

TAX ADMINISTRATION AGREEMENT

BETWEEN:

The Government of Canada,
as represented by the
Minister of Finance ("Canada")

and

The Cowichan Tribes,
as represented by the
Council of the Cowichan Tribes ("COWICHAN")

Whereas:

Cowichan wishes to levy on the sale of tobacco products, alcoholic beverages and fuel on its reserves, a tax called the Cowichan Tribes Community Improvement Fee, in accordance with the authority granted to the council in the *Budget Implementation Act, 2000*, S.C., 2000, c.14;

Cowichan desires that, subject to the terms and conditions set out in this agreement, Canada shall collect, administer and enforce the tax on behalf of Cowichan; and

Under subsection 7(1) of the *Federal-Provincial Fiscal Arrangements Act*, R.S.; c. F-8, with the approval of the Governor in Council, the Minister of Finance is authorized to enter into an administration agreement with respect to the Cowichan Tribes Community Improvement Fee;

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. For the purposes of this agreement:

«Act» means the *Budget Implementation Act, 2000*, S.C., 2000, c.14;

«Auditor General of Canada» means the Auditor General of Canada and includes, where circumstances require, the Deputy Auditor General or any officer or class of officer authorized by the Auditor General of Canada;

«by-law» means a by-law made by the Council of the Cowichan Tribes under the authority of the Act;

«consumer» has the meaning assigned by section 123 of the *Excise Tax Act*;

«designated products» means alcoholic beverages, fuel and tobacco products;

«Gross CTCIF Revenues» means the aggregate of all CTCIF reported as collected or collectible on the schedules received by the Minister prior to March 1st which relate to reporting periods ending between January 1st and December 31st of the previous year and from earlier reporting periods that had not been taken into account in determining Gross CTCIF Revenues for prior years;

«interim payments» means payments made to Cowichan during the year based on an estimate of net CTCIF Revenues for that year;

«CTCIF» means the Cowichan Tribes Community Improvement Fee levied pursuant to a by-law;

«Minister» means the Minister of National Revenue and includes, where circumstances require, the Commissioner of Customs and Revenue or any officer or class of officers authorized by the Minister of National Revenue;

«Minister of Finance» means the Minister of Finance and includes, where circumstances require, the Deputy Minister of Finance or any officer or class of officers authorized by the Minister of Finance;

«month» means, unless the context otherwise requires, a calendar month;

«Pre-Adjusted CTCIF Revenues» for a year means Gross CTCIF Revenues for that year multiplied by the weighted final sales factor for the year to which the Gross CTCIF Revenues relate (and in the event that the Gross CTCIF Revenues include amounts relating to reporting periods ending in prior years, these amounts should be multiplied, where possible, by the weighted final sales factor applicable for the year in which the relevant reporting period ended);

«reconciliation period» means the calendar year prior to the year in which the reconciliation is performed;

«registrant» has the meaning assigned by section 123 of the *Excise Tax Act*;

«schedule» means the First Nation Tax (FNT) Schedule to a GST/HST return;

«weighted final sales factor» means, in respect of a year, the proportion that collected or collectible CTCIF on sales to consumers from a location on reserve is of the aggregate of all CTCIF reported as collected or collectible on schedules;

«year» means, unless the context otherwise requires, a calendar year during the term of this agreement.

2. Any term not defined in section 1 has the meaning assigned to it in the Act.

First Nation Covenants

3. During the term of this Agreement, Cowichan shall keep in force a by-law which:
 - (a) conforms to the requirements of section 25 of the Act; and
 - (b) is consistent with subsection 26(2) of the Act with respect to the application of Part IX of the *Excise Tax Act* and proceedings that could be taken under any other Act of Parliament in respect of the tax imposed under subsection 165(1) of the *Excise Tax Act*.

Covenants by Canada

4. Canada agrees to collect for and on behalf of Cowichan, the CTCIF for the term of this agreement and to remit amounts in respect thereof to Cowichan in accordance with this agreement.
5. Canada agrees that, in accordance with section 27 of the Act, no tax under subsection 165(1) of the *Excise Tax Act* will be levied on the sale of designated products on reserve that are subject to the CTCIF while this agreement is in effect.

