


# TŁICHQ AGREEMENT



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2003  
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## TŁICHQ TAX TREATMENT AGREEMENT



**Tłchq Tax Treatment Agreement**

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# **TŁICHQ TAX TREATMENT AGREEMENT**

**THIS AGREEMENT** made the 3 day of March, 2003,

**BETWEEN:**

**THE GOVERNMENT OF CANADA**, as represented by the Minister of Finance  
("Canada")

OF THE FIRST PART

**AND:**

**THE GOVERNMENT OF THE NORTHWEST TERRITORIES**, as represented by the  
Minister of Finance  
("Northwest Territories")

OF THE SECOND PART

**AND:**

**THE TŁİCHŦ FIRST NATION**, as represented by the Grand Chief of Dogrib Treaty 11  
Council  
(the "TłıchŦ First Nation")

OF THE THIRD PART

**WHEREAS:**

1. The TłıchŦ First Nation, Canada and the Northwest Territories propose to initial a treaty referred to as the "TłıchŦ Agreement", which provides that the TłıchŦ First Nation, Canada and the Northwest Territories will enter into a tax treatment agreement; and
2. This agreement is a taxation agreement and is referred to as the "TłıchŦ tax treatment agreement".

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

## TŁJCHQ TAX TREATMENT AGREEMENT

### 1 INTERPRETATION

1.1 Subject to 4.1 and 4.2, words and expressions not defined in this agreement but defined in the Tłjchq Agreement have the meanings ascribed to them in the Tłjchq Agreement.

1.2 In this agreement:

“claimant” means:

- (a) the Tłjchq Government; or
- (b) a person, other than a financial institution, that is
  - (i) a trust, board, commission, tribunal or similar body, established by the Tłjchq Government, or
  - (ii) an eligible corporation incorporated under legislation.

“Tłjchq capital trust” at any time means a trust that has been designated before that time by the Minister of National Revenue pursuant to 5.1 as a capital trust and that is at that time designated as a Tłjchq capital trust.

“Tłjchq Government corporation” means a corporation all the shares (except director’s qualifying shares) or capital of which belong to the Tłjchq Government or a Tłjchq capital trust.

“eligible corporation” means:

- (a) a corporation, all of the shares of which, except director’s qualifying shares, are owned by the Tłjchq Government or a Tłjchq capital trust, or any combination of those persons; or
- (b) a corporation, all of the shares of which, except director’s qualifying shares, are owned by:
  - (i) the Tłjchq Government or a Tłjchq capital trust,
  - (ii) a corporation that itself is an eligible corporation, or
  - (iii) any combination of the persons referred to in (i) and (ii).

“*Excise Tax Act*” means the *Excise Tax Act* or any other Act of Parliament which imposes a tax to replace or succeed any tax imposed under the *Excise Tax Act*.

“permanent establishment” of a claimant means:

- (a) a fixed place of business of the claimant and includes:
  - (i) a place of management, a branch, an office, a factory, a workshop or other site, and
  - (ii) a mine, an oil or gas well, a quarry, timberland or any other place of extraction of a natural resource;
- (b) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the ordinary course of business or any person established by the claimant) who is acting on behalf of the claimant;
- (c) a place at which the claimant uses substantial machinery or equipment; or

- (d) any real property owned, or supplied on a regular or continuous basis, by the claimant.

"specified activity" of a claimant means:

- (a) a business or other activity that has the primary purpose of providing property or services to Tłıchǫ Citizens, the Tłıchǫ Government, eligible corporations, individuals resident on Tłıchǫ lands or in a Tłıchǫ community, Tłıchǫ community governments or any combination of those persons; or
- (b) any other business or activity that the Government of Canada and the Tłıchǫ Government agree is included under this definition.

