

**NISGA'A NATION
OWN SOURCE REVENUE
AGREEMENT**

**Canada
British Columbia
Nisga'a Nation**

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**Nisga'a Nation Own Source Revenue Agreement / Canada,
British Columbia, Nisga'a Nation.** Issued jointly by: Canada.
Indian affairs and Northern Development; British Columbia.
Ministry of Aboriginal Affairs; and Nisga'a Nation.
Ottawa : Indian and Northern Affairs Canada, 2000.

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

THIS AGREEMENT made May 11, 2000,

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by
the Minister of Indian Affairs and Northern Development**

("Canada")

OF THE FIRST PART

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA, as represented by the
Minister of Aboriginal Affairs**

("British Columbia")

OF THE SECOND PART

AND:

**NISGA'A NATION, as represented by the Nisga'a Lisims
Government Executive**

(the "Nisga'a Nation")

OF THE THIRD PART

WHEREAS:

- A. The Nisga'a Nation, Canada and British Columbia have entered into the Nisga'a Final Agreement which provides that every 10 years, or at other intervals if the Parties agree, the Parties will negotiate and attempt to reach agreement on an own source revenue agreement under which Nisga'a Nation own source revenue capacity, and the manner and extent to which that capacity will be taken into account under fiscal financing agreements, will be determined; and
- B. The Parties have negotiated this Agreement as an own source revenue agreement in accordance with the Nisga'a Final Agreement.

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

DEFINITIONS

1. Words and expressions not defined in this Agreement but defined in the Nisga'a Final Agreement have the meanings ascribed to them in the Nisga'a Final Agreement.
2. In this Agreement, unless the context requires otherwise:
 - “Chapter” means the Chapter of the Nisga'a Final Agreement;
 - “charge or fee” means a charge or fee, other than a Nisga'a tax, that is:
 - a. levied in connection with a specific service or activity;
 - b. similar to a charge or fee generally levied in British Columbia in similar circumstances by Canada, British Columbia or a local authority in British Columbia; and
 - c. levied in respect of an agreed-upon program or service that is funded under a fiscal financing agreement and that is delivered by the Nisga'a Nation or another person under an arrangement with the Nisga'a Nation;

and, for greater certainty, includes:

- d. charges in respect of government health programs or services including health insurance or co-insurance premiums;
- e. court fees, moorage fees, recreation fees, park utilization fees, building permit fees, business licence fees, marriage licence fees and timber mark registration fees;
- f. fees charged for permission to perform activities such as hunting, fishing and shooting, providing entertainment or gambling facilities, selling alcohol or tobacco and granting permission to own an animal; and
- g. fines and penalties not relating to tax offences;

but does not include:

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- h. charges or fees in respect of an education program or service including tuition;
- i. charges or fees that have been taken into account under a fiscal financing agreement in determining the level of funding for the program or service in respect of which it is levied; or
- j. charges or fees in respect of a program or service where the Nisga'a Nation and the other Party or Parties providing funding to the Nisga'a Nation to enable provision of that program or service agree that the funding is provided on the basis that 100% of any charge or fee levied will be applied to the cost of the program or service;

"commercial and investment activities" means:

- a. an undertaking for the purpose of gaining or producing income from a business or property including a natural resource;
- b. an adventure or concern in the nature of trade; or
- c. a disposition of a capital asset, other than Nisga'a Lands or Nisga'a Fee Simple Lands, held or used primarily for the purpose of gaining or producing income from a business or property;

"effective date" means the date upon which the Nisga'a Final Agreement takes effect;

"fiscal financing agreement" means a fiscal financing agreement within the meaning of that term in the Fiscal Relations Chapter;

"fiscal year" means the period that commences on April 1st of a year and ends on March 31st of the next year, or another period if the Parties agree by amending this Agreement;

"generally accepted accounting principles" means the accounting principles generally accepted in Canada from time to time and if the handbook published by the Canadian Institute of Chartered Accountants or its successor includes a relevant statement of a principle or an accounting guideline, that statement will be considered conclusively to be an accounting principle or guideline generally accepted in Canada;

"Lisims Fisheries Conservation Trust" means the trust that Canada and the Nisga'a Nation

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have agreed to establish under paragraph 96 of the Fisheries Chapter;

“Nisga’a Nation OSRC annual report” means the report of the Nisga’a Nation own source revenue capacity for a fiscal year prepared under paragraph 23;

“Nisga’a tax” means:

- a. a tax imposed under a law made by Nisga’a Government in respect of direct taxation of:
 - i. Nisga’a citizens under paragraph 1 of the Taxation Chapter; or
 - ii. persons other than Nisga’a citizens under authority delegated by Canada or British Columbia under an agreement made under subparagraph 3(a) of the Taxation Chapter or under another agreement with the Nisga’a Nation; and
- b. a fine or penalty, or interest on payments overdue, paid to the Nisga’a Nation or a Nisga’a Village in respect of a tax referred to in subparagraph (a);

“Nisga’a Final Agreement” means the Nisga’a Final Agreement signed on behalf of the Nisga’a Nation and Her Majesty in right of British Columbia on April 27, 1999, and Her Majesty in right of Canada on May 4, 1999, and includes any amendments made to that Agreement from time to time in accordance with its provisions;

“other Nisga’a revenues” means the revenues of the Nisga’a Nation, a Nisga’a Village, a Nisga’a government corporation, a Nisga’a exempt corporation or a corporation without share capital established and operated for the benefit of the Nisga’a Nation or a Nisga’a Village, or any combination of them, other than revenue in respect of:

- a. a charge or fee;
- b. items referred to in subparagraph (h), (i) or (j) in the definition of charge or fee;
- c. a commercial or investment activity;
- d. a Nisga’a tax; or
- e. a Nisga’a settlement trust;

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"Parties" means the parties to this Agreement and "Party" means any of them;

"Taxation Agreement" means a Taxation Agreement within the meaning of that term in the Taxation Chapter;

"Tripartite Finance Committee" means the Tripartite Finance Committee established under this Agreement.

3. The categories charge or fee, commercial and investment activities, Nisga'a tax and other Nisga'a revenues are mutually exclusive categories and, for greater certainty, a revenue allocated to one category cannot be allocated to another.
4. If a provision of this Agreement applies in respect of a Nisga'a exempt corporation, the own source revenue capacity that results:
 - a. will be reduced proportionately to fully account for the direct or indirect ownership interests in the corporation of persons other than the Nisga'a Nation, the Nisga'a Villages, Nisga'a government corporations, and Nisga'a settlement trusts; and
 - b. if the Nisga'a Nation or a Nisga'a Village, or any combination of them, cannot cause a distribution by the corporation, will be taken into account only at the time, and to the extent, that a distribution is made to the Nisga'a Nation, a Nisga'a Village or a Nisga'a government corporation.

NISGA'A NATION OWN SOURCE REVENUE CAPACITY

5. Nisga'a Nation own source revenue capacity for a fiscal year is the specified percentage of the aggregate of the own source revenue capacities for the fiscal year in respect of commercial and investment activities, Nisga'a taxes, Nisga'a settlement trusts, charges and fees, and other Nisga'a revenues, as determined in accordance with this Agreement.
6. In paragraph 5, "specified percentage" is 0% for each of the first two fiscal years commencing on or after the effective date, 5% for each of the third and fourth fiscal years, 10% for the fifth fiscal year, 15% for the sixth fiscal year, 20% for the seventh fiscal year, 30% for the eighth fiscal year, 40% for the ninth fiscal year, 55% for the tenth fiscal year, 70% for the eleventh fiscal year, 85% for the twelfth fiscal year, and 100% for the thirteenth and subsequent fiscal years.