Costs of Administration

6. Any costs, charges or expenses, including amounts required to be paid in respect of prosecutions or other legal proceedings, incurred by Canada in the collection, enforcement and administration of the CTCIF for any year during the term of the agreement will be paid by Canada.
7. Unless otherwise agreed to by the parties, Cowichan will pay its own costs, charges and expenses, should it become party to litigation, either voluntarily or because a party other than Canada requires it, relating to the validity of the Act, a by-law or the CTCIF.

Payments to Cowichan

8. The parties agree that the interim payments will be an estimate of net CTCIF Revenues for that year divided into twelve instalments. This estimate will be based on the best data available and acceptable to the parties and may, where appropriate, take into account any factor (e.g., growth of tax revenues over the estimate period) agreed to by the parties. Canada and Cowichan may agree, at any time, to change the amount of interim payments to more accurately reflect net CTCIF Revenues should new or better data indicate that the estimate on which interim payments are based is significantly inaccurate.
9. Canada will calculate the estimate of net CTCIF Revenues, on which interim payments will be based, in consultation with the band. The estimate for the first twenty-eight month period will be agreed to by the parties prior to the implementation of the CTCIF. The estimate for subsequent periods will take place within sixty days of the receipt, by Cowichan, of the Auditor General's report referred to in article 39 of this Agreement.
10. Interim payments will be paid to Cowichan on a monthly basis. The first interim payment, which will include revenues from CTCIF on designated products, will be made on or before the last working day in the month after the coming into force of the CTCIF and subsequent payments will be made on or before the last working day of each month thereafter until the agreement is terminated.

Annual Determination of CTCIF Revenues

11. An annual estimate of Gross CTCIF will be made for each product or group of products subject to CTCIF.
12. In recognition of the fact that only CTCIF collected or collectible on sales made to final consumers from a location on reserve should be taken into account when determining CTCIF revenues, an annual estimate of Pre-Adjusted CTCIF Revenues will be made.
13. Pre-Adjusted CTCIF revenues for a year will be determined as follows:

$$CTCIF_i = GCTCIF_i * WFSF_i$$

where

CTCIF Represents total CTCIF Revenues in period t;

GCTCIF Represents CTCIF collected or collectible as per the schedule in period t;

WFSF Represents the weighted final sales factor, in period t, indicating the amount of GCTCIF collected related to final sales, based upon

estimates acceptable to the parties; and,

T Represents a specific time period.

14. The weighted final sales factor which is equivalent to an estimate of the proportion of CTCIF taxable sales which are made to final consumers excluding the proportion of sales made to businesses which are eligible to an input tax credit, will be determined in the following manner:

$$WFSF_t = \frac{((FSFA_t * AS_t) + (FSFTP_t * TPS_t) + (FSFG_t * GS_t) + (FSFD_t * DS_t) + (FSFP_t * PS_t))}{(AS_t + TPS_t + GS_t + DS_t + PS_t)}$$

where

FSFA represents the estimated final sales factor, in period t, established by the parties for alcoholic beverages subject to the CTCIF;

AS represents the estimated sales of alcoholic beverages in dollars, in period t, sold on the reserve and subject to the CTCIF;

FSFTP represents the estimated final sales factor, in period t, established by the parties for tobacco products subject to the CTCIF;

TPS represents the estimated sales of tobacco products in dollars, in period t, sold on the reserve and subject to the CTCIF;

GS represents the estimated sales of gasoline in dollars, in period t, sold on the reserve and subject to the CTCIF;

FSFD represents the estimated final sales factor, in period t, established by the parties for diesel fuel subject to the CTCIF;

DS represents the estimated sales of diesel fuel in dollars, in period t, sold on the reserve and subject to the CTCIF;

FSFP represents the estimated final sales factor, in period t, established by the parties for propane subject to the CTCIF;

PS represents the estimated sales of propane in dollars, in period t, sold on the reserve and subject to the CTCIF;

15. If either party becomes aware of any change in circumstances that could have an impact on the current final sales factor, it will provide notice to the other party. As soon as is possible after such notice is given, the parties will meet to discuss and attempt to reach agreement on the following:

- (a) a new weighted final sales factor;
- (b) the date that the new weighted final sales factor will take effect; and
- (c) in the event that the new weighted final sales factor takes effect on a date other than January 1st, a transitional weighted final sales factor representing an average of the old weighted final sales factor and the new weighted final sales factor, which will be applied in the year the amendment takes effect.