### 1.3 In this agreement:

- (a) unless it is otherwise clear from the context, "including" means "including, but not limited to", and "includes" means "includes, but is not limited to";
- (b) headings are for convenience only, do not form a part of this agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this agreement;
- (c) citation of legislation refers to the legislation as amended from time to time, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- (d) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

## 2 GENERAL

- 2.1 This agreement does not form part of the Tłıchǫ Agreement.
- 2.2 This agreement is not intended to be a treaty or a land claims agreement, within the meaning of section 35 of the *Constitution Act, 1982*.
- 2.3 This agreement shall bind, as Parties, the Tłıchǫ Government, the Government of the Northwest Territories and the Government of Canada.
- 2.4 Nothing in this agreement or the provisions of the settlement legislation giving effect to this agreement limits any entitlement of the Tłıchǫ Government to any benefit available to it under any other legislation.
- 2.5 No term or condition of this agreement, or performance by a Party of a covenant under this agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.
- 2.6 No written waiver of a term or condition of this agreement, of performance by a Party of a covenant under this agreement, or of default by a Party of a covenant under this agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.
- 2.7 This agreement may not be assigned, either in whole or in part, by any Party.
- 2.8 This agreement may be executed at one or more times and in one or more places.

- 2.9 Each counterpart will be deemed an original instrument as against any party who has signed it, and the aggregate of the counterparts will be deemed to constitute a single executed document.

### **3 TAXATION STATUS OF THE TŁJCHQ GOVERNMENT**

3.1 The Tłjchq Government will be

- (a) for purposes of paragraph 149(1)(c) of the federal *Income Tax Act*, deemed to be a public body performing a function of government in Canada; and
- (b) for purposes of paragraphs 149(1)(d) to 149(1)(d.6) and subsections 149(1.1) to 149(1.3) of the federal *Income Tax Act*, deemed to be a Canadian municipality the geographic boundaries of which include Tłjchq lands and the lands within Tłjchq communities.

3.2 Donations to the Tłjchq Government will have the same tax treatment as donations to a charity registered under the *Income Tax Act*.

3.3 For greater certainty, 3.2 does not require the Tłjchq Government to comply with the requirements of the *Income Tax Act* relating to charities registered under that Act.

3.4 The Tłjchq Government will be treated as a public authority designated under subsection 32(2) of the *Cultural Property Export and Import Act*, subject to the availability of a facility for long term storage and display of donated cultural artifacts that

- (a) is operated by the Tłjchq Government and meets accepted standards of Canadian museums; or
- (b) is operated by an institution or public authority designated under subsection 32(2) of the *Cultural Property Export and Import Act* which has entered into a long term agreement with the Tłjchq Government.

### **4 GST REFUND**

4.1 Unless otherwise defined in this agreement and subject to 4.2, words used in 4.3 to 4.7 have the same meaning as in Part IX of the *Excise Tax Act*.

4.2 The definition of "government" in subsection 123(1) of the *Excise Tax Act* does not apply to 4.3 to 4.7.

4.3 A claimant who acquires or imports property or a service in respect of which it pays tax under subsection 165(1) or section 212 or 218 of the *Excise Tax Act* is entitled to a refund of that portion of the tax that is not recoverable as an input tax credit under Part IX of that Act and is not otherwise recovered under any law, if

- (a) the property or service was not acquired or imported for consumption, use or supply in the course of a business or other activity, other than a specified activity, engaged in by the claimant for profit or gain;
- (b) the property or service was acquired or imported for consumption, use or supply in the course of performing a function of government under the Tłjchq Agreement or a subsequent agreement between or among government and the Tłjchq Government; and



