

TAX COLLECTION AND TAX SHARING AGREEMENT

Between The
GOVERNMENT OF CANADA

and the

TESLIN TLINGIT COUNCIL

MEMORANDUM OF AGREEMENT DATED AS OF _____, 19____

BETWEEN:

THE GOVERNMENT OF CANADA ("Canada")

AND

THE TESLIN TLINGIT COUNCIL

WHEREAS the Teslin Tlingit Council desires to exercise its power of direct taxation pursuant to the *Teslin Tlingit Council Self-Government Agreement*, brought into 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;

AND WHEREAS the Teslin Tlingit Council *Income Tax Act* imposes taxes on the income of individuals and provides that the Teslin Tlingit Council may enter into a tax collection agreement;

AND WHEREAS the Teslin Tlingit Council wishes to enter in an agreement with Canada, pursuant to which Canada will collect taxes payable under the Teslin Tlingit Council *Income Tax Act* on behalf of the Teslin Tlingit Council and will make payments to the Teslin Tlingit Council in respect of the taxes so collected, in accordance with such terms and conditions as the tax collection agreement prescribes;

AND WHEREAS the *Federal-Provincial Fiscal Arrangements Act*, RSC 1985, c-F-18, provides that where First Nations impose income taxes, the Minister of Finance, with the approval of the Governor in Council, may enter into a tax collection agreement with First Nations, on behalf of Canada.

AND WHEREAS the Minister of Finance has the approval of the Governor in Council to enter into this agreement;

NOW, THEREFORE, in consideration of the terms, exchange of promises, covenants and conditions contained in this agreement, the parties to this agreement agree as follows:

INTERPRETATION

1. (1) In this Agreement:
 - (a) "Citizen" means a citizen of the Teslin Tlingit Council, in accordance with the Teslin Tlingit Council constitution;
 - (b) "collection agreement" means an agreement entered into between Canada and a First Nation, a province or a territory for the collection of income tax;
 - (c) "federal Act" means the *Income Tax Act*, R.S.C. 1985 (5th supp.) c.1;
 - (d) "federal tax" means the amount that, but for section 120 of the federal Act, would be the tax payable by an individual under Part I of that Act for the taxation year in respect of which the expression is being applied, computed as if the individual were not entitled to any deduction under section 126, 127, 127.2, 127.4 or 127.41 of that Act and as if the income tax room was not vacated in accordance with clause 3 of this Agreement.
 - (e) "Teslin Tlingit Council *Income Tax Act*" means the Teslin Tlingit Council law enacted in relation to the income taxation of individuals pursuant to section 14.1.2 of the *Teslin Tlingit Council Self-Government Agreement*, as amended;
 - (f) "Financial Transfer Agreement" means the agreement referred to in section 16 of the *Teslin Tlingit Council Self-Government Agreement*;
 - (g) "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;
 - (h) "income tax", means the income tax imposed by the Teslin Tlingit Council *Income Tax Act*;
 - (i) "individual" means a person other than a corporation and includes a trust referred to in subdivision K of Division B of Part I of the federal Act;
 - (j) "Minister" means the Minister of Finance of Canada and, where circumstances require, the Deputy Minister or any officer or class of officers authorised by the Minister of Finance;
 - (k) "Minister of National Revenue" means the Minister of National Revenue and, where circumstances require, the Deputy Minister or any officer or class of officers authorised by the Minister of National Revenue;
 - (l) "non-citizen" means an individual who is not a Citizen;

- (m) "settlement land" means settlement land of the Teslin Tlingit Council pursuant to the *Teslin Tlingit Council Final Agreement*, to the *Yukon First Nations Land Claim Settlement Act*, S.C., 1994, c.34 and to *An Act Approving Yukon Land Claims Final Agreements*, S.Y., 1993, c.19;
- (n) "taxation year" has the meaning given to that expression in subsection 249 (1) of the federal Act;
- (o) "year", unless the context otherwise requires, means the calendar year during the term of this Agreement

(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 therein.