COMMERCIAL AND INVESTMENT ACTIVITIES

7. Subject to paragraphs 4 and 19, the own source revenue capacity for a fiscal year in respect of commercial and investment activities is the aggregate of amounts, each of which is equal to the income tax, corporation capital tax or other tax (other than a tax referred to in paragraphs 24 and 26 of the Taxation Agreement) that would be payable for the fiscal year to a government in Canada in respect of the commercial and investment activities by the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation, a Nisga'a exempt corporation, or a corporation without share capital established and operated for the benefit of the Nisga'a Nation or a Nisga'a Village, or any combination of them, as the case may be, if each were not exempt from the income tax, corporation capital tax or other tax, under laws of general application, and if the assumptions in paragraphs 8 to 11 applied.
8. For the purposes of paragraph 7, the Nisga'a Nation and each Nisga'a Village will be assumed to be:
 - a. each a private corporation incorporated in Canada on the effective date, all of the shares of which are owned by one or more individuals resident in Canada; and
 - b. unrelated to, and dealing at arm's length with, each other.
9. The taxes referred to in paragraph 7 will be determined on the assumption that each entity referred to in paragraph 7:
 - a. had a fiscal period coincident with the fiscal year;
 - b. did not carry on any activity other than its commercial and investment activities;
 - c. did not own any property, except to the extent that the property was employed by it in a commercial or investment activity; and
 - d. was not allowed any deduction in determining its income or taxable income for:
 - i. any amount, to the extent that it reasonably could be considered to be an expenditure in respect of:
 - A. a program or service for which funding has been provided to the

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Nisga'a Nation under a fiscal financing agreement; or

- B. a management, enhancement or rehabilitation activity in respect of a natural resource, other than a forestry resource, that is reasonably comparable in nature to an activity carried on by another government in Canada in respect of the management, enhancement or rehabilitation of a similar natural resource; or
- ii. a gift made to a person that provides goods or services primarily to Nisga'a citizens;

and on the assumption that the Nisga'a Nation and each Nisga'a Village was allowed a deduction in determining the amount subject to corporation capital tax for the carrying value, determined in accordance with generally accepted accounting principles, of any estate or interest it held in Nisga'a Lands on which there were no improvements or on which there was a designated improvement.

- 10. In determining the own source revenue capacity in respect of a commercial or investment activity that is the exploitation of an interest in a forest resource on Nisga'a Lands or Nisga'a Fee Simple Lands:
 - a. for purposes of determining any capital cost allowance in respect of that interest that would be allowable under paragraph 20(1)(a) of the *Income Tax Act* and paragraph 1100(1)(e) of the regulations to that Act, and any recaptured depreciation under subsection 13(1) of the *Income Tax Act*, that interest will be deemed to have been acquired at the later of:
 - i. the effective date; and
 - ii. the date, if any, the interest was last acquired by the entity from a person (other than the Nisga'a Nation, a Nisga'a Village or a Nisga'a government corporation) with whom the entity was dealing at arm's length;at a cost equal to:
 - iii. the fair market value of that interest on the effective date, where subparagraph (i) applies; or
 - iv. the consideration given for the interest on the date referred to in subparagraph (ii), where subparagraph (ii) applies; and

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- b. no deduction will be made by the entity in respect of an outlay or expenditure in relation to the management or development of the forest resource, except to the extent that the outlay or expenditure was made or incurred for the purpose of earning income from the forest resource and is reasonable in the circumstances.
11. In determining the own source revenue capacity in respect of a commercial and investment activity that is the exploitation of an interest in a mineral resource or natural accumulation of petroleum or natural gas, the *Income Tax Act* will be read without reference to paragraphs 12(1)(o), 12(1)(z.5), 18(1)(m) and 20(1)(v.1), and subsections 69(6) and 69(7) thereof.

NISGA'A TAXES

12. Subject to paragraph 19, the own source revenue capacity for a fiscal year in respect of Nisga'a taxes is the sum of all amounts, each of which is the amount determined in respect of each Nisga'a tax in accordance with subparagraph 16(c) of the Fiscal Relations Chapter, except that in applying that subparagraph:
- a. the phrase "the amount by which" in subparagraph 16(c)(ii)(A) will be read as "50% of the amount by which";
 - b. the phrase "exceed the amount, if any, included" in subparagraph 16(c)(ii)(A) will be read as "exceed the amount of tax room, if any, referred to";
 - c. the phrase "exceeds the amount included" in subparagraph 16(c)(ii)(B) will be read as "exceeds the amount of tax room, if any, referred to"; and
 - d. the reasonable costs, if any, of developing and administering the tax system in respect of the tax and of collecting the tax under subparagraph 16(c)(i) or 16(c)(ii)(B), will be taken into account in determining the own source revenue capacity.

NISGA'A SETTLEMENT TRUSTS

13. Subject to subparagraph 19(c), own source revenue capacity for a fiscal year in respect of Nisga'a settlement trusts is the sum of the amounts determined by multiplying the taxable income of each Nisga'a settlement trust for its taxation year ended in the fiscal year by the composite tax rate for the fiscal year.
14. In paragraph 13, "composite tax rate" is intended to be approximately equal to the net

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change in the sum of all income taxes, transaction taxes, and refundable tax credits that would have accrued to a government in Canada from all Nisga'a citizens as beneficiaries of the trust if, under the terms of each Nisga'a settlement trust, an amount equal to the taxable income of the trust for its taxation year ended in the fiscal year had been made payable in that taxation year in equal shares to those Nisga'a citizens, and:

- a. is 18.2% for the term of the first two fiscal financing agreements, as calculated in Schedule A; and
 - b. will be determined for each subsequent fiscal financing agreement according to the method set out in that Schedule A.
15. In paragraphs 13 and 14, "taxable income" and "taxation year" have the same meanings as in the *Income Tax Act*.

CHARGES AND FEES

16. Subject to paragraph 19, own source revenue capacity for a fiscal year in respect of charges or fees is the amount determined by applying the inclusion rate to the aggregate of amounts, each of which is the amount by which the receipts of the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation or a Nisga'a exempt corporation, in the fiscal year in respect of a charge or fee exceed the reasonably deductible costs, including reasonable allowances for depreciation and amortization, that are incurred in the fiscal year for the purposes of levying, and that would not have been incurred but for the imposition of, that charge or fee.
17. In paragraph 16, "inclusion rate" is 46.0%.

OTHER NISGA'A REVENUES

18. Subject to paragraph 19, own source revenue capacity in respect of other Nisga'a revenues is the own source revenue capacity that would be determined in respect of the revenue if it were a charge or fee.

AMOUNTS NOT INCLUDED

19. Notwithstanding any other provision of this Agreement, Nisga'a Nation own source revenue capacity for a fiscal year does not include any amount in respect of:
- a. proceeds that are received or become receivable in a fiscal year from the sale of

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Nisga'a Lands or Nisga'a Fee Simple Lands, except to the extent that the proceeds represent revenues received in the course of:

- i. leasing or licensing the lands; or
 - ii. taking production from the lands or from a resource on the lands, by the Nisga'a Nation, a Nisga'a Village or a Nisga'a government corporation; or
 - iii. reasonably can be considered to represent a recapture of depletion or depreciation deducted in the computation of own source revenue capacity for the fiscal year or any preceding fiscal year;
- b. any amount referred to in subparagraphs 18(b) to (f) of the Fiscal Relations Chapter;
 - c. for the first 12 calendar years commencing on or after the effective date, the income or capital gains of a Nisga'a settlement trust;
 - d. a tax payable by a Nisga'a citizen to the Nisga'a Nation or a Nisga'a Village during the period that ends on the first day of the first month that starts on or after the eighth anniversary of the effective date;
 - e. a tax, other than a transaction tax, payable by a Nisga'a citizen to the Nisga'a Nation or a Nisga'a Village during the period that starts at the end of the period described in subparagraph (d) and ends on the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date;
 - f. any amount payable to the Nisga'a Nation under a fiscal financing agreement, fiscal contribution agreement, or any bilateral agreement between the Nisga'a Nation or a Nisga'a Village, and Canada or British Columbia in respect of a program or service of the Nisga'a Nation or Nisga'a Village;
 - g. any amount paid or collected by the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, or a Nisga'a government corporation, under a law made under paragraph 21 of the Fiscal Relations Chapter;
 - h. a gift to the Nisga'a Nation, a Nisga'a Village or a Nisga'a Institution; and
 - i. the taking of a natural resource on Nisga'a Lands for the personal consumption of
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a Nisga'a citizen, for any purpose other than profit.