- (c) the property or service
    - (i) is a capital property of the claimant acquired or imported for consumption, use or supply, at any place, primarily in the course of engaging, on Tłjchq land or in a Tłjchq community, in a business or other activity of the claimant,
    - (ii) is a service in respect of capital property referred to in (i) or is property supplied in conjunction with a service in respect of capital property referred to in (i), or
    - (iii) in the case of property or a service referred to in neither (i) nor (ii), was acquired or imported for consumption, use or supply, at any place, exclusively in the course of engaging, on Tłjchq land or in a Tłjchq community, in a business or other activity of the claimant.
- 4.4 For the purposes of 4.3(c), where a claimant is engaging in a business or other activity partly on Tłjchq land or partly in a Tłjchq community and partly at or through one or more permanent establishments of the claimant that are not located on Tłjchq land or in a Tłjchq community, the claimant is deemed not to be engaging, on Tłjchq land or in a Tłjchq community, in the business or activity
- (a) in the case of a business or activity that involved the making of supplies of real property on a regular or continuous basis by way of lease, licence or similar arrangement, if the property is not, and is not intended to be, located on Tłjchq land or in a Tłjchq community; and
  - (b) in any other case, to the extent to which the claimant is engaging in the business or activity at or through one or more permanent establishments of the claimant that are not located on Tłjchq land or in a Tłjchq community.
- 4.5 Despite paragraph 141.1(1)(b), subsection 200(3), section 1 of Part V.1 of Schedule V and sections 2 and 25 of Part VI of that schedule, of the *Excise Tax Act*, and 2.4, if a claimant makes a supply by way of sale of property that is capital property of the claimant and in respect of which the claimant was entitled to receive a refund under 4.3, the supply is deemed, for the purposes of Part IX of that Act, to be made in the course of a commercial activity of the claimant.
- 4.6 A refund of tax under 4.3 will not be paid unless an application for the refund is filed with the Minister of National Revenue within four years after the tax was paid.
- 4.7 Part IX of the *Excise Tax Act* applies, with such modifications as the circumstances require, in respect of claims under 4.3 and in respect of amounts paid or payable as a refund under 4.3, as though such refund were a rebate provided for under Division VI of that Part .

## 5 TŁJCHQ CAPITAL TRUSTS

- 5.1 On written application, the Minister of National Revenue shall designate as a Tłjchq capital trust any trust whose terms have, in the opinion of the Minister, the following characteristics:
- (a) the trust is resident in Canada;
  - (b) the beneficiaries of the trust are limited to the following:
    - (i) the Tłjchq Government,
    - (ii) a Tłjchq Citizen;
    - (iii) the Tłjchq First Nation;



- (iv) another Tłıchq capital trust, and
  - (v) any registered charity or non-profit organization, within the meaning of the federal *Income Tax Act*, that in the reasonable opinion of the trustees directly or indirectly benefits at least one Tłıchq Citizen, the Tłıchq Government, the Tłıchq First Nation or a Tłıchq capital trust;
- (c) investment of the trust's funds is restricted to
- (i) investment instruments that are described as qualified investments for a trust governed by a registered retirement savings plan within the meaning of section 146 of the federal *Income Tax Act* or in any other investments identified in an agreement between the Tłıchq Government and the Government of Canada, represented by the Minister of Finance,
  - (ii) loans to Tłıchq Citizens, the Tłıchq Government or Tłıchq Government corporations, at a rate of interest equal to the rate prescribed under paragraph 4301(c) of the federal *Income Tax Regulations* in effect at the time the loan was made or last renewed,
  - (iii) investments in a share of a Tłıchq Government corporation where the average annual rate of dividends on the share over any five year period cannot exceed the rate prescribed under paragraph 4301(c) of the federal *Income Tax Regulations* at the beginning of the five year period, and on condition that the amount receivable on redemption of the share or on liquidation of the Tłıchq Government corporation is limited to the amount of the consideration for which the share was originally issued, and
  - (iv) loans, that are interest free or at rates of interest less than that referred to in (ii), to Tłıchq Citizens, or partnerships or trusts in which no persons other than Tłıchq Citizens hold the interests as partners or beneficiaries where, at the time the loan was made, arrangements were made for repayment of the loan and where the purpose of the loan is to assist the borrower, or where the borrower is a partnership or a trust, to assist a partner or a beneficiary, to
    - (A) acquire, construct or renovate a residential property in the Northwest Territories for his or her own habitation,
    - (B) attend courses to further his or her own education, technical or vocational skills, or attend courses in native studies, culture or language programs,
    - (C) acquire funding for purposes of carrying on a business within Tłıchq lands, Tłıchq communities or in Wek'èezhì where the borrower is unable to borrow from ordinary commercial lenders at normal commercial rates, or
    - (D) exercise rights of wildlife harvesting under 10.1.1 of the Tłıchq Agreement or participate in wildlife harvesting activities that are not commercial;
- (d) the trust is not permitted to carry on a business as a proprietor or member of a partnership, or acquire any beneficial interest in a trust engaged in a business where one or more of the Tłıchq Government, Tłıchq Government corporations, Tłıchq capital trusts or Tłıchq Citizens, either alone or in combination, hold more than 10 percent of all of the beneficial interests in the trust;
- (e) the trust is not permitted to borrow money except as required to finance the acquisition of its investments or to carry out its operations;
- (f) contributions to the trust are limited to contributions by the Tłıchq Government from the payments described in (a), (b), (c) and (f) of the definition of Tłıchq capital or amounts contributed by another Tłıchq capital trust where all or substantially all of the funds of that contributing trust reasonably can be considered to have been derived from a contribution to a Tłıchq capital trust by