(4) In this Agreement, where the reference is to an Act of Parliament of Canada or an Act of the Teslin Tlingit Council, the reference shall be deemed to be a reference to the Act or Legislation, or regulations thereunder, all as amended from time to time whether such amendment is made before or after the execution of this Agreement.

COVENANTS BY CANADA

2. (1) Canada, as agent of the Teslin Tlingit Council, shall collect for and on behalf of the Teslin Tlingit Council income tax for each taxation year to which this Agreement applies, and shall remit amounts in respect thereof to the Teslin Tlingit Council in accordance with this Agreement.

(2) Subject to sub-clause 10(5), Canada shall administer this Agreement free of charge. In particular, any costs, charges or expenses (including amounts required to be paid in respect of prosecutions or other legal proceedings) incurred in the collection by Canada of the income tax for any taxation year to which this Agreement applies shall be paid by Canada.

3. (1) Canada agrees, in respect of each of the first ten taxation years of this Agreement, to vacate 75% of the federal tax payable by an individual residing within Settlement Land on the last day of the taxation year.

(2) Canada agrees, in respect of each subsequent taxation year, to vacate 95% of the federal tax payable by an individual residing within Settlement Land on the last day of the taxation year.

COVENANTS BY THE TESLIN TLINGIT COUNCIL

4. The Teslin Tlingit Council agrees, in respect of each taxation year to which this Agreement applies, to impose an income tax under the Teslin Tlingit Council *Income Tax Act* in the following manner:

- (a) in the case of an individual who resides within Settlement Land on the last day of the taxation year and who has no income earned in the year outside the Yukon, income tax shall be expressed, for the first ten years of this Agreement, as 75% of the federal tax payable by that individual for the year and, for subsequent years as 95% of the federal tax payable;
- (b) in the case of an individual who resides within Settlement Land on the last day of the taxation year and who has income earned in the year outside the Yukon, income tax shall be the amount that bears the same relation to 75% of the federal tax payable for the first ten years of this Agreement, or 95% for subsequent years, that the income earned in the year on Settlement Land bears to his income for the year.

5. The income tax imposed under the Teslin Tlingit Council *Income Tax Act* shall be imposed at the same rate for all residents within Settlement Land, whether Citizen or non-citizen.

6. For the purposes of the Teslin Tlingit Council *Income Tax Act*, the Teslin Tlingit Council agrees, in respect of each taxation year to which this Agreement applies, to rely on the provisions of the federal Act relating to the administration, enforcement and collection of the income tax.

PAYMENTS TO THE TESLIN TLINGIT COUNCIL

7. (1) Payments shall be made to the Teslin Tlingit Council by Canada in respect of each taxation year to which this Agreement applies on account of income tax for that year.

(2) For the purposes of sub-clause 7(1), but subject to sub-clause 7(3), the amount payable to the Teslin Tlingit Council for each taxation year is the amount that is equal to the aggregate of

- (a) amounts assessed under the Teslin Tlingit Council *Income Tax Act* on or before the last day of the year following the taxation year in respect of:
 - (i) income tax for the taxation year; and
 - (ii) income tax, or adjustments thereof, for taxation years to which this Agreement applies that have not been included in the calculation of the amount payable for a previous taxation year; and

(b)

- (i) where sub-clause 3(1) applies, 75% of amounts, as determined by the Minister, that have been deducted at source from employees in accordance with the federal Act in respect of income tax for that taxation year and for all previous taxation years to which this Agreement applies, and that have not, because of the failure of such employees to file returns, been applied on or before the last day of the year following the taxation year on account of the tax payable by such employees under the federal Act for the year or for any previous year, less any amount included in a determination under this paragraph in respect of a previous taxation year; and
- (ii) where sub-clause 3(2) applies, "95%" is substituted for "75%" in sub-paragraph 7(2)(b)(i).

