

## **Kwanlin Dun First Nation Goods and Services Tax Act**

Enacted May 15<sup>th</sup>, 2007

### **Short title**

1. This law may be cited as the *Kwanlin Dun First Nation Goods and Services Tax Act, 2007*.

### **Interpretation**

2. (1) In this Act,

“administration agreement” means an agreement in respect of this Act entered into between the Chief on behalf of the First Nation and the Minister of Finance on behalf of the Government of Canada for, among other things, the administration and enforcement of this Act, including the collection of tax imposed under this Act;

“Chief” means the Chief of the First Nation under the Constitution;

“Constitution” means the constitution of the First Nation, as amended from time to time;

“Council” means the Council of the First Nation under the Constitution;

“*Excise Tax Act*” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended from time to time;

“Federal FNGST Act” means the *First Nations Goods and Services Tax Act*, S.C. 2003, c. 15, as amended from time to time;

“First Nation” means the Kwanlin Dun First Nation;

“net tax” has the same meaning as in subsection 225(1) of the *Excise Tax Act*;

“Part IX of the *Excise Tax Act*” means Part IX of the *Excise Tax Act* and Schedules V to X to that Act;

“Settlement Land” means Settlement Land of the Kwanlin Dun First Nation as defined under the Kwanlin Dun 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, as amended from time to time; and

“tax attributable to the First Nation” means tax attributable to the first nation within the meaning of subsection 5(1) of the Federal FNGST Act.

### **Expression defined in *Excise Tax Act***

(2) Unless a contrary intention appears, words and expressions used in this Act have the meanings assigned by Part IX of the *Excise Tax Act*.

### **Application of Division X of Part IX of the *Excise Tax Act***

(3) Division X of Part IX of the *Excise Tax Act* applies for the purposes of determining the application of this Act as if

- (a) the Settlement Land were a participating province;
- (b) the announcement date, implementation date and specified pre-implementation date for that participating province were the effective date of the administration agreement referred to in section 16;
- (c) the tax imposed under paragraph 3(1)(a) were imposed under subsection 165(2) of the *Excise Tax Act*;
- (d) the tax imposed under paragraph 3(1)(b) were imposed under subsection 220.05(1) of the *Excise Tax Act*; and
- (e) the tax imposed under paragraph 3(1)(c) were imposed under subsection 218.1(1) of the *Excise Tax Act*.

## **PART I TAX ON PROPERTY AND SERVICES**

### **Imposition of tax**

- 3.** (1) Subject to this section,
- (a) every recipient of a taxable supply made on Settlement Land shall pay to the First Nation tax in respect of the supply calculated in accordance with subsection (10);
  - (b) every person who brings tangible personal property onto Settlement Land from a place in Canada shall pay to the First Nation tax in respect of the bringing of the property onto the Settlement Land calculated in accordance with subsection (8); and
  - (c) every recipient of an imported taxable supply made on Settlement Land shall pay to the First Nation tax in respect of the supply calculated in accordance with subsection (10).

### **Supply made on Settlement Land**

(2) A supply, other than an imported taxable supply, is made on Settlement Land only if at least one of the following conditions is met:

(a) if the Settlement Land were a participating province, a provision of Part IX of the *Excise Tax Act* would deem the supply to be made in that participating province if

(i) the lands of every other first nation in respect of which a first nation law, as defined in subsection 11(1) or 12(1) of the Federal FNGST Act, is in force at the time the supply is made were each a separate participating province, and

(ii) the participating provinces listed in Schedule VIII to the *Excise Tax Act* were non-participating provinces; or

(b) tax under Part IX of the *Excise Tax Act* is not payable in respect of the supply and such tax would, without section 13 of the Federal FNGST Act, be payable but for the connection of the supply with the Settlement Land and the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

### **Supply of specified motor vehicle on Settlement Land**

(3) Despite subsection (2), for the purposes of paragraph (1)(a), a supply of a specified motor vehicle by way of lease, licence or similar arrangement under an agreement under which continuous possession or use of the vehicle is provided for a period of more than three months is made on Settlement Land only if

(a) in the case of a recipient who is an individual, the recipient ordinarily resides on Settlement Land at the time the supply is made; and

(b) in the case of a recipient who is not an individual, the ordinary location of the vehicle, determined for the purposes of Schedule IX to the *Excise Tax Act* at the time the supply is made, is on Settlement Land.