FISCAL FINANCING AGREEMENTS

20. In determining the sum of the net transfers by Canada and British Columbia to the Nisga'a Nation under a fiscal financing agreement for each fiscal year commencing on or after the effective date (each a "particular year"), the Parties will deduct:
- a. the estimated Nisga'a Nation OSRC amount for the particular year;
 - b. the amount, if any, by which the Nisga'a Nation own source revenue capacity for the second fiscal year preceding the particular year exceeds the estimated Nisga'a Nation OSRC amount for that second preceding fiscal year; and
 - c. any amount due by the Nisga'a Nation to Canada or British Columbia, in respect of Nisga'a Nation own source revenue capacity for a preceding fiscal year, that was confirmed in the fiscal year immediately preceding the particular year by the resolution of a disagreement referred to in paragraph 25 or 26;
- and will add:
- d. the amount, if any, by which the estimated Nisga'a Nation OSRC amount for the second fiscal year preceding the particular year exceeds the Nisga'a Nation own source revenue capacity for that second preceding fiscal year; and
 - e. any amount due by Canada or British Columbia to the Nisga'a Nation, in respect of Nisga'a Nation own source revenue capacity for a preceding fiscal year, that was confirmed in the fiscal year immediately preceding the particular year by the resolution of a disagreement referred to in paragraph 25 or 26.
21. In paragraph 20, "estimated Nisga'a Nation OSRC amount" for a particular year is an amount equal to the aggregate referred to in paragraph 5 for the second fiscal year preceding the particular year, as reported in the Nisga'a OSRC annual report for that second preceding fiscal year, multiplied by the specified percentage for the particular year.
22. In paragraph 21, "specified percentage" is 0% for each of the first two fiscal years commencing on or after the effective date, 5% for each of the third and fourth fiscal years, 10% for the fifth fiscal year, 15% for the sixth fiscal year, 20% for the seventh fiscal year, 30% for the eighth fiscal year, 40% for the ninth fiscal year, 55% for the tenth fiscal year, 70% for the eleventh fiscal year, 85% for the twelfth fiscal year, and 100% for the
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thirteenth and subsequent fiscal years.

NISGA'A NATION OSRC ANNUAL REPORT

23. Within nine months after the end of each fiscal year, the Nisga'a Nation will prepare a Nisga'a Nation OSRC annual report substantially in the form of Schedule B for that fiscal year setting out:
- a. the own source revenue capacity for that fiscal year in respect of each category of revenue for which a calculation is required to be made under this Agreement; and
 - b. Nisga'a Nation own source revenue capacity for that fiscal year;
- and provide a copy to Canada and British Columbia.
24. For purposes of providing information for negotiation of the next own source revenue agreement, the Nisga'a Nation OSRC annual report for a fiscal year will include an analysis that compares the own source revenue capacity for that year in respect of commercial and investment activities that is determined under this Agreement with the amount that would be determined if own source revenue capacity in respect of commercial and investment activities for that year were:
- a. calculated at the prevailing combined federal and British Columbia corporate income tax rates on business income; and
 - b. based on the consolidated net accounting incomes from commercial and investment activities of entities referred to in paragraph 7, calculated before deductions for income tax or an amount payable under a law made under paragraph 21 of the Fiscal Relations Chapter but after extraordinary items, in accordance with generally accepted accounting principles applied on a consistent basis from year to year.
25. At any time within four years of the Nisga'a Nation OSRC annual report for a fiscal year being provided to Canada and British Columbia under paragraph 23, a Party may notify the other Parties that it disagrees with the determination of an amount reported in that report.
26. Notwithstanding paragraph 25, at any time a Party may notify the other Parties that it disagrees with the determination of an amount included in a Nisga'a Nation OSRC annual report for a fiscal year:
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- a. in any case where a change in that amount is required to reflect, and reasonably can be considered to be consequential upon, an assessment or reassessment by a taxing authority; or
 - b. if the person filing the report has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed fraud in filing the report or in supplying information required in connection with the report.
27. A notice given by a Party under paragraph 25 or 26 will:
- a. identify the relevant Nisga'a Nation OSRC annual report and fiscal year;
 - b. set out each determination that the Party disagrees with;
 - c. set out a calculation of each adjustment that the Party proposes be made to an amount included in the report, with detailed reasons; and
 - d. include a proposal for how the adjustment could be made.
28. Within 45 days of the date of a notice given by a Party under paragraph 25 or 26, each of the other Parties may respond in writing to the notice, setting out:
- a. their acceptance of each proposed adjustment; or
 - b. proposed alternative adjustments, with detailed reasons.
29. If the Parties fail to resolve a matter, in respect of which a notice is given under paragraph 25 or 26, by informal discussion within 60 days after the date of that notice, a Party may within 90 days after the date of that notice give another Party a notice of dispute in respect of the matter.

FINANCIAL RECORDS

30. All accounts and financial statements required to be prepared under this Agreement will be prepared in accordance with generally accepted accounting principles.
 31. The financial records of the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation or a Nisga'a settlement trust, for a fiscal year will be:
 - a. retained by the Nisga'a Nation for 10 years after the date of submission of the
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Nisga'a Nation OSRC annual report for the fiscal year to Canada and British Columbia under paragraph 23; and

- b. made available to Canada and British Columbia at the principal administration offices of the Nisga'a Nation for inspection, on a confidential basis, within 30 days of receipt of a request from Canada or British Columbia to inspect the records.

TRIPARTITE FINANCE COMMITTEE

32. A Tripartite Finance Committee will be:

- a. established by the Parties as soon as practicable after the effective date;
- b. composed of one member designated by each Party; and
- c. kept in place throughout the term of this Agreement.

33. The members of the Tripartite Finance Committee will:

- a. meet at least once a year to carry out an annual review of this Agreement;
- b. if they all agree, recommend in writing to the Parties any changes to this Agreement;
- c. do such things as are appropriate to facilitate the resolution of any problems that arise in respect of this Agreement;
- d. during the eighth and fifteenth years of this Agreement, carry out a comprehensive review of this Agreement; and
- e. do such other things relating to this Agreement as the Parties may agree from time to time to be appropriate.

34. A Tripartite Finance Committee member may bring resource persons to meetings as they consider appropriate to assist in fulfilling their responsibilities under this Agreement.

DISPUTE RESOLUTION

35. The Parties desire and expect that a dispute arising from this Agreement will be resolved by informal discussion between the disputing Parties.

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36. If the dispute is not resolved by informal discussion within 60 days of a Party notifying another Party of the dispute, it will be referred to the Tripartite Finance Committee.
37. If the Tripartite Finance Committee fails to resolve a dispute within 45 days of the dispute being referred to it, or a longer period if the Parties agree, the dispute will be dealt with under the Dispute Resolution Chapter and, for greater certainty, the dispute will be considered to be a dispute for the purposes of that Chapter.
38. The discussions in paragraphs 35 to 37 will be considered to be “collaborative negotiations” for the purposes of the Dispute Resolution Chapter.

INFORMATION EXCHANGE, GENERAL PROVISION

39. The Parties will share information as required for the purposes of implementing and monitoring this Agreement and to facilitate the negotiation of future own source revenue agreements.

TERM

40. The term of this Agreement:
 - a. starts on the effective date; and
 - b. subject to paragraph 41, ends at the end of the fiscal year during which the 12th anniversary of that effective date occurs.
41. Unless a Party provides each of the other Parties, no less than fifteen months before the term of this Agreement, as extended from time to time under this paragraph, ends under subparagraph 40(b), with a notice to end this Agreement, the time at which the term of this Agreement ends under subparagraph 40(b) will be extended by two years.
42. For greater certainty, paragraphs 40 and 41 are intended to result in the term of this Agreement continuing unless a Party provides notice under paragraph 41 to end this Agreement.

