

**PERSONAL INCOME TAX ROOM SHARING AGREEMENT**

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BETWEEN

**THE GOVERNMENT OF YUKON**

AND

**TA'AN KWACH'AN COUNCIL**

[2013-2022]

## PERSONAL INCOME TAX ROOM SHARING AGREEMENT

### BETWEEN:

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

### AND:

TA’AN KWACH’AN COUNCIL, as represented by the  
Chief (“the First Nation”),

being the Parties (collectively, the “Parties”) to this  
Agreement.

### WHEREAS:

The First Nation desires to exercise its power of direct taxation under subsection 14.1.2 of the Self-Government Agreement so as to raise revenue for First Nation purposes;

The Government of Canada has agreed the First Nation power of direct taxation extends to apply to individuals who are Non-Citizens resident within Settlement Land;

The First Nation has enacted legislation that imposes tax on the income of individuals who are resident within Settlement Land and has entered into an administration agreement with the Government of Canada;

The Parties’ agreement made in 2003 for the sharing by Yukon of its personal income tax room with the First Nation and for the co-ordination of First Nation income tax legislation with Yukon’s *Income Tax Act*, R.S.Y. 2002, c.118, expired on December 31, 2012, and the Parties wish to enter into a new agreement for the term set out herein; and

Section 14.6 of the Self-Government Agreement provides that the Yukon Minister of Finance may enter into taxation agreements with the First Nation;

The Parties do now agree as follows:

### INTERPRETATION

1. In this Agreement, including the recitals hereto:

“administration agreement” means the agreement entered into and in force between Government of Canada and the First Nation, as amended from time to time, for the administration, collection and enforcement of income tax and the sharing of Canada’s personal income tax room with the First Nation;

“Citizen” means a citizen of the Ta’an Kwach’an Council, in accordance with the Constitution of the Ta’an Kwach’an Council;

“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 Act” means the First Nation law enacted under section 14.1.2 of the Self-Government Agreement in relation to the income taxation of individuals and includes regulations established under that Act;

“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 income tax imposed on an individual by the First Nation Act;

“individual” means a person other than a corporation and includes a trust referred to in subdivision K of Division B of Part 1 of the federal Act;

“Non-Citizen” means an individual who is resident in the Yukon but is not a Citizen;

“Self-Government Agreement” means the agreement made by the First Nation, Yukon and the Government of Canada dated January 13, 2002 and given effect by the *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35 and by the *First Nations (Yukon) Self-Government Act*, R.S.Y. 2002, c. 90;

“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*, R.S.Y. 2002, c. 240;

“tax payable under the territorial Act” means the amount that would be the tax payable under the territorial Act by a Citizen or Non-Citizen resident within Settlement Land for the taxation 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 11 or section 12 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 the *Income Tax Act*, R.S.Y. 2002, c. 118 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. In this Agreement, 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.
  - (a) For the purposes of this Agreement, the federal Act, the First Nation Act and the territorial Act shall each be interpreted in accordance with the rules of interpretation that are applicable to that Act.
  - (b) For greater certainty, where reference is made in this Agreement to the First Nation Act, the Self-Government Agreement or the First Nation Final Agreement, the reference shall be deemed to be a reference to the legislation or Agreement as amended from time to time, whether such amendment is made before or after the execution of this Agreement.

#### **YUKON’S UNDERTAKINGS**

5. Yukon agrees that, during this Agreement, an individual may deduct from their tax otherwise payable under the territorial Act for a taxation year, that amount which is equal to 95% of their tax otherwise payable for that year if:
  - (a) the individual resided within Settlement Land on the last day of that year;  
or

- (b) having ceased to be resident in Canada at any time in that year, the individual resided within Settlement Land on the last day of that taxation year that the individual resided in Canada.
- 6. Yukon undertakes, subject to section 20, that during this Agreement the percentage prescribed for the purposes of subsection 12(2) of the territorial Act shall be 95%.
- 7. Yukon shall pay the costs or fees assessed by the Government of Canada against Yukon as a result of the sharing of tax room by Yukon in favour of the First Nation under this Agreement.