### **Imported taxable supply made on Settlement Land**

(4) An imported taxable supply is made on Settlement Land only if at least one of the following conditions is met:

(a) tax would be payable in respect of the imported taxable supply under subsection 218.1(1) of the *Excise Tax Act* if

(i) the Settlement Land were the particular participating province referred to in that subsection,

(ii) the lands of every other first nation in respect of which a first nation law, as defined in subsection 11(1) or 12(1) of the Federal FNGST Act, is in force at the time the supply is made were each a separate participating province,

(iii) the participating provinces listed in Schedule VIII to the *Excise Tax Act* were non-participating provinces, and

(iv) the recipient of the supply were not a selected listed financial institution; or

(b) tax under Part IX of the *Excise Tax Act* is not payable in respect of the supply and such tax would, without section 13 of the Federal FNGST Act, be payable but for the connection of the supply with the Settlement Land and the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

### **Bringing of property onto Settlement Land**

(5) Subject to subsection (6), a tax in respect of the bringing of property onto Settlement Land by a person shall be imposed under this Act only if the property was last supplied to the person by way of sale at a time when an administration agreement was in effect and tax would have been payable under Part IX of the *Excise Tax Act* in respect of the supply otherwise than at the rate of zero but for the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

### **Exception**

(6) A tax in respect of the bringing of property onto Settlement Land by a person shall not be imposed if

(a) tax became payable by the person in respect of the property under any first nation law, as defined in subsection 11(1) or 12(1) of the Federal FNGST Act, or section 212 of the *Excise Tax Act* before the property is brought onto Settlement Land; or

(b) tax would not be payable under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of the property onto Settlement Land if

(i) the Settlement Land were the particular participating province referred to in that subsection;

(ii) the lands of every other first nation in respect of which a first nation law, as defined

in subsection 11(1) or 12(1) of the Federal FNGST Act, is in force at the time the property is brought onto Settlement Land were each a separate participating province;

(iii) the participating provinces listed in Schedule VIII to the *Excise Tax Act* were non-participating provinces; and

(iv) paragraphs 220.05(3)(a) and (b) of the *Excise Tax Act*, section 18 of Part I of Schedule X to that Act, the exemption under section 87 of the *Indian Act* and any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section did not apply in respect of the bringing of the property onto Settlement Land.

### **Carriers**

(7) For the purposes of this Act, if a particular person brings property onto Settlement Land on behalf of another person, the other person, and not the particular person, is deemed to have brought the property onto the Settlement Land.

### **Amount of tax – bringing of property onto Settlement Land**

(8) For the purposes of subsection (1), the amount of tax that is imposed under this Act in respect of the bringing of property onto Settlement Land by a person is equal to the amount determined by the formula

$$A \times B$$

where

A is the rate of tax set out in subsection 165 (1) of the *Excise Tax Act*, and

B is

(a) if the person last acquired the property by way of a sale under which the property was delivered to the person within thirty days before the day on which it is brought onto the Settlement Land, the value of the consideration on which tax under Part IX of the *Excise Tax Act* in respect of the sale would have been calculated but for the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section, and

(b) in any other case, the lesser of

(i) the fair market value of the property at the time the property is brought onto the Settlement Land, and

(ii) the value of the consideration referred to in paragraph (a).

## **Reporting and payment of tax**

(9) Tax that is imposed under this Act in respect of the bringing of property onto Settlement Land shall become payable by the person who brings the property onto the Settlement Land at the time it is brought onto those lands and

(a) if the person is a registrant who acquired the property for consumption, use or supply primarily in the course of commercial activities of the person, the person shall, on or before the day on or before which the person's return in respect of net tax is required to be filed under this Act for the reporting period in which the tax became payable, pay the tax to the Receiver General for Canada and report the tax in that return; and

(b) in any other case, the person shall, on or before the last day of the month following the calendar month in which the tax became payable, pay the tax to the Receiver General for Canada and file with the Minister of National Revenue in the manner authorized by that Minister a return in respect of the tax in the form authorized by, and containing information specified by, that Minister.

## **Amount of tax – supply made on Settlement Land**

(10) For the purposes of paragraphs (1) (a) and (c), the amount of tax imposed under this Act in respect of a supply is equal to the amount of tax that would be imposed under Part IX of the *Excise Tax Act* in respect of that supply if

(a) the *Excise Tax Act* applied and this Act, the exemption under section 87 of the *Indian Act* and any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section did not apply in respect of that supply;

(b) the amount were determined without reference to subparagraph (v) of the description of A or subparagraph (vi) of the description of J in the definition "basic tax content" in subsection 123(1) of the *Excise Tax Act*; and

(c) no amount of tax under subsection 165(2), 212.1(2) or 218.1(1), or Division IV.1 of Part IX, of the *Excise Tax Act* were included in determining that amount.