SUBSEQUENT OWN SOURCE REVENUE AGREEMENT

43. At least one year before the end of the term of this Agreement, Canada, British Columbia and the Nisga'a Nation will begin negotiating the next own source revenue agreement.
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44. If the Parties do not reach a further own source revenue agreement by the end of the term of this Agreement, this Agreement will continue in effect for a period of two years from the end of the term of this Agreement while they attempt to reach the further own source revenue agreement.

SCHEDULE DESCRIPTION

45. The following Schedules are attached to and form part of this Agreement:

Schedule	Description
A	Calculation of the Composite Tax Rate
B	Nisga'a Nation Own Source Revenue Capacity Annual Report

46. The following Schedule is attached to this Agreement for convenience only, does not form part of this Agreement and in no way defines, limits, alters or enlarges the scope or meaning of any provision of this Agreement:

Schedule	Description
C	Technical Notes

AMENDMENT

47. Any amendment to this Agreement must be in writing and executed by all Parties.

NO IMPLIED WAIVER

48. 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.
49. 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

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Agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.

FURTHER ASSURANCES

50. The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.

INTERPRETATION

51. 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. a reference to a statute includes every amendment to it, 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, a reference to a Schedule means a Schedule to this Agreement;
 - e. 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; and
 - f. all accounting terms have the meanings assigned to them under generally accepted accounting principles.
52. This Agreement does not form part of the Nisga'a Final Agreement.
53. This Agreement is not intended to be a treaty or a land claim agreement, and is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

TIME OF ESSENCE

54. Time is of the essence in this Agreement .
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SEVERABILITY

55. If any part of this Agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion.

ENUREMENT

56. This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

ASSIGNMENT

57. Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by any Party to it.

NOTICES

58. 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.
59. 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

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- c. if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.
60. 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 Indian Affairs and Northern Development
House of Commons
Confederation Building
Ottawa, Ontario
K1A 0A6
Fax Number: (819) 953-4941

For: British Columbia
Attention: Minister of Aboriginal Affairs
Parliament Buildings
Victoria, British Columbia
V8V 1X4
Fax Number: (250) 356-1124

For: Nisga'a Nation
Attention: President
P.O. Box 231
New Aiyansh, British Columbia
VOJ 1A0
Fax Number: (250) 633-2367


NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

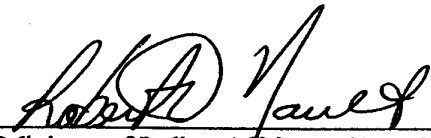
61. A Party may change its address or facsimile number by giving a notice of the change to the other Parties in the manner set out above.

THIS AGREEMENT HAS BEEN EXECUTED as of the day and year first above written.

EXECUTED in the presence of:

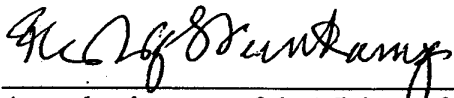
HER MAJESTY THE QUEEN IN
RIGHT OF CANADA as represented
by the Minister of Indian Affairs and
Northern Development

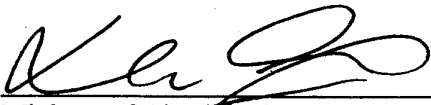

As to the signature of the Minister of Indian
Affairs and Northern Development


Minister of Indian Affairs and Northern
Development

EXECUTED in the presence of:

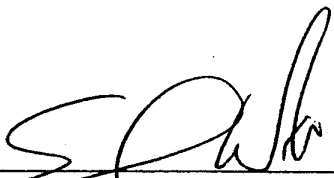
HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA as represented
by the Minister of Aboriginal Affairs


As to the signature of the Minister of
Aboriginal Affairs


Minister of Aboriginal Affairs

EXECUTED in the presence of:

NISGA'A NATION as represented by
the Nisga'a Lisims Government
Executive


As to the signature of Doctor Joseph Gosnell


Doctor Joseph Gosnell, President

Schedule A

Calculation of Composite Tax Rate

The composite tax rate (“CTR”) in paragraph 14 of this Agreement, as calculated in Table 1, is determined as follows:

CTR= is the sum over (i) of C_i

where:

- i is an income range as set out in Table 1;
- $C_i = A_i \times B_i$;
- A_i is the estimated percentage of Nisga’a Citizens having total annual incomes within income range (i) as set out in Table 1 column A; and
- B_i is the estimated combined marginal net tax rate applicable to income range (i) as determined in Table 2.

The composite tax rate will be calculated in accordance with this Schedule for the third and each subsequent fiscal financing agreement (FFA), using the latest available data as of the calculation date and will remain fixed for the duration of each FFA. It will be recalculated 90 days prior to the FFA.

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Table 1 sets out the calculation of the composite tax rate.

Table 1

	A	B	C
Income Range (i) 1999\$	Aboriginal Income Distribution	Combined Marginal Rate	Product of A and B
\$0-\$4,999	55.2%	5.0%	2.8%
\$5,000-\$9,999	11.5%	20.5%	2.4%
\$10,000-\$14,999	8.7%	27.8%	2.4%
\$15,000-\$19,999	5.6%	31.4%	1.7%
\$20,000-\$24,999	4.5%	36.2%	1.6%
\$25,000-\$29,999	3.5%	44.6%	1.6%
\$30,000-\$34,999	2.5%	57.2%	1.5%
\$35,000-\$39,999	2.4%	56.5%	1.4%
\$40,000-\$44,999	1.7%	49.9%	0.8%
\$45,000-\$49,999	1.5%	48.5%	0.7%
\$50,000+	2.8%	48.5%	1.3%
CTR = sum over (i) of C_i			18.2%

Column A sets out A_i , the estimated percentage of British Columbia resident aboriginal people having total annual incomes, including government transfers, within each income range (i). The estimates are based on *British Columbia On and Off Reserve Aboriginal Income Distribution* data obtained from Statistics Canada Catalogue No.(94-325) for the most recent year available (1991). This information is adjusted to 1999. Future composite tax rate calculations will use income distribution data for Nisga'a citizens, if available at the time, and if the Parties agree.

If the composite tax rate is calculated when current income distribution data is not available either for British Columbia resident aboriginal people or Nisga'a citizens, the calculation will be prepared on the assumption that:

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

- a. each A_i is the same as in the last preceding estimate:
- b. each income range (i) will be inflated in proportion to changes in the Final Domestic Demand Implicit Price Index for Canada, as most recently published at the time by Statistics Canada.

Column B sets out the combined marginal net tax rate B_i applicable to each income range (i), as determined from Table 2.

Column C sets out the composite tax rate C_i for each income range (i). C_i is the product of A_i and B_i . The composite tax rate in paragraph 14 of this Agreement is the sum of column C.

NISGA 'A NATION OWN SOURCE REVENUE AGREEMENT

Calculation of Combined Marginal Net Tax Rate

Table 2 sets out the rates of tax and the rate of reduction in tax system credits and benefits, that apply in British Columbia to additional income earned by an individual in income range (i), based on tax policies in effect on December 31, 1997. The amount B_i is the sum of row (i) for income range (i).

Table 2

Income Range (i) 1999 \$	Marginal Income Tax Rate (1997 Rates)			Marginal Transaction Tax Rates (1997 Rates)			Tax Credit & Benefit Reduction Rate (1997 Rates)	Combined Marginal Net Tax Rate (B_i)
	Federal Income Tax (T1)	BC Income Tax (T2)	Federal Income Surtax (T3)	GST (T4)	PST (T5)	Fuel (T6)	(T7)	
\$0-\$4,999	0.0%	0.0%	0.0%	3.0%	2.0%	0.0%	0.0%	5.0%
\$5,000-\$9,999	10.2%	5.2%	0.3%	3.0%	2.0%	0.0%	-0.2%	20.5%
\$10,000-\$14,999	17.0%	8.7%	0.5%	3.0%	2.0%	1.0%	-4.4%	27.8%
\$15,000-\$19,999	17.0%	8.7%	0.5%	3.0%	2.0%	1.0%	-0.8%	31.4%
\$20,000-\$24,999	17.0%	8.7%	0.5%	3.0%	2.0%	1.0%	4.0%	36.2%
\$25,000-\$29,999	17.0%	8.7%	0.5%	3.0%	2.0%	1.0%	12.4%	44.6%
\$30,000-\$34,999	24.2%	12.3%	0.7%	3.0%	2.0%	1.0%	14.0%	57.2%
\$35,000-\$39,999	26.0%	13.3%	0.8%	3.0%	2.0%	1.0%	10.4%	56.5%
\$40,000-\$44,999	26.0%	13.3%	0.8%	3.0%	2.0%	1.0%	3.8%	49.9%
\$45,000-\$49,999	26.0%	13.3%	0.8%	3.0%	2.0%	1.0%	2.4%	48.5%
\$50,000+	26.0%	13.3%	0.8%	3.0%	2.0%	1.0%	2.4%	48.5%

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The rates are determined by the rates and rules in effect under applicable federal and provincial laws, for individuals in each income range at the time of the calculation and the assumptions that are made with respect to those individuals as set out in this schedule. If a tax, tax credit or benefit is introduced, eliminated, or restructured, Table 2 will be adjusted to reflect that change in a manner consistent with the method used to estimate the other rates in the table.