### **FIRST NATION'S UNDERTAKINGS**

- 8. The First Nation agrees that, during the term of this Agreement:
  - (a) the First Nation shall impose income tax under the First Nation Act on each Citizen and Non-Citizen who resided within Settlement Land on the last day of the taxation year, or, in the case of a part-year resident, on the last day of the taxation year that the individual resided in Canada;
  - (b) under the First Nation Act, Non-Citizens shall not be subject to such tax, or any requirement connected with the payment of such tax, which is other than or more burdensome than the tax and connected requirements to which Citizens are or may be subject in the same circumstances; and
  - (c) except as provided for in this Agreement, the aggregate federal, Yukon and First Nation income tax to which an individual is or may be subject for a taxation year will not result in an aggregate personal income tax burden for that year which is other than the aggregate federal and Yukon income tax to which that individual, if resident in the Yukon on non-Settlement Land, is or may be subject in the same circumstances under the federal Act and the territorial Act, taken together.
- 9. 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 Yukon a statement prepared by the Government of Canada showing:
  - (a) the income tax assessed under the First Nation Act 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 Government of 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 administration agreement that were not applied in respect of individual income tax payable by such employees under the First Nation Act in respect of such years because of their failure to file returns for those years.
10. In the alternative to section 9, the First Nation shall request the Government of Canada to supply the statement therein described to Yukon and, if so, shall notify Yukon, in writing, of the request.

#### **CO-ORDINATION OF TAX SYSTEMS**

11. This Agreement shall continue only so long as the administration agreement is in effect.
12. Each Party agrees to provide to the other, as soon as possible following enactment, a certified true copy of any amendment, respectively, to the First Nation Act by the First Nation or to the territorial act by Yukon.
- 12.1 A copy of any amendment to the First Nation Act shall be forwarded by the First Nation to the Yukon Minister c/o the Government of Yukon, P.O. Box 2703, Whitehorse, Yukon Y1A 2C6.
  - 12.2 A copy of any amendments to the territorial act shall be forwarded by Yukon to the Chief of Ta'an Kwach'an Council, 117 Industrial Road, Whitehorse, Yukon Y1A 2T8.
13. Where, in the opinion of the Yukon Minister or the First Nation, an amendment to the First Nation Act, the territorial Act, the administration agreement or this Agreement would improve the effective administration, collection or enforcement of the First Nation Act or the territorial Act, Yukon and the First Nation shall meet and discuss the issue.
14. If, after the discussions referred to in section 13, the Parties reach a solution, the Parties shall take whatever steps that are within their respective powers, subject to any necessary approvals, authorizations or legislative requirements and any required co-operation by the Government of Canada, to effect the solution.

15. 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 Yukon may determine, the territorial Act.

15.1 If Yukon conducts public consultations on individual income tax policy, Yukon also will consult directly with the First Nation.

### **DISPUTE RESOLUTION**

16. In the event of a dispute between the First Nation and Yukon arising out of the interpretation or application of this Agreement, other than sections 17, 18 and 20, the Parties agree to use the following procedure diligently and in good faith 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, the Parties shall submit the dispute to mediation. The Parties shall equally bear the costs of that mediation.
- (c) The Parties jointly shall select a mediator. If, within thirty (30) days after submission of the dispute to mediation, the Parties are unable to agree upon the selection of a mediator, the Parties jointly shall apply to a judge of the Supreme Court of Yukon Territory for the selection of a mediator by the Court.
- (d) After the selection of a mediator, the Parties agree to participate in not less than 10 hours of mediation over a maximum period of 45 days unless sooner advised by the mediator that, in his or her opinion, the dispute cannot be resolved through mediation.
- (e) The Parties by consent may vary any time periods referred to in subsections (a) to (d).

### **TERMINATION**

17. If either the First Nation or the Government of Canada has given written notice of termination of the administration agreement, then:

- (a) such notice shall be deemed by the Parties to be notice of termination of this Agreement; and
- (b) the effective date of the termination of this Agreement under subparagraph (a) shall be concurrent with the effective date of termination of the administration agreement;

provided that:

- (c) the extension, cancellation or withdrawal of a notice of termination of the administration agreement shall be deemed by the Parties to apply likewise for the purposes of subparagraphs (a) and (b); and
  - (d) within 90 days after notice under subparagraph (a) is given, the Parties shall meet and discuss available options or alternative arrangements for the sharing of personal income tax room by Yukon in favour of the First Nation.
18. Where, in the opinion of the Yukon Minister, the First Nation Act imposes income tax in breach of the First Nation's obligations under section 8 of this Agreement, then:
- (a) the Minister shall notify the First Nation in writing of the particulars of the breach alleged; and
  - (b) if the Parties have not resolved the matter or, in the opinion of the Yukon Minister, the First Nation has not undertaken reasonable efforts to remedy the breach within 90 days after notice under subsection (a) is given, Yukon may terminate this Agreement by giving written notice of termination to the First Nation.
19. If a breach of this Agreement, other than a breach described in section 18, is alleged by Yukon, the Parties shall follow the dispute resolution process set out in this Agreement. If the Parties have not resolved the matter through the dispute resolution process, the Yukon may give written notice of termination of this Agreement.
20. In addition to the provisions of sections 17 to 19, Yukon, acting reasonably and having regard to the fiscal conditions of the Territory, may terminate this Agreement at any time for any cause; provided that, prior to giving notice of termination,



- (a) Yukon shall give notice in writing to the First Nation of the particulars; and
  - (b) the Parties shall meet and discuss the circumstances, the terms of this Agreement and the options available, other than termination of this Agreement, to address the situation.
21. Yukon and the First Nation acknowledge that the options that may be considered in the process set out in section 20 include but are not limited to:
- (a) adjustment of the amount of deduction from Yukon tax provided for in sections 5 and 6 of this Agreement;
  - (b) the transfer of program and service responsibilities from Yukon to the First Nation; and
  - (c) possible steps to manage the transition toward an outcome described in (a) or (b).

If the Parties have not identified a solution of the matter satisfactory to Yukon within 90 days after notice is given by Yukon of the particulars, Yukon may proceed to give notice of termination.

22. This Agreement may be terminated by the First Nation at any time by providing notice of termination of this Agreement to Yukon.
23. A notice of termination given under this Agreement shall be given in writing by one Party to the other, addressed as set out in subsection 12.1 or 12.2, as the case may be and, if given prior to July 1 in a year, shall take effect as of December 31 of that year and, if given after July 1 in a year, shall take effect as of December 31 of the following year.
24. A notice to terminate this Agreement shall terminate the obligations of the Parties with respect to any year or portion thereof following the termination date, but such termination shall not affect the operation of any provision of this Agreement in respect of any year or portion thereof comprising the term of this Agreement prior to or ending at the termination date.
25. If the Government of Canada revokes its agreement that the First Nation power of direct taxation extends to apply to individuals who are Non-Citizens resident within Settlement Land, then this Agreement shall continue to apply, with such modification as that circumstance may require and the Parties may agree, with

respect to the income tax of individuals who are Citizens resident within Settlement Land.

26. If the administration agreement is amended so as to modify, without revoking, the Government of Canada's agreement that the First Nation power of direct taxation extends to apply to individuals who are Non-Citizens resident within Settlement Land, then the Parties shall meet to review and determine, within thirty days, the impact, if any, of such amendment on the sharing of tax room provided for in this Agreement.

The review described in this section shall be conducted expeditiously. The Parties shall amend this Agreement, if and as may be required, to accommodate the impact of the amendment made to the administration agreement. Any amendment to this Agreement shall come into effect at the same time as the amendment to the administration agreement comes into effect.

#### **TERM**

27. This Agreement shall be effective as of January 1, 2013 and shall continue in effect until December 31, 2022.
28. At least 18 months prior to December 31, 2022, the Parties shall jointly review the terms of this Agreement with a view to extending this Agreement or entering into a new agreement for such period of time and on such terms and conditions as the Parties may agree.

#### **SAVING**

29. Matters arising in relation to the taxation years 2003-2012 shall be addressed in accordance with the terms of the Personal Income Tax Sharing Agreement entered into by the Parties in 2003.
30. Nothing in this Agreement shall be deemed to vary or terminate any of the rights or obligations of the First Nation or 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.

#### **AMENDMENT**

31. Amendments to this Agreement may be made through the exchange of letters between the First Nation and the Yukon Minister.

32. Unless the Parties otherwise agree, an amendment agreed to by the Parties shall come into effect for the taxation year following the year in which the Parties agreed to the amendment.

### EXECUTION AND DELIVERY

33. This Agreement may be entered into in counterparts. 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.
34. This Agreement may be delivered by one Party to the other by way of facsimile transmission or PDF-formatted electronic mail, provided that a copy of this Agreement as executed in the original is delivered to the other Party in due course.

Signed on behalf of the Parties, respectively, on the dates indicated below:



**Chief  
Ta'an Kwach'an Council**

April 11, 2013



**Minister of Finance  
Government of Yukon**

March 25, 2013, 2013