## **Rules where agreement**

4. If the Chief, on behalf of the First Nation, and the Minister of Finance, on behalf of the Government of Canada, have entered into an administration agreement,

(a) every provision of Part IX of the *Excise Tax Act* (other than a provision that creates a criminal offence) applies, with any modifications that the circumstances require, for the purposes of this Act as if tax referred to in each of paragraphs 3(1)(a) and (c) were imposed under

subsection 165(1) and section 218 of the *Excise Tax Act*, respectively and, subject to subsection 3(9), as if tax referred to in paragraph 3(1)(b) were imposed under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of property into a participating province, but this Act shall not thereby be construed as imposing a tax except as provided in section 3;

(b) this Act applies as if tax imposed under Part IX of the *Excise Tax Act* were imposed under this Act and as if the provisions of that Part (other than a provision that creates a criminal offence) relating to that tax were included in this Act, but this Act shall not thereby be construed as imposing a tax except as provided in section 3; and

(c) for greater certainty,

(i) a person who does anything to satisfy a requirement of this Act that would satisfy a corresponding requirement of Part IX of the *Excise Tax Act* if the tax imposed under this Act were imposed under that Part is deemed to have satisfied the requirement of this Act,

(ii) a person who does anything to exercise an authority, right or privilege under this Act that would be a valid exercise of a corresponding authority, right or privilege under Part IX of the *Excise Tax Act* if the tax imposed under this Act were imposed under that Part is deemed to have validly exercised the authority, right or privilege under this Act,

(iii) a person who does anything to satisfy a requirement or exercise an authority, right or privilege under Part IX of the *Excise Tax Act* is deemed to have done that thing for the purposes of both that Part and this Act, and

(iv) a person who is a registrant for the purposes of Part IX of the *Excise Tax Act* is a registrant for the purposes of both that Part and this Act.

## **PART II COLLECTION, ADMINISTRATION, ENFORCEMENT AND REVENUE SHARING**

### **Incorporated and delegated authorities**

**5.** For the purposes of this Act,

(a) the Council shall have all of the authorities, rights and privileges of the Minister of National Revenue under Part IX of the *Excise Tax Act* that are also within the jurisdiction of the First Nation and, as the Council may determine for the better operation, administration and enforcement of this Act, the Council may delegate its authorities, rights and privileges, including the authority to exercise any discretion or to perform the duties of Council under this Act; and

(b) a person who does anything to exercise an authority, right or privilege of Council under paragraph (a) that would be a valid exercise of a corresponding authority, right or privilege of the Minister of National Revenue under Part IX of the *Excise Tax Act* if the tax imposed under this Act were imposed under that Part is authorized to do that thing without need for further action, exercise of discretion or delegation by Council if the doing of the thing is in respect of the administration or enforcement of this Act, or the collection of amounts payable under this Act, by the Government of Canada on behalf of the First Nation pursuant to an administration agreement.

### **Amounts payable**

#### **6. All amounts payable under this Act**

(a) are debts due to the First Nation and are recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act; and

(b) may be recovered by Her Majesty in Right of Canada as a debt due to Her Majesty acting on behalf of the First Nation if they become payable while an administration agreement is in effect or become payable after an administration agreement has ceased to be in effect but relate to taxes, interest, penalties, costs or other amounts that became payable, or to the doing of anything or the failure to do anything, while such an administration agreement was in effect.

### **Administration agreement**

**7.** The Chief, with the approval of the Council, may enter into, and may amend from time to time, an administration agreement with the Government of Canada under which the Government of Canada, on behalf of the First Nation, will administer and enforce this Act, collect amounts payable under this Act and retain or make payments to the First Nation in respect of amounts payable under this Act, in accordance with such terms and conditions, as to administration, enforcement, collection, retention and payment, as the administration agreement may prescribe. The Chief is designated as the authorized body for the purposes of a tax administration agreement with the Government of Canada.

### **Agreement affirmed**

**8.** An administration agreement that is consistent with this Act, approved by the Council and entered into on behalf of the First Nation prior to the coming into force of this Act, is affirmed as if it were entered into under this Act.