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The following paragraphs and tables outline how the rates in Table 2 were determined for each type of tax and benefit.

Table 3 - Marginal Income Taxes Rates

Tax (1997 Rates)¹	Tax Category	Tax Rate
Federal Income Tax	taxable income of \$7,000 to \$29,590 ² taxable income of \$29,591 ² to \$59,180 taxable income greater than \$59,181 ²	17% 26% 29%
BC Income Tax	all income categories	51% of Federal Income Tax Rate
Federal Income Surtax	all income categories	3% of Federal Income Tax Rate

¹ British Columbia marginal surtax rates will be added to Table 2 in future calculations if information is available which allows a reasonable estimate of the incomes and number of aboriginal people, or Nisga'a citizens where Nisga'a specific data are used in the calculation, who are subject to the surtax.

² In Table 2, the 26% (29%) federal income tax rate bracket was assumed to start at \$31,000 (\$64,000) rather than \$29,591 (\$59,181), in order to recognize that each income range (i) reflects total gross income, rather than taxable income, and to recognize that taxpayers can claim deductions to reduce the amount of gross income that is subject to tax.

Table 4 - Marginal Transaction Tax Rates

Transaction Tax (1997 Rates)	Category	Marginal Rate
Goods and Services Tax ("GST")	All income categories	3.0%
Provincial Sales Tax ("PST")	All income categories	2.0%
Fuel Tax	Income \$10,000 and below Income above \$10,000	0.0% 1.0%

GST

The marginal rate of GST was derived as follows;

1. GST is 7% and it is assumed that 65% of goods and services are subject to GST.
2. It is assumed that 70% of each new dollar is disposable income. (\$0.70 of each new dollar is available to purchase goods and services and to pay the applicable GST). The amount of each new dollar that is spent on goods and services can be derived as follows:
Total Purchases + 0.07 X Total Purchases = \$0.70
Total Purchases = 0.07/1.07= \$0.65
Therefore, 65% of each new dollar is spent on goods and services.
3. Combine 1. and 2. to get the marginal rate of GST. 7% X 65% X 65% = 3%

Note: It is recognized that incomes less than \$7,000 do not pay income tax so that 100% of each new dollar is disposable income. But, it is assumed that these individuals spend a greater portion of their incomes on items such as food and shelter which are not subject to GST. It is assumed that:

1. GST is 7% and 46% of goods and services are subject to GST
2. 100% of each new dollar is disposable income. The formula now becomes:
Total Purchases + 0.07 X Total Purchases = \$1.00
Total Purchases = \$1.00 /\$1.07 = \$0.93
Therefore, 93% of each new dollar is spent on goods and services
3. Combining 1. and 2 yields the marginal rate of GST. 7% X 46% X 93% = 3%.

PST

In Table 2, it is assumed that 2/3 of goods and services that are subject to GST also are subject to PST, which is 7%. Consequently, the marginal PST rate included in Table 2 is 2/3 of the marginal GST rate (i.e. 2/3 X 65% X 65% X 7%).

Fuel Tax

In Table 2, it is assumed that 2.4% of each additional dollar of income is spent on fuel, based on the *Household Expenditure Survey for British Columbia, 1992*, and that federal excise tax and provincial motor fuel tax together represent 42% of the assumed expenditure.

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Table 5 - Marginal Benefits Rates

Income Range (i) 1997 \$	Income Supplement	BC Family Bonus	Child Tax Benefit	PST Credit	GST Credit	Combined Rate 1	Adjusted Combined Rate ²
\$0-\$4,999	-0.2%	0.0%	0.0%	0.0%	-0.0%	-0.2%	0.0%
\$5,000-\$9,999	-4.0%	0.0%	0.0%	0.0%	-0.4%	-4.4%	-0.2%
\$10,000-\$14,999	-0.8%	0.0%	0.0%	0.0%	0.0%	-0.8%	-4.4%
\$15,000-\$19,999	0.0%	3.0%	0.0%	1.0%	0.0%	4.0%	-0.8%
\$20,000-\$24,999	3.9%	7.8%	0.0%	0.7%	0.0%	12.4%	4.0%
\$25,000-\$29,999	1.0%	7.8%	1.9%	0.0%	3.3%	14.0%	12.4%
\$30,000-\$34,999	0.0%	4.7%	2.4%	0.0%	3.3%	10.4%	14.0%
\$35,000-\$39,999	0.0%	0.0%	2.4%	0.0%	1.4%	3.8%	10.4%
\$40,000-\$44,999	0.0%	0.0%	2.4%	0.0%	0.0%	2.4%	3.8%
\$45,000-\$49,999	0.0%	0.0%	2.4%	0.0%	0.0%	2.4%	2.4%
\$50,000+	0.0%	0.0%	2.4%	0.0%	0.0%	2.4%	2.4%

¹ Not all benefits are enjoyed by all members of society. In order to account for this, the marginal rates of each benefit were adjusted (multiplied) by the percentage of the British Columbia Aboriginal population who would qualify for it. For example, the Income Supplement is only available to lone parents and married couples with children. This group makes up 49.2% of the adult Aboriginal population in BC according Statistics Canada, based on the 1991 census. Therefore, the marginal rate of the income supplement (Table 7) is adjusted (multiplied) by 49.2% (Table 6) over each income category greater than \$4,999. In the \$0-\$4,999 income range, an estimated 20.8% were adults, as all children were assumed to earn \$4,999 or less, so the marginal rate of the Income Supplement in the this income category was multiplied by 10.2% (20.8% X 49.2%). This group makes up 49.23% of the adult Aboriginal population in BC according Statistics Canada, based on the 1991 census. Therefore, the marginal rate of the income

NISGA'A NATION OWN SOURCE REVENUE AGREEMENT

supplement is adjusted (multiplied) by 49.23% over each income category greater than \$4,999.

² Income ranges (i) include government transfers, and thus, do not adequately represent the thresholds at which the tax credit and benefit reductions occur in practice. The combined rate calculated for each income range (i) has been shifted to the next highest income range (i) to compensate for this factor.

The following chart is based on information from Statistics Canada for the Aboriginal population in British Columbia, based on the 1991 census.

Table 6

Category	Percentage of Total Population	Percentage of Adult Population
Couples without children	10.7%	19.1%
Couples with children	22.0%	39.2%
Lone Parents	5.6%	10.1%
Non Family Person	17.8%	31.7%
Children	44.0%	0%

Each benefit is adjusted (multiplied) by the percentage of the adult population who is eligible to receive it. The following table outlines the assumptions made about each benefit.