the Tłjchq Government from Tłjchq capital and income and gains derived therefrom; and

- (g) the trust is not permitted to make any distributions other than to one or more beneficiaries under the trust, or to another Tłjchq capital trust.

5.2 Any refusal by the Minister of National Revenue to designate any trust as a Tłjchq capital trust under 5.1 is subject to the same right of appeals as applies to a refusal of the registration of a charity under the federal *Income Tax Act*, with such modifications as the circumstances require.

5.3 A Tłjchq capital trust, beneficial interests in a Tłjchq capital trust, and any amount contributed to a Tłjchq capital trust or distributed as income or capital by a Tłjchq capital trust to a beneficiary shall not be taxable except that

- (a) any amount of income or capital distributed in a particular year to a Tłjchq Citizen shall be deemed for purposes of subsection 104(13) of the federal *Income Tax Act* to be income of the trust that was payable to the Tłjchq Citizen in the particular year;
- (b) a Tłjchq capital trust shall be subject to the provisions of Part XI of the federal *Income Tax Act*, as if that Part was stated to be specifically applicable to Tłjchq capital trusts and was amended as required to take into account the investments referred to in 5.1 (c);
- (c) a Tłjchq capital trust shall be subject to tax under Parts I and I.1 of the federal *Income Tax Act* and for that purpose its taxable income will be calculated as the total of
  - (i) the amount of any income derived during the year from a property, including any taxable capital gain from the disposition of the property, that is not a qualified investment for the Tłjchq capital trust or that is not acquired in the course of carrying on a permitted activity of the Tłjchq capital trust, and
  - (ii) any amount contributed to the Tłjchq capital trust that is not permitted under the terms of the Tłjchq capital trust; and
- (d) goods and services tax or similar taxes may be imposed on goods or services consumed by the Tłjchq capital trust or the trustee.

5.4 Where the Minister of National Revenue is of the opinion that a Tłjchq capital trust has failed to comply with any of the terms set out under 5.1:

- (a) the Minister may notify the Tłjchq capital trust of the default and request a remedy to address the default; and
- (b) if within 100 days after the registered mailing of the notice referred to in 5.4(a) the Tłjchq capital trust does not address the default to the satisfaction of the Minister, then the Minister may revoke the designation of the Tłjchq capital trust as a Tłjchq capital trust.

5.5 Any revocation under 5.4(b) is subject to the same right of appeal as applies to a revocation of the registration of a registered charity under the federal *Income Tax Act*, with such modifications as the circumstances require.

5.6 If the Minister of National Revenue revokes the designation of a Tłjchq capital trust, the taxation year of the trust that would otherwise have included the time of



revocation shall be deemed to end immediately before the time of the revocation, and the Tłjchq capital trust shall be deemed to dispose of all its assets immediately before that time for proceeds equal to their fair market value, and to re-acquire those assets at the time at a cost equal to their fair market value, and for the purposes of calculating the taxable income of the Tłjchq capital trust referred to in 5.3(c), an amount equal to the amount by which their fair market value exceeds the cost amount of the assets of the Tłjchq capital trust shall be deemed to be a capital gain from the disposition of property that is not a qualified investment for the Tłjchq capital trust.