16. Subject to article 17, the Pre-Adjusted CTCIF Revenues will be adjusted to arrive at net CTCIF Revenues for the year:

- (a) CTCIF amounts assessed or reassessed by the Minister during that year shall be added or deducted as the case requires; and
- (b) CTCIF amounts relating to the year in question, or to prior years, that have been successfully appealed or settled and repaid to a registrant or other person during the reconciliation period shall be deducted.

17. An adjustment will only be made if it relates to a change in a registrant's tax collected or collectible reported on a schedule. Where possible, such adjustment should be multiplied by the weighted final sales factor that applied for the year in which the relevant reporting period ended, or in a case where no schedule is filed, the weighted final sales factor that would have applied had the information been included in a schedule filed for the relevant reporting period.

18. The parties also agree to assume, for the purposes of determining annual net CTCIF Revenues, that the amount of GST on retail sales of designated products made on-reserve and delivered to a location off-reserve are equivalent to the amount of CTCIF on retail sales of designated products made off-reserve and delivered to a location on-reserve. As a result, no adjustment relating to this issue is required for the purposes of determining net CTCIF Revenues. However, should either party become aware of a significant imbalance in the relationship between retail sales of designated products made on-reserve and delivered to a location off-reserve and retail sales of designated products made off-reserve and delivered to a location on-reserve, the parties agree to review this assumption with a view to ensuring that the calculation of net CTCIF Revenues is adjusted appropriately.

19. From time to time, the parties may agree to conduct or have conducted a survey of final vs. business sales of one or more products subject to CTCIF. Cowichan and Canada will each assume fifty (50) percent of the cost of surveys conducted, Cowichan's share of the cost being calculated net of any federal transfer.

20. Once a survey pursuant to article 19 has been completed and the data analysed, the parties will meet and attempt to reach agreement on the following:

- (a) a new weighted final sales factor;

- (b) the date that the new weighted final sales factor will take effect; and
- (c) in the event that the new weighted final sales factor takes effect on a date other than January 1st, a transitional weighted final sales factor representing an average of the old weighted final sales factor and the new weighted final sales factor, which will be applied in the year the amendment takes effect.

Reconciliation

- 21. A reconciliation comparing the interim payments paid to Cowichan during the reconciliation period and net CTCIF Revenues for the reconciliation period will be made once a year. A copy of such reconciliation, together with any relevant information used in arriving at net CTCIF Revenues, except in cases where the provision of such information is prohibited by law, and the Auditor General's report, referred to in article 39, will be provided to Cowichan on or before October 1st.
- 22. The first reconciliation will be provided to Cowichan on or before October 1, 2003.
- 23. If the reconciliation determines that net CTCIF Revenues for the reconciliation period exceeded interim payments made to Cowichan during the reconciliation period, so that an amount remains payable to Cowichan, such amount will be paid to Cowichan in the following manner, unless Canada and Cowichan agree otherwise:
 - (a) in any case where the agreement is in effect, the amount will be paid to Cowichan in twelve equal monthly instalments beginning in the month after the Auditor General's report, referred to in article 39, is provided to Cowichan; or
 - (b) in any case where the term of the agreement has ended, the amount will be paid to Cowichan within sixty days from the date that the Auditor General's report, referred to in article 39, is provided to Cowichan.
- 24. If the reconciliation determines that the interim payments made to Cowichan in the reconciliation period exceeded net CTCIF Revenues for that reconciliation period, such overpayment will be recovered in the following manner, unless Canada and Cowichan agree otherwise:
 - (a) in any case where the agreement is in effect, the amount will be recovered as a set-off against future interim payments from Canada to Cowichan in twelve equal monthly instalments beginning in the month after the Auditor General's report, referred to in article 39, is provided to Cowichan; or
 - (b) in any case where the term of the agreement has ended, the amount will be paid to Canada by Cowichan within sixty days from the date that the Auditor General's report, referred to in article 39, is provided to the Cowichan.