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Table 7

Benefit	Assumptions
Income Supplement	The supplement is \$500 or 8% of earned income in excess of \$3,750, whichever is less. The supplement is reduced by 10% of income in excess of \$20,921. This benefit is available to couples with children and lone parents.
BC Family Bonus	The maximum BC Family Bonus is \$1236 per year, per child under 18, for families with incomes of \$18,000 or less. This benefit is reduced by 16% of income in excess of \$18,000 for families with two children. Aboriginal families are assumed to have 2 children. This benefit is available to couples with children and lone parents.
Child Tax Benefit	The Child Tax Benefit pays an annual basic amount of \$1,020 per child. This amount is reduced by 5% of incomes in excess of \$25,921 for families with two children. Aboriginal families are assumed to have 2 children. This benefit is available to couples with children and lone parents.
PST Credit	The annual maximum credit is \$50 per adult family member. The full amount is reduced by 2% of income in excess of \$15,000 for single individuals and lone parents, and 5% for couples with incomes greater than \$18,000. This is available to couples, with and without children, lone parents and single individuals.
GST Credit	<p><u>Lone Parents</u> receive \$199 plus an additional \$199 for the first child, \$105 for the second child and an additional \$105 phased in at 2% of income in excess of \$3,750. The maximum amount is reduced by 5% of income in excess of \$25,921. Lone parents are assumed to have 2 children.</p> <p><u>Single individuals living alone</u> receive \$199 plus an additional \$105 phased in at 2% of income in excess of \$3750. The maximum amount is reduced by 5% for income in excess of \$25,931. It was assumed that half of non family members are single and living alone.</p> <p><u>Couples (with children)</u> receive \$199 for each parent and \$105 for each child. There is no phase in. The maximum amount is reduce by 5% for incomes greater than \$25, 921. Couples are assumed to have 2 children.</p> <p><u>Couples (without children)</u> receive - \$199 for each parent. There is no phase in. The maximum amount is reduced by 5% for income in excess of \$25,921. Couples are assumed to have 2 children.</p>

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Schedule B

Nisga'a Nation Own Source Revenue Capacity Annual Report

(A) Estimated Nisga'a Nation OSRC amount for the particular year	1998	\$x.xx
Section 6 recognition percentage		0.00%
Net Estimated Nisga'a Nation OSRC amount for the year		\$x.xx
(B) Actual Nisga'a Nation OSRC amount for the fiscal year	1996	
Commercial and investment Activities calculated tax [Section 7]		
Description of Activity #1 of the Nisga'a Nation	\$x.xx	
Description of Activity #2 of the Nisga'a Nation	\$x.xx	
and so on for each activity of the Nisga'a Nation	\$x.xx	
Description of Activity #1 of the Nisga'a Village #1	\$x.xx	
Description of Activity #2 of the Nisga'a Village #2	\$x.xx	
and so on for each activity for each Nisga'a Village	\$x.xx	
Description of Government Corporation #1	\$x.xx	
Description of Government Corporation #2	\$x.xx	
and so on for each Government Corporation	\$x.xx	
Description of each combinations not elsewhere reported	\$x.xx	
Description of each investment, fund or other financial account	\$x.xx	
and so on	====> \$x.xx	
Section 4(a) reduction		\$(x.xx)
Net own source revenue capacity		\$x.xx

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Nisga Taxes [Section 12]

Description of Tax (e.g., property tax)	\$x.xx	
Description of Tax (e.g., Canada-Nisga'a tax co-ordination agreement #12345)	\$x.xx	
And so on	<u>\$x.xx</u>	
	====>	\$x.xx

Nisga'a Settlement Trust taxable income [Section 13]

Description of Settlement Trust #1	\$x.xx	
Description of Settlement Trust #2	\$x.xx	
and so on	<u>\$x.xx</u>	
	====>	\$x.xx
less: section 19(c) reduction	<u>\$(x.xx)</u>	
		\$x.xx
Composite tax rate [Section 14(a)]	<u>18.20%</u>	
Net own source revenue capacity		\$x.xx

Charges and Fees [Section 18]

Description of charge 1	\$x.xx	
Reasonable expenses incurred for charge 1	<u>\$(x.xx)</u>	
	====>	\$x.xx
Description of charge 2	\$x.xx	
Reasonable expenses incurred for charge 2	<u>\$(x.xx)</u>	
	====>	\$x.xx
Description of fee 1	\$x.xx	
Reasonable expenses incurred for fee 1	<u>\$(x.xx)</u>	
	====>	\$x.xx
and so on	<u> </u>	
	====>	\$x.xx

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Inclusion Rate [Section 17]	46.00%	
Net own source revenue capacity		\$x.xx

Other Nisga'a Revenues [Section 18]		
description of other revenue source #1	\$x.xx	
description of other revenue source #2	\$x.xx	
and so on	<u>\$x.xx</u>	
	====>	\$x.xx

Inclusion Rate [Section 17]	46.00%	
Net own source revenue capacity		\$x.xx

Total Actual Nisga'a Nation OSRC		<u>\$x.xx</u>
Section 6 recognition percentage		<u>0.00%</u>
Total net actual OSRC for the year	1996	\$x.xx
less net estimated Nisga'a Nation OSRC for	1996	\$(x.xx)
Net addition (deduction) to be taken into account for the particular year		\$x.xx

(C) Section 20 (c) & (e) addition (deduction)		
Section 20 (c)	\$x.xx	
Section 20 (e)	<u>\$x.xx</u>	
Net Section 20 adjustment	====>	\$x.xx
TOTAL ADDITION (DEDUCTION) TO NET TRANSFER (A+B+C)		\$x.xx

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(D) Section 24 reporting	Taxes Calculated
Commercial and investment Activities calculated tax [Section 7]	
Description of Activity #1 of the Nisga’a Nation	\$x.xx
Description of Activity #2 of the Nisga’a Nation	\$x.xx
and so on for each activity of the Nisga’a Nation	\$x.xx
Description of Activity #1 of the Nisga’a Village #1	\$x.xx
Description of Activity #2 of the Nisga’a Village #1	\$x.xx
and so on for each activity for each Nisga’a Village	\$x.xx
Description of Government Corporation #1	\$x.xx
Description of Government Corporation #2	\$x.xx
and so on for each Government Corporation	\$x.xx
Description of each combinations not elsewhere reported	\$x.xx
Description of each investment, fund or other financial account	\$x.xx
and so on	<u>\$x.xx</u> ==>
	\$x.xx
OSR capacity for commercial and investment activities	\$x.xx
Section 24(a) & (b) determination	<u>\$x.xx</u> ==>
Difference	==> <div style="border: 1px solid black; display: inline-block; padding: 2px 5px; margin-left: 10px;">\$x.xx</div>

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Schedule C

This Schedule is attached to the Nisga'a Nation Own Source Revenue Agreement for convenience only, does not form part of that Agreement and in no way defines, limits, alters or enlarges the scope or meaning of any provision of that Agreement.

Any reference in this Schedule to a provision of the Income Tax Act reflects legislation in effect at December 31, 1999 and does not reflect amendments enacted after that date. For greater certainty, any amount in Nisga'a Nation own source revenue capacity that is determined with reference to a taxing statute will be determined with reference to that statute as it may be amended from time to time.

Technical Notes

Overview

Funding of the Nisga'a Nation and Nisga'a Villages is to be a shared responsibility of Canada, British Columbia and the Nisga'a Nation.

The Parties will enter into fiscal financing agreements whereby Canada and British Columbia will transfer funding to enable the Nisga'a Nation to provide specified public programs and services. The amount of the transfer will reflect, among other things, the financial contribution ("Nisga'a Nation own source revenue capacity") to be made by the Nisga'a Nation out of its own revenue resources. That financial contribution will be determined and applied pursuant to a separate own source revenue agreement among the Parties, as described in this schedule.

The Nisga'a Nation Own Source Revenue ("OSR") Agreement:

- sets out the rules to determine the Nisga'a Nation's financial contribution in respect of the programs and services described in the Nisga'a Nation Fiscal Financing Agreement ("fiscal financing agreement"); and
- describes how that contribution will be applied in determining the net transfers to be made by Canada or British under that fiscal financing agreement.

Components of Nisga'a Nation Own Source Revenue Capacity

The OSR Agreement contemplates that the Nisga'a Nation own source revenues will be derived from five principal sources:

- commercial and investment activities of the Nisga'a Nation, the Nisga'a Villages, and certain
-

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entities in which any of them holds a beneficial interest, where those activities are not otherwise subject to tax;

- direct taxation by the Nisga'a Nation and Nisga'a Villages;
- incomes from property within a Nisga'a settlement trust;
- charges and fees derived by the Nisga'a Nation, the Nisga'a Villages and certain entities in which any of them holds a beneficial interest;
- other revenues derived by the Nisga'a Nation, the Nisga'a Villages and certain entities in which any of them holds a beneficial interest.