5.7 For purposes of 5.3, the distribution by a Tłjchq capital trust of any amount to a beneficiary of the Tłjchq capital trust in respect of the beneficiary's interest in the Tłjchq capital trust shall not be considered to be cause for the revocation of the designation of the Tłjchq capital trust.

5.8 The rule against perpetuities does not apply to a Tłjchq capital trust.

## **6 DISPUTE RESOLUTION**

6.1 The Parties desire and expect that most disagreements will be resolved by informal discussion, between or among the Parties, without the necessity of invoking a dispute resolution mechanism.

6.2 Subject to 4.7, 5.2 and 5.5, in the event of a dispute between any of the Parties arising under this agreement, the Parties involved in the dispute will use the procedure set out in 6.4 of the Tłjchq Agreement before pursuing any other legal remedy.

## **7 TERM OF THIS AGREEMENT**

7.1 This agreement comes into effect on the effective date and, unless the Parties agree otherwise, terminates at the end of the fiscal year following the year in which a Party notifies the others that it wants the agreement to terminate.

7.2 A Party may not give notice that it wants this agreement to terminate before the fiscal year in which the 9th anniversary of the effective date occurs.

7.3 At least one year before this agreement is expected to terminate, the Parties shall begin negotiations for a replacement agreement.

## **8 AMENDMENT AND REVIEW**

8.1 Any amendment to this agreement must be in writing and executed by all Parties.

8.2 Any party may at any time request the other Parties to review this agreement and to consider amendments to this agreement.

## **9 NOTICES**

9.1 Unless otherwise provided, a notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this agreement must be in writing and may be given or made in one or more of the following ways:

- (a) delivered personally or by courier;
- (b) transmitted by facsimile transmission; or
- (c) mailed by prepaid registered post in Canada.

9.2 A communication will be considered to have been given or made, and received:

- (a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
- (b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day on which it was transmitted; or
- (c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

9.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

**For Canada:**

Attention: Minister of Finance  
House of Commons  
Confederation Building  
OTTAWA ON K1A 0A6  
Fax: (613) 995-1534

**For Northwest Territories:**

Attention: Minister of Finance  
Government of the Northwest Territories  
Legislative Assembly  
YELLOWKNIFE NT X1A 2L9  
Fax: (867) 873-0481

**For the Tłı̨chǫ First Nation:**


Attention: Grand Chief  
Box 417  
RAE-EDZO NT X0E 0Y0  
Fax: (867) 392-6389

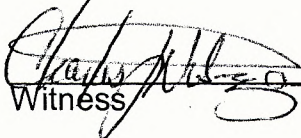
9.4 A Party may change its address or facsimile number by giving a notice of the change to the other Parties in the manner set out above in 9.2.



**For the Tłı̨chǫ First Nation**

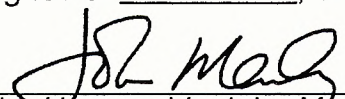
Signed at Yellowknife, this 3rd day of March, 2003.

  
Grand Chief Joe Rabesca  
Dogrib Treaty 11 Council

  
Witness

**For the Government of Canada**

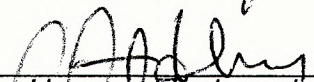
Signed at Ottawa, this 6th day of February, 2003.

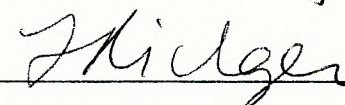
  
The Honourable John Manley  
Minister of Finance

  
Witness

**For the Government of the Northwest Territories**

Signed at Yellowknife, this 27 day of FEBRUARY, 2003.

  
The Honourable Joseph L. Handley  
Minister of Finance

  
Witness