25. Where, at any time within four years after the report of the Auditor General, referred to in article 39, for a reconciliation period has been delivered to Cowichan, either Canada or Cowichan discovers information indicating that the weighted final sales factor for that reconciliation period was inaccurate, it will give notice to the other party. As soon as possible after such notice is given, the parties will discuss and attempt to reach agreement on what the weighted final sales factor should have been in the prior year or years.
26. Where an agreement on a new weighted final sales factor for a given reconciliation period is reached, net CTCIF Revenues for that period will be re-calculated by taking the Gross CTCIF Revenue figure from that reconciliation period multiplying it by the new weighted final sales factor to arrive at a new Pre-Adjusted CTCIF Revenue figure. This new Pre-Adjusted CTCIF Revenue figure will then be adjusted by repeating the procedure outlined in article 16 for the relevant year.
27. If the re-calculation indicates an underpayment to Cowichan, such amount will be paid to Cowichan in the following manner, unless Canada and Cowichan agree otherwise:
 - (a) in any case where the agreement is in effect, the amount will be paid to Cowichan in twelve equal monthly instalments beginning in the month after the re-calculation has been completed; or
 - (b) in any case where the term of the agreement has ended, the amount will be paid to Cowichan within sixty days from the date that the recalculation has been completed.
28. If the re-calculation indicates an overpayment to Cowichan, such amount will be recovered from Cowichan in the following manner, unless Canada and Cowichan agree otherwise:
 - (a) in any case where the agreement is in effect, the amount will be recovered as a set-off against future interim payments from Canada to Cowichan in twelve equal monthly instalments beginning in the month after Cowichan has received written notification of the results of the re-calculation; or
 - (b) in any case where the term of the agreement has ended, the amount will be paid to Canada by Cowichan within sixty days from the date that Cowichan receives written notification of the results of the re-calculation.

Administration

29. The Minister will administer the CTCIF on behalf of Cowichan.
30. Cowichan agrees that, in addition to any other forms vendors may be required to file, vendors selling designated products from a location on reserve are required to file a separate schedule with the Minister.
31. In order to assist the Minister in matters relating to the collection, administration and enforcement of the CTCIF, Cowichan agrees to provide such information or other assistance that is reasonably in its power to provide, when such assistance is requested by the Minister. In particular, Cowichan agrees to assist in the following manner:
 - (a) to provide information in its possession relating to any person liable to pay tax, or relating to any vendor under the CTCIF;
 - (b) to provide information in its possession relating to transactions subject to the CTCIF;
 - (c) to take whatever steps are in its power to grant access to the Minister for the purposes of the administration of the CTCIF; and
 - (d) to take whatever steps are in its power to assist in the enforcement of the CTCIF.
32. In order to facilitate the Minister's administration of the CTCIF, Cowichan will accept as final and binding all interpretations, assessments, reassessments, decisions and other steps made or taken by the Minister under the CTCIF in accordance with this agreement. Nothing in this article is intended to restrict Cowichan from using any remedy or procedure that may be available to it in its capacity as a registrant under the CTCIF.
33. Cowichan agrees that Canada will retain interest and penalties collected by the Minister in respect of the CTCIF.
34. Where, in the opinion of the Minister of Finance, the Minister or Cowichan, an amendment to the Act, a by-law, this agreement or the schedule would improve the effective administration, collection or enforcement of the CTCIF, the Minister of Finance and Cowichan agree to meet and discuss the issue. On reaching a potential solution Canada and Cowichan agree to take whatever steps are in their respective powers, subject to any necessary approvals, authorizations or legislative requirements, to effect the solution. However, it is understood that this provision in no way creates any obligation on Canada to consult or advise Cowichan of any amendments or contemplated amendments to the *Excise Tax Act*.

35. Notwithstanding that the term of this agreement has ended the Minister will continue to collect and assess and take steps to ensure the administration of the CTCIF in respect of any period during which the agreement was in effect.
36. Cowichan agrees to ensure that the Minister will have the authority, after the term of the agreement has ended, to carry out the functions contemplated in article 35.
37. Actions, suits, prosecutions or other legal proceedings required to be brought or taken in the administration or enforcement of the CTCIF will be brought or taken by Canada. At the request of the Minister, and subject to article 6:
 - (a) Cowichan will assist Canada with respect to the conduct of any such action, suit, or proceeding or any matter related thereto; and
 - (b) Cowichan will forward to the Minister any document that may be received by it relating to any assessment under the CTCIF or relating to any action, suit or other legal proceeding brought or taken under the CTCIF.