In general, and subject to specific exclusions and transitional rules, the Nisga'a Nation own source revenue capacity in respect of these revenue sources will be an approximation of the tax revenues and other levies that Canadian governments might be expected to derive from similar revenue sources within their jurisdiction.

Excluded Revenues

Certain items are permanently excluded from the Nisga'a Nation own source revenue capacity. In general, these excluded items represent property transferred to the Nisga'a Nation under the Nisga'a Final Agreement (the "Treaty"), or proceeds from the sale thereof, incomes identified and specifically dedicated to pre-identified government purposes, such as income earned by the Nisga'a capital finance authority, gifts received from third parties, and inter-government transfers of revenues that have otherwise already been contemplated in the determination.

Transitional Rules

Transactions taxes and other taxes payable by Nisga'a citizens to the Nisga'a Nation, which ordinarily would be included, will be excluded from Nisga'a Nation own source revenue capacity during, respectively, the first eight and twelve years immediately following the effective date¹ of the Treaty.

Nisga'a Nation own source revenue capacity will be phased in on a staged and incremental basis over the first twelve years following the effective date, so that only a specified percentage of the amount otherwise determined will be taken into account in each of those years. Income and capital gains of the Nisga'a settlement trust will not be taken into account for the first twelve

¹Unless otherwise provided, the words "effective date" in this document refer to the effective date of the Treaty

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years commencing on or after the effective date.

Organization of OSR Agreement

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Components of Nisga'a Nation own source revenue capacity	
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Nisga'a Settlement Trusts	13 to 15
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Paragraph 4

Paragraph 4 is an interpretative provision which deals with the revenues of a Nisga'a exempt corporation.

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A “Nisga’a exempt corporation”, as defined in paragraph 1 of the Fiscal Relations Chapter² of the Treaty, is a corporation, other than a Nisga’a government corporation, in which the Nisga’a Nation or a Nisga’a Village has a direct or indirect interest as a shareholder and that is exempt from Canadian federal or provincial income tax. A corporation will be a “Nisga’a exempt corporation”, if it meets certain tests set out in subsections 149(1)(d.3) to (d.6) of the Income Tax Act, as follows:

- a. at least 90% of its shares are owned by one or more of the Nisga’a Nation, a Nisga’a Village or a Canadian municipality, in combination with one or more of the following:
 - i. Canada,
 - ii. a Canadian province,
 - iii. a corporation all of the shares of which are owned by Canada or a Canadian province, or
 - iv. a wholly owned subsidiary³ of a corporation described in subparagraph (iii);
- b. it is a wholly owned subsidiary of a corporation described in paragraph (a),
- c. at least 90% of its shares are owned by the Nisga’a Nation, a Nisga’a Village or a Canadian municipality, where the corporation’s income from activities carried on outside of the geographic boundaries of the shareholders does not exceed 10% of its income for the period; or
- d. it is a wholly owned subsidiary of a corporation referred to in paragraph (c) and meets the income test described in that paragraph.

For example:

- a. *Companies A, B and C are Nisga’a exempt corporations, where:*
 - i. *the shares of Company A are owned 50% by the City of Terrace, 41% by the Nisga’a Nation and 9% by a U.S. public corporation,*
 - ii. *Company A owns 100% of Company B, and*

²Unless otherwise provided, the word “Chapter” in this schedule refers to a Chapter in the Treaty

³In this schedule, the phrase “wholly owned subsidiary” includes any corporation in a chain of wholly owned subsidiary corporations.

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iii. *Company B owns 100% of Company C;*

(provided the income test is met in all cases); and

b. *Companies E and F are **not** Nisga'a exempt corporations, where:*

i. *the Nisga'a Nation owns 100% of Company D,*

ii. *Company D owns 90% of Company E, and*

iii. *Company E owns 100% of Company F.*

(Companies E and F fail the stock ownership test since the 90% interest in Company E is held through a corporation, rather than directly by the Nisga'a Nation.

Paragraph 4(a) ensures that Nisga'a Nation own source revenue capacity does not include any share of the revenues of a Nisga'a exempt corporation that ultimately will accrue to the benefit of a shareholder other than the Nisga'a Nation, a Nisga'a Village or a Nisga'a settlement trust.

For instance, in example (a) above, only 41% of the own source revenue capacity attributable to Companies A, B and C will be taken into account in Nisga'a Nation own source revenue capacity.

Paragraph 4(b) provides that, where the Nisga'a Nation and Nisga'a Villages, acting alone or together, cannot cause a particular Nisga'a exempt corporation to pay dividends, the own source revenue capacity attributable to the corporation will be taken into account only when and to the extent that the corporation distributes that own source revenue capacity as a dividend to the Nisga'a Nation, a Nisga'a Village or a Nisga'a government corporation.

In example (a) above, assume that in Year 1 Company B sells its shares of Company C and realises a \$500 capital gain. Company B's only asset was its investment in Company C. In Year 2, Company B pays a \$250 dividend to Company A.

Company A had no retained earnings at the beginning of Year 2. In Year 2, Company A receives the \$250 dividend from Company B and earns \$1,000 of commercial business income from its own operations. Company A pays a \$500 dividend to its shareholders at the end of Year 2. The Nisga'a Nation's share of the \$500 dividend is \$205.

Nisga'a Nation own source revenue capacity for Year 2 will include 44.339% [100 x

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$(39.215\%^4 \text{ of } \$250 + 45.62\%^5 \text{ of } \$1000)/(\$250 + \$1,000)] \text{ of the } \$205 \text{ dividend, or } \$91.$

Paragraph 5

Paragraph 5 is the charging provision of the OSR Agreement. This paragraph constitutes the definition of Nisga'a Nation own source revenue capacity and, hence, defines the amount of the Nisga'a Nation's financial contribution under its fiscal financing agreements.

Under paragraph 5, Nisga'a Nation own source revenue capacity for a fiscal year is defined to be the "specified percentage", described in paragraph 6, of the aggregate of:

- the own source revenue capacity for the year in respect of commercial and investment activities, as defined in paragraph 7,
- the own source revenue capacity in respect of the fiscal year in respect of Nisga'a taxes, as defined in paragraph 12,
- the own source revenue capacity for the fiscal year in respect of Nisga'a settlement trusts, as defined in paragraph 13,
- the own source revenue capacity for the fiscal year in respect of charges and fees, as defined in paragraph 16, and
- the own source revenue capacity for the fiscal year in respect of other Nisga'a revenues, as defined in paragraph 18.

Paragraph 7

Paragraphs 7 to 11 implement the principle expressed in paragraph 16(d) of the Fiscal Relations Chapter.

Paragraph 7 defines "own source revenue capacity in respect of commercial and investment activities" for purposes of the definition of "Nisga'a Nation own source revenue capacity" in paragraph 4. Under paragraph 7, own source revenue capacity in respect of commercial and investment activities is the sum of each tax, other than a tax under the *Mineral Tax Act*, *Mining Tax Act*, *Petroleum and Natural Gas Act* or *Mineral Land Tax Act* referred to paragraphs 24 or 26

⁴1999 effective combined federal and British Columbia corporate income tax rate on capital gains.

⁵1999 effective combined federal and British Columbia corporate income tax rate on business and income not eligible for the small business deduction.

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of the Nisga'a Nation Taxation Agreement, that would be payable to a government in Canada by the Nisga'a Nation, the Nisga'a Villages, Nisga'a government corporations, Nisga'a exempt corporations, and certain corporations without share capital, if:

- a. each such entity were subject to the tax under laws of general application,
- b. the Nisga'a Nation and each Nisga'a Village were private Canadian corporations (as per the assumption in paragraph 8), and
- c. the other assumptions in paragraphs 8 to 11 applied.

