be considered to be capital transfer payments received by it under the Capital Transfer and Negotiation Loan Repayment chapter of the Tsawwassen First Nation Final Agreement or amounts received from another Tsawwassen 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 Tsawwassen Settlement Trust by Tsawwassen First Nation of capital transfer payments received by it under the Capital Transfer and Negotiation Loan Repayment chapter of the Tsawwassen First Nation Final Agreement 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 Tsawwassen 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 Tsawwassen 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 Tsawwassen Settlement Trust, a beneficial interest in a Tsawwassen Settlement Trust, and any amount contributed to a Tsawwassen Settlement Trust or distributed as income or capital by a Tsawwassen 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 Tsawwassen Member 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 Tsawwassen 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 Tsawwassen Settlement Trust; and
- (ii) any amount contributed to the Tsawwassen Settlement Trust that is not permitted under the terms of the Tsawwassen Settlement Trust; and
- (c) goods and services tax or similar taxes may be imposed on goods or services consumed by the Tsawwassen Settlement Trust or the trustee.
- (4) Where the Minister of National Revenue is of the opinion that a Tsawwassen Settlement Trust has failed to comply with the terms referred to in paragraphs 9(1)(a) to (h):
- (a) the Minister may notify the Tsawwassen 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 Tsawwassen 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 Tsawwassen Settlement Trust as a Tsawwassen 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 Tsawwassen Settlement Trust as a Tsawwassen 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 Tsawwassen 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 Tsawwassen 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 Tsawwassen 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 Tsawwassen Settlement Trust.

(7) For purposes of subsection 9(4), the distribution by a Tsawwassen Settlement Trust of any amount to a beneficiary of the Tsawwassen 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 Tsawwassen Settlement Trust.

(8) The rule against perpetuities does not apply to a Tsawwassen Settlement Trust.

## 10 TSAWWASSEN CAPITAL

- 10 Any transfer of Tsawwassen Capital, other than cash, between Tsawwassen First Nation and any Tsawwassen Government Corporation 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, 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 Tsawwassen Member, a reserve or Tsawwassen 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 Tsawwassen Member, Tsawwassen 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 Tsawwassen 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 Tsawwassen First Nation 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 the Tsawwassen income 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 *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 Tsawwassen First Nation 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 31<sup>st</sup> 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;

(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 number: 613-995-1534

**For British Columbia:**

Attention: Minister of Aboriginal Relations and Reconciliation  
Parliament Buildings  
Victoria (British Columbia) V8V 1X4  
Fax number: 250-953-4856

**For Tsawwassen First Nation and any Tsawwassen Settlement Trust:**

Attention: Chief, Tsawwassen First Nation  
#131 N Tsawwassen Drive  
Delta (British Columbia) V4M 4G2  
Fax number: 604-943-2264

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 15(1).



**For Tsawwassen First Nation**

Signed at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Witness

**For the  
Government of Canada**

Signed at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_, 200\_\_.

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

\_\_\_\_\_  
Witness

**For the  
Government of British Columbia**

Signed at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
The Hon.  
Minister of Aboriginal Relations and Reconciliation

\_\_\_\_\_  
Witness

**TSAWWASSEN  
FIRST NATION**

**LAND  
FACING  
THE SEA**



*If you would like more information about the Tsawwassen First Nation Tax Treatment Agreement, contact:*

**Canada**

Indian and Northern Affairs Canada  
600 - 1138 Melville Street  
Vancouver, BC V6E 4S3  
1-800-567-9604  
[www.ainc-inac.gc.ca](http://www.ainc-inac.gc.ca)  
[infopubs@ainc-inac.gc.ca](mailto:infopubs@ainc-inac.gc.ca)

**Tsawwassen First Nation**

Tsawwassen First Nation  
1926 Tsawwassen Drive  
Tsawwassen, BC V4M 4G2  
604-943-2112  
[www.tsawwassenfirstnation.com](http://www.tsawwassenfirstnation.com)  
[info@tsawwassenfirstnation.com](mailto:info@tsawwassenfirstnation.com)

**British Columbia**

Ministry of Aboriginal Relations  
and Reconciliation  
PO Box 9100 Stn Prov Govt  
Victoria, BC V8W 9B1  
1-800-880-1022  
[www.gov.bc.ca/arr](http://www.gov.bc.ca/arr)  
[ABRInfo@gov.bc.ca](mailto:ABRInfo@gov.bc.ca)