- (3) For each taxation year to which this Agreement applies, the Minister shall
 - (a) estimate the amount of the payment that, in his opinion, is due to the Teslin Tlingit Council under sub-clause (2) in respect of that taxation year;
 - (b) subject to sub-clause (4), make payments to the Teslin Tlingit Council on the basis of the estimate referred to in paragraph (a) in 12 equal instalments, once each month, throughout the twelve-month period, commencing with the month immediately following the commencement of that taxation year, on or before the last working day of the month; and
 - (c) furnish the Teslin Tlingit Council with a statement outlining the method of calculating the estimate referred to in paragraph (a) at the time the first payment is made for that taxation year.
- (4) If, in a taxation year during which payments are being made in accordance with sub-clause (3), it becomes apparent to the Minister that, owing to the availability of more accurate information, the estimate made in paragraph (3)(a) in respect of that taxation year should be revised, the Minister shall make a new estimate and the remaining payments in respect of that taxation year shall be adjusted accordingly.
- (5) After each taxation year in respect of which payments in accordance with sub-clauses (3) and (4) have been made by Canada to the Teslin Tlingit Council, and in no case later than the 31st day of December next following that taxation year, the Minister shall, on the basis of information available on the 15th day of October next following the close of that taxation year, in respect of income tax:
 - (a) make an interim recalculation of the amount payable to the Teslin Tlingit Council in accordance with sub-clause (2);

(b) furnish the Teslin Tlingit Council with a statement outlining the method and result of such interim recalculation;

and the Minister may, within 30 days following said December 31, pay to the Teslin Tlingit Council all or such part as may be determined, of the amount, if any, by which the amount of such interim recalculation exceeds the total of the payments made to the Teslin Tlingit Council during that taxation year.

(6) Notwithstanding anything in this clause, the aggregate of all amounts to be paid to the Teslin Tlingit Council by Canada on account of income tax in respect of each taxation year to which this Agreement applies shall be the amount that is equal to the aggregate of:

- (a) the total amount of income tax assessed under the *Teslin Tlingit Council Income Tax Act*; and
- (b) the amount, as determined by the Minister, that is equal to
 - (i) where sub-clause 3(1) applies, 75% of the total amount of unclaimed deductions at source made from employees under the federal Act; and
 - (ii) where sub-clause 3(2) is applicable, 95% of the amount of unclaimed deductions at source made from employees under the federal Act in respect of each year covered by this Agreement.

8. The Minister shall, on or before the last working day of March of each year following a taxation year in which payments are made to the Teslin Tlingit Council under clause 7, supply to the Teslin Tlingit Council a statement prepared by the Department of National Revenue showing

- (a) the income tax assessed prior to the 31st day of December of the year just ended in respect of the immediately preceding year, or other preceding year where the assessment was not included in a previous statement supplied under this clause; and
- (b) the amount, as determined by the Minister as of the 31st day of December of the year just ended, that is due to the Teslin Tlingit Council in respect of amounts deducted at source from employees in accordance with the federal Act in respect of the preceding years during the term of the collection agreement that were not applied in respect of income tax payable by such employees in respect of such years because of their failure to file returns for those years.

DEBTS DUE TO CANADA

9. Where, under this Agreement, the Teslin Tlingit Council has received an amount in excess of the amount to which it is entitled, the Minister may recover that excess amount as a debt due to Canada, in the following manner:

- (a) Unless Canada and the Teslin Tlingit Council agree otherwise, in any case where this Agreement is in effect, the Minister shall recover any overpayment through a set-off against future payments from Canada to the Teslin Tlingit Council pursuant to this Agreement, in twelve equal instalments, beginning in the month after the date that the Auditor General's report, referred to in subclause 17(1), is provided to the Teslin Tlingit Council; or
- (b) in any case where this Agreement has been terminated, an amount equal to any overpayment will be paid to Canada by the Teslin Tlingit Council within sixty days from the date that the Auditor General's report, referred to in subclause 17(1), is provided to the Teslin Tlingit Council.