Enforcement

38. For greater certainty, for the purposes of section 89 of the *Indian Act*, Cowichan acknowledges that enforcement measures undertaken by the Minister with respect to the CTCIF are undertaken at the instance of Cowichan.

Inspection

39. The Minister of Finance will annually provide to Cowichan a report, signed by the Auditor General of Canada, on the results of applying specified auditing procedures to the reconciliation described in article 21 and in a format agreed to between Cowichan, the Minister of Finance and the Auditor General of Canada.
40. The Auditor General's report will constitute the only auditing procedures conducted with respect to Canada's obligations under this agreement.

Dispute Settlement

41. In the event of a dispute between Cowichan and Canada arising out of or in connection with this agreement, the parties agree to use the procedure set out in articles 42 to 45 prior to pursuing any other legal remedy.
42. Within thirty days of either party receiving written notice from the other of a dispute under this agreement, a meeting will be held between the parties to attempt in good faith to settle the dispute.
43. If, within sixty 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.

44. The parties will jointly select a mediator. If after thirty days the parties are unable to agree upon the choice of a mediator, the matter will be referred to a neutral appointing authority that will be asked to choose a mediator.
45. The parties agree to participate in good faith in the mediation process for a period of sixty days.
46. The parties may mutually determine time periods other than those referred to in articles 42 to 45.

Amendment and Termination

47. Subject to article 48, this agreement may only be amended by agreement, in writing, of both Canada and Cowichan, subject to any necessary approvals, authorizations or legislative requirements.
48. Changes to the amount of interim payments under article 8, the estimate for the first twenty-eight month period pursuant to article 9, changes to the weighted final sales factor under article 15 and changes to the payment schedule of amounts due or owed to Canada or the Cowichan pursuant to clauses 23 and 24, are to be agreed upon and implemented by an exchange of letters between the Chief of the Cowichan and the Senior Assistant Deputy Minister (or Assistant Deputy Minister), Tax Policy Branch, Department of Finance.
49. Any amending document will form part of this agreement and will be effective as of the date specified in such amending document.
50. The parties may mutually agree to terminate the agreement at any time on such terms as they may agree.
51. Cowichan may terminate, at its discretion, this agreement giving at least six months notice, in writing to the Minister of Finance, of Cowichan's desire to terminate this agreement together with a council by-law that repeals the by-law imposing the tax on the date specified in the notice.
52. Canada may terminate, at its discretion, this agreement by giving at least six months notice, in writing to Cowichan's Council, of Canada's desire to terminate this agreement on the date specified in the notice.
53. Where Canada has given Cowichan notice in accordance with article 52, Cowichan will have thirty days from the day it receives the notice to notify Canada if it desires to negotiate a new taxation agreement with Canada. In this case, Canada agrees to make reasonable efforts to negotiate and attempt to reach an agreement, subject to any necessary approvals, authorizations or legislative requirements, on an alternative taxation arrangement with Cowichan.

Effects of Termination

54. The effects of termination will be as follows:

- (a) subject to article 35, the Minister's obligations to collect the CTCIF on behalf of Cowichan will end on the termination date; and
- (b) after the termination date and subject to section 87 of the *Indian Act*, tax on designated products will be payable under subsection 165(1) of the *Excise Tax Act*.

Term

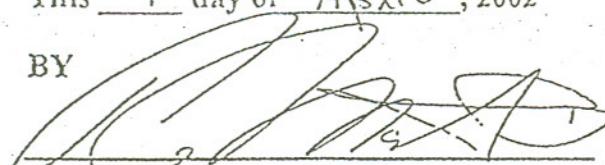
55. The term of this agreement, except as otherwise specified in this agreement, will commence when duly executed by both parties and will end on:

- (a) in the case of termination in accordance with article 50, the date agreed to by the parties;
- (b) in the case of termination by Cowichan in accordance with article 51, the date specified in the notice; and
- (c) in the case of termination by Canada in accordance with article 52, the date specified in the notice.

THE GOVERNMENT OF CANADA
AT Ottawa, ONTARIO

This 9 day of April, 2002

BY



Minister of Finance for the Government
of Canada

COWICHAN TRIBES
AT COWICHAN INDIAN RESERVE NO. 1, B.C.

This 21 day of MARCH, 2002

BY



Chief for the Cowichan Tribes