### **Provisions of agreement**

- 9.** An administration agreement shall, among other things, provide for
- (a) an enabling provision for a revenue sharing mechanism; and
  - (b) payments, and the eligibility of the First Nation for payments, by the Government of Canada to the First Nation in respect of, and the method for estimating, tax attributable to the First Nation.

### **Revenue sharing**

- 10.** The First Nation is authorized to share, in accordance with the terms of an administration agreement,
- (a) the tax attributable to the First Nation; and
  - (b) tax and other amounts payable under this Act that are not included in the tax attributable to the First Nation.

## **PART III REMISSION**

### **Remission by Canada**

- 11.** (1) The First Nation hereby delegates to Canada the authority to remit any amount payable under this Act where Canada considers that the collection or the enforcement of the payment of the amount is
- (a) unreasonable;
  - (b) unjust; or
  - (c) otherwise not in the public interest.

## **Application**

(2) Subsection (1) applies to any amount that is paid or becomes payable while an administration agreement is in effect and to any amount that becomes payable after an administration agreement has ceased to be in effect but that relates to an amount that became payable while such an administration agreement was in effect.

## **Amount deemed to be tax**

(3) Where subsection (1) applies, an amount payable under this Act shall, for the purposes of subsection (1), be deemed to be “tax” as defined in the *Financial Administration Act* (Canada).

## **Remission by Council**

**12.** (1) Where section 11 does not apply, the Council, in its discretion, may remit any amount payable under this Act where the Council considers that the collection or the enforcement of the payment of the amount

- (a) is unreasonable;
- (b) is unjust;
- (c) is otherwise not in the interest of the First Nation; or
- (d) would cause great public inconvenience or great hardship.

## **Terms of remission**

(2) A remission granted pursuant to this section may be total or partial and conditional or unconditional.

## **When remission may be granted**

(3) A remission granted pursuant to this section may be granted before, during or after any proceeding for the recovery of the amount, and either before or after payment of the amount has been made or has been enforced by process or execution.

### **Failure to fulfill condition**

(4) Where a remission is granted pursuant to this section subject to a condition and the condition is not fulfilled, payment of the amount may be enforced, or all proceedings may be had, as if there had been no remission.

### **Remission of tax on goods**

(5) No tax on any goods shall be remitted by reason only that, after the payment of the tax, the goods were lost or destroyed.

### **Effect of remission**

(6) A conditional remission, on fulfilment of the condition, and an unconditional remission have effect as if the remission were made after the amount in respect of which the remission was granted had been sued for and recovered.

### **Remission of penalty**

(7) Where a penalty imposed by this Act has been wholly and unconditionally remitted pursuant to this section, the remission has the effect of a pardon for the offence for which the penalty was incurred and thereafter the offence has no legal effect prejudicial to the person to whom the remission was granted.

## **PART IV MISCELLANEOUS**

### **Offences**

**13.** Where a person commits an act or omission in respect of this Act that would be an offence under a provision of Part IX of the *Excise Tax Act* or regulations made under that Act if the act or omission were committed in relation to that Part or those regulations, the person is guilty of an offence under this Act punishable on summary conviction and is liable on conviction to the punishment provided for in that provision upon summary conviction.

### **Proof of law**

**14.** A copy of this Act that is certified by the Chief to be a true copy is evidence that this law was duly made by the First Nation, without proof of the signature or official character of that person.

## **Powers of Council**

**15.** The Council may

(a) establish regulations;

(b) approve, and authorize the Chief to enter into or to amend from time to time, an administration agreement; and

(c) do all such other acts and things as it may deem convenient for the better administration, collection and enforcement of the tax imposed under section 3.

## **Coming into force**

**16.** Section 1, subsection 2(1), sections 7, 8, 9 and 14, paragraphs 15(a) and (b) and this section shall come into force upon the enactment of this Act and all other provisions of this Act shall come into force on the effective date of the administration agreement.

**THIS KWANLIN DUN FIRST NATION GOODS AND SERVICES TAX ACT IS HEREBY ENACTED** by the Chief and a quorum of Councillors at a duly convened meeting of the Council of the Kwanlin Dun First Nation pursuant to section 49(1)(d) of the *Constitution of the Kwanlin Dun First Nation* on this 15<sup>th</sup> day of May, 2007.

Signed Chief Mike Smith

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Chief Mike Smith