ADMINISTRATION

10. (1) The Minister of National Revenue will administer the Teslin Tlingit Council *Income Tax Act* for and on behalf of the Teslin Tlingit Council.

(2) The Teslin Tlingit Council agrees, in respect of each taxation year to which this Agreement applies, that the Minister of National Revenue has and may exercise all the powers of the Teslin Tlingit Council for the administration, enforcement and collection of income tax under the Teslin Tlingit Council *Income Tax Act*, all of which shall operate concurrently with, but not in duplication of, the federal Act.

(3) To assist the Minister of National Revenue in the administration of the Teslin Tlingit Council *Income Tax Act*, the Teslin Tlingit Council agrees to provide to the Minister of National Revenue upon request with information that it may have in its possession

- (a) relating to any person liable for tax under the Teslin Tlingit Council *Income Tax Act*; and
- (b) relating to real property valuations and transactions, except to the extent that the communication of any such information is specifically prohibited pursuant to the enactment of the Teslin Tlingit Council under which the information has been collected.

(4) To facilitate the Minister of National Revenue's administration of the Teslin Tlingit Council *Income Tax Act*, the Teslin Tlingit Council will accept as final and binding all interpretations, assessments, reassessments, decisions and other steps made or

taken by the Minister of National Revenue under the Teslin Tlingit Council *Income Tax Act* in pursuance of this Agreement.

(5) The Teslin Tlingit Council agrees that Canada will retain interest and penalties collected by the Minister of National Revenue in respect of the Teslin Tlingit Council *Income Tax Act*.

11. (1) Where, in the opinion of the Minister, the Minister of National Revenue or the Teslin Tlingit Council, an amendment to the Teslin Tlingit Council *Income Tax Act*, or this agreement would improve the effective administration, collection or enforcement of the Teslin Tlingit Council *Income Tax Act*, the Minister and the Teslin Tlingit Council agree to meet and discuss the issue.

(2) On reaching a potential solution Canada and the Teslin Tlingit Council agree to take whatever steps are in their respective powers, subject to any necessary approvals, authorisations or legislative requirements, to effect the solution.

(3) This provision in no way obligates Canada to consult or advise the Teslin Tlingit Council of any amendments or contemplated amendments to the federal Act.

12. (1) Notwithstanding that this Agreement has ended or the Agreement has been terminated, the Minister of National Revenue shall continue to assess and collect income tax in respect of the taxation years to which this Agreement applies.

(2) The Teslin Tlingit Council agrees to ensure that, for the purposes of assessing and collecting the income tax as described in sub-clause 12(1), the Minister of National Revenue shall have all the powers with respect to the assessment and collection of income tax after the end of this Agreement in respect of each taxation year to which this Agreement applies, that they would have had if the assessment were made and the collection effected during such particular taxation years.

(3) Where this Agreement has ended or this Agreement has been terminated and any loss is incurred by Canada by reason of the fact that the Teslin Tlingit Council has failed to provide the Minister of National Revenue with authority sufficient to collect the income taxes, an amount equal to the amount of the loss may be recovered by Canada as a debt due to Canada by the Teslin Tlingit Council.

13. (1) Actions, suits, prosecutions or other legal proceedings required to be brought or taken under the Teslin Tlingit Council *Income Tax Act* shall be brought or taken by Canada on behalf of the Teslin Tlingit Council

- (a) in the same name in which such action, suit, prosecution or other legal proceeding would have been brought or taken if brought or taken under corresponding provisions of the federal Act, or
- (b) in such other name as would be appropriate if such action, suit, prosecution or other legal proceeding were brought or taken by, or on behalf of the Teslin Tlingit Council,

and the Teslin Tlingit Council agrees to assist Canada with respect to the conduct of any such action, suit, prosecution or other legal proceeding or any matter related or incidental thereto.

(2) In the event of a specific request, the Teslin Tlingit Council agrees to forward to the Minister of National Revenue, with all reasonable dispatch, any document that may be received by it relating to any assessment made under the Teslin Tlingit Council *Income Tax Act* or relating to any action, suit, prosecution or other legal proceeding brought or taken under the Teslin Tlingit Council *Income Tax Act*.

COLLECTION

14. Where, in respect of any taxation year to which this Agreement applies, amounts are required to be paid by a taxpayer on account of tax payable under the Teslin Tlingit Council *Income Tax Act* and under the federal Act, and the Minister of National Revenue receives a payment on account of the tax payable by the taxpayer for that year under either the Teslin Tlingit Council *Income Tax Act* or the federal Act, or both, the payment so received shall be applied by the Minister of National Revenue towards the tax payable by the taxpayer under the Teslin Tlingit Council *Income Tax Act* for that year, and the remainder, if any, shall be applied towards the tax payable by the taxpayer for that year under the federal Act.

UNIFORMITY OF TESLIN TLINGIT COUNCIL LEGISLATION

15. (1) Where, in the opinion of the Minister, the Teslin Tlingit Council *Income Tax Act* does not

- (a) give to the Minister of National Revenue authority sufficient to collect the income tax,
- (b) admit of sufficient uniformity in the administration of the federal Act and Teslin Tlingit Council *Income Tax Act*, or
- (c) provide for the imposition and collection of income taxes in a manner similar to that provided in the income tax acts or ordinances of other provinces or other First Nations that have entered into collection agreements,

the Minister shall so notify the Teslin Tlingit Council in writing and shall specify the amendments and alterations to the Teslin Tlingit Council *Income Tax Act* that the Minister considers necessary.

(2) Where the Teslin Tlingit Council fails to amend or alter the Teslin Tlingit Council *Income Tax Act* within six months of the receipt of the notice referred to in sub-clause (1), the Minister may give a notice to terminate in the manner prescribed in sub-clause 20(1).

TAXATION OF NON-CITIZENS

16. (1) Where, in the opinion of the Minister, the Teslin Tlingit Council *Income Tax Act* imposes income tax in respect of non-citizens who are resident within Settlement Land at a rate different than the rate of taxation imposed on Citizens who are resident on Settlement Land, the Minister shall notify in writing the Teslin Tlingit Council of the concern in respect of the discriminatory taxation of non-citizens.

(2) If, in the opinion of the Minister, the Teslin Tlingit Council has not undertaken reasonable efforts within 90 days after the notice in writing is received to remedy the discriminatory taxation of non-citizens, the Minister may give notice to terminate in the manner prescribed in clause 20.

INSPECTION

17. (1) The Minister will provide to the Teslin Tlingit Council a report annually, signed by the Auditor General of Canada, on the results of applying specified auditing procedures to the reconciliation procedures described in clause 8, in a format consistent with current auditing and reporting practices as expressed in the "*Statement of Income Taxes Payable to the Territories in respect of the 1995 and Prior Taxation Years*," or in any other format as may be agreed upon.

(2) The Auditor General's report will constitute the only auditing procedures conducted with respect to Canada's obligations under this agreement and the Teslin Tlingit Council hereby agrees that it will have no right to inspect the books and records of Canada.

AMENDMENT

18. (1) Amendments to this Agreement, including requests to administer special tax measures, may be made through the exchange of letters between the Teslin Tlingit Council and the Minister, subject to any necessary approvals, authorisations or legislative requirements.

(2) An amendment 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.

(3) Canada and the Teslin Tlingit Council shall review the terms of this Agreement, in particular the amount of federal tax room vacated by Canada in favour of the Teslin Tlingit Council pursuant to clause 3, in the event that the value of the eligible revenue offset to be made under the *Financial Transfer Agreement* for a fiscal year exceeds the value, before the deduction of the offset, of the annual formula grant to be made to the Teslin Tlingit Council by Canada pursuant to that Agreement for that fiscal year.

DISPUTE SETTLEMENT

19. (1) In the event of a dispute between the Teslin Tlingit Council and the Minister arising out of the interpretation of this Agreement, the parties agree to use the procedure set out in sub-clauses (2) to (6) below prior to pursuing any other legal remedy.

(2) 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 in good faith to settle the dispute.

(3) If, within sixty (60) days after this meeting, the parties have failed to resolve the dispute, they agree to submit the dispute to mediation and to equally bear the costs of that mediation.

(4) The parties will jointly select a mediator. If after thirty (30) days the parties are unable to agree upon the choice of a mediator, then a judge of the Court of Appeal of the Yukon Territory will choose a mediator.

(5) The parties agree to participate in good faith in the mediation process for a period of sixty (60) days.

(6) The parties may mutually determine time periods other than those referred to in sub-clauses (2) to (5).

(7) This clause does not apply to clauses 15 and 16.

TERMINATION

20. (1) A notice to terminate the Agreement shall be given

(a) in the case of termination by Canada, by notice in writing given by the Minister to the Teslin Tlingit Council; or

(b) in the case of termination by the Teslin Tlingit Council, by notice in writing given by the Teslin Tlingit Council to the Minister.

(2) A notice to terminate this Agreement shall, with respect to any year following the end of the term,

(a) terminate the obligation of the Teslin Tlingit Council to keep the Teslin Tlingit Council *Income Tax Act* in harmony with the federal Act; and

(b) terminate the obligation of Canada to collect income tax for and on behalf of the Teslin Tlingit Council, and to make any payments under this Agreement in respect of income tax so collected.

(3) Termination of the obligations of the Teslin Tlingit Council and of Canada as provided in paragraphs 1(a) and (b) respectively shall not affect the operation of any clause of this Agreement in respect of the taxation years to which this Agreement applies (being the period January 1, 1999 to December 31 of the year that this Agreement is terminated), and 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 taxation years, and the provisions of this Agreement relating to payments to the Teslin Tlingit Council in respect of income tax for that period shall be adjusted to take into account such termination.

SAVING

21. Nothing in this Agreement shall limit or restrict, or be construed as limiting or restricting, Canada's right to alter or vary, in such manner as Canada may determine, the federal Act or the regulations made thereunder.

22. (1) Nothing in this Agreement shall be or be construed as an undertaking by Canada to collect income tax or take any action with respect to the collection of income tax where, in the opinion of the Minister, a doubt exists that the Teslin Tlingit Council has provided sufficient statutory or other authority for the imposition or collection of such income tax.

(2) Where Canada has been unable to collect income tax or amounts payable on account of income tax by reason of there being, in the opinion of the Minister, doubtful authority to do so as referred to in subclause (1), the amount that, in the opinion of the Minister, Canada has thereby failed to collect may be recovered by Canada as a debt due to Canada by the Teslin Tlingit Council notwithstanding that payments on account have been made to the Teslin Tlingit Council as if there were sufficient authority.

23. Nothing contained in this Agreement shall be deemed to vary or terminate any of the rights or obligations of the Teslin Tlingit Council or of Canada under any agreement heretofore 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.

TERM

24. (1) The period covered by this Agreement, except as otherwise specifically provided herein, is the period commencing on the 1st day of January 1999 and ending on the 31st day of December of that year in respect of which, pursuant to sub-clause (2), notice is given by Canada or the Teslin Tlingit Council to terminate the collection agreement.

(2) Any termination of this Agreement shall have effect as of the 31st day of December of any year, provided that,

- (a) in the case of Canada, the Minister has given notice to terminate in the manner prescribed in paragraph 20(1)(a) at any time preceding the commencement of that year; or
- (b) in the case of the Teslin Tlingit Council, the Teslin Tlingit Council has given notice to terminate in the manner prescribed in paragraph 20(1)(b) at any time prior to the 1st day of October of that year.

SIGNATURE

(4) This document may be signed in counter part. Each signature hereon 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.



Chief,
Teslin Tlingit Council

Date: Dec 15, 1998



Minister of Finance
Government of Canada

Date: DEC 8 1998