Each entity will compute the corporate tax that it would pay for the particular fiscal year, if it were subject to tax under the rules that apply to private corporations in the commercial mainstream and, if the relevant assumptions applied. For that purpose, the entity's tax will be computed in accordance with the rules that are in effect for the particular year under each of the relevant taxing statutes.

For instance:

- interest, dividends, and investment income will be treated in the manner prescribed under the Income Tax Act for similar incomes derived from similar sources by taxable Canadian controlled private corporations;
- an allowable loss incurred by a particular entity in any particular year will be treated as it would under normal corporate income tax rules: i.e., it will be carried over and applied against the entity's income for preceding or subsequent years, within the prescribed statutory limits; and
- the losses of any entity will not be available to reduce the income of another without winding one up into the other or otherwise legally merging the two.

The parties will be guided, in applying the relevant statutory rules for a particular year, by the applicable decided jurisprudence, published interpretations, and published rulings that are available to the public as at the end of that year.

The calculation under paragraph 7 contemplates commercial and investment activities of the Nisga'a Nation, the Nisga'a Villages, Nisga'a government corporations⁶, Nisga'a exempt

⁶A corporation is a "Nisga'a government corporation", as defined in paragraph 1 of the Fiscal Relations Chapter of the Treaty, if all of its shares (except directors' qualifying shares) are owned by the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust, or by any combination thereof.

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corporations⁷, and corporations without share capital that are established and operated for the benefit of the Nisga'a Nation and/or a Nisga'a Village.

Many Nisga'a government corporations⁸ will be subject to tax under laws of general application. In addition, the Nisga'a Nation, Nisga'a Villages and Nisga'a exempt corporations may be subject to tax under some taxing statutes. In those cases, the Nisga'a Nation, Nisga'a Villages, Nisga'a government corporations and Nisga'a exempt corporations will pay those taxes under the normal rules. The bases upon which those taxes are levied will be excluded from the amounts used to calculate Nisga'a Nation own source revenue capacity, pursuant to subparagraph 16(e) of the Fiscal Relations.

On the other hand, there may be an instance where a provision in a law of general application exempts a taxable Canadian corporation from a particular tax in respect of a particular commercial or investment activity. The Nisga'a Nation or a Nisga'a Village would be similarly exempt from that tax, if it were a privately owned taxable Canadian corporation and engaged in that activity. Thus, no amount will be included in respect of that tax in own source revenue capacity under paragraph 7 when that activity is carried on by any of the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation, a Nisga'a exempt corporation or a

The definition of "Nisga'a government corporation" includes "look through" rules for shares which are owned by an intermediary corporation, partnership or trust (other than a Nisga'a settlement trust). Under those rules, any shares of a corporation that are owned by an intermediary are deemed to be owned by the intermediary's shareholders, partners or beneficiaries, as appropriate, proportionate with the relative fair market values of their respective interests in the intermediary.

Thus, to assess if a particular corporation is a Nisga'a government corporation, it is necessary to examine the distribution of ownership of its issued shares up the complete ownership chain, attributing the ownership of shares held by any intermediary to the intermediary's owners, and so on, until the ultimate owner of the shares is determined. After that process, if all of the corporation's shares are found to be owned, or deemed to be owned, by the Nisga'a Nation, a Nisga'a Village or a Nisga'a settlement trust, then the corporation will be a Nisga'a government corporation. Conversely, a corporation is not a Nisga'a government corporation if, at any point in the analysis, any of its shares is found to be owned, or deemed to be owned, by a person that is not the Nisga'a Nation, a Nisga'a Village, a Nisga'a settlement trust or an intermediary.

⁷See discussion under paragraph 4.

⁸A Nisga'a government corporation will be exempt from tax under the *Income Tax Act* only if the Nisga'a Nation and/or one or more Nisga'a Villages directly own at least 90% of its issued shares or if it is a wholly owned subsidiary of such a corporation. Thus, for instance, a Nisga'a government corporation that is 50% owned by the Nisga'a Nation and 50% owned by a company that is wholly owned by the Nisga'a Nation will not be exempt from tax under the *Income Tax Act*. Moreover, a company which meets the share ownership test will nevertheless be taxable, if more than 10% of its income is derived from activities carried on outside the geographic boundaries of its shareholders (i.e., in the case of a shareholder that is a Nisga'a Village, its Village lands; in the case of the Nisga'a Nation, Nisga'a Lands).

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corporation without share capital established and operated for the benefit of the Nisga’a Nation or a Nisga’a Village.

Paragraph 8

Subparagraph 8(a) provides that, for purposes of computing the amounts to be included in own source revenue capacity under paragraph 7, the Nisga’a Nation and each Nisga’a Village will be treated as if it were a private corporation incorporated in Canada on the effective date, all of the shares of which were owned by one or more individuals resident in Canada. Under these assumptions, the Nisga’a Nation and each Nisga’a Village will be treated as if it were a taxable “Canadian controlled private corporation” (within the meaning of the *Income Tax Act*) for purposes of approximating the tax revenues that Canadian governments would expect to derive if the Nisga’a Nation’s and Nisga’a Villages’ commercial activities were carried out by the private sector. A Canadian controlled private corporation is the typical operating structure for similarly sized Canadian private enterprises in the commercial sector.

Subparagraph 8(b) provides for purposes of paragraph 7, that the Nisga’a Nation and the Nisga’a Villages are assumed to be unrelated parties which deal with each other at arm’s length. This rule establishes certain base line assumptions to assist the Parties in deciding how the rules in various taxing statutes are to be applied for purposes of determining own source revenue capacity in respect of commercial and investment activities. Certain statutes apply different thresholds for allowable deductions, tax rates and tax credits, depending on whether the particular “taxpayer” is related to, or deals at arm’s length with another.

For example, under the assumptions in subparagraph 8(b), there will be five groups of corporations. The Nisga’a Nation and its subsidiary companies will constitute one group. The four Nisga’a Villages, each with its own subsidiary companies, will constitute the others. Each company within a particular group will be related to, and “associated” (within the meaning of the *Income Tax Act*) with each other company in that group, but will not be associated with, or related to, any company in any other group. Each “associated group” will be entitled to its own “small business deduction”, in computing own source revenue capacity in respect of the first \$200,000 of active business income⁹ that is earned by that group for the fiscal year. That “small business deduction” will have to be shared among all of the members in that group, but will not have to be shared with any other company in any other group. Similarly, each group will be entitled to its own capital deduction⁹, which will be shared among the members of that group, for purposes of computing the notional large corporations tax liability of each group member for that year.

Paragraph 9

⁹Within the meaning of the *Income Tax Act*.

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Paragraph 9 sets out certain assumptions to be used for purposes of computing own source revenue capacity in paragraph 7.

Subparagraph 9(a) provides that the amount under paragraph 7 will be determined on the assumption that each entity referred to in that paragraph 7 has a fiscal period coincident with the fiscal year ending on March 31 in each calendar year. This assumption simplifies reporting and ensures that both sides of inter-company transactions are reflected in the same accounting period for purposes of computing own source revenue capacity.

Subparagraph 9(b) provides that the own source revenue capacity for a fiscal year in respect of commercial and investment activities will be determined based on an assumption that each entity referred to in paragraph 7 did not carry on any activity, other than its commercial and investment activities. Similarly, subparagraph 9(c) assumes that each such entity did not own any property, except to the extent that the property was employed by the entity in a commercial or investment activity in the year. These provisions ensure that property, revenues and expenses associated with public programs and services, the capital finance authority or other activities of the entity are not taken into account in determining the own source revenue capacity in respect of the entity's commercial and investment activities.

Subparagraph 9(d)(i) provides that no deduction will be made in computing income or taxable income, for purposes of computing own source revenue capacity in respect of commercial and investment activities under paragraph 7, for any amount to the extent that the amount reasonably can be considered to be an expenditure in respect of:

- A. a program or service for which funding has been provided to the Nisga'a Nation under a fiscal financing agreement; or
- B. a management, enhancement or rehabilitation activity in respect of a natural resource, other than a forestry resource, that is reasonably comparable in nature to an activity carried on by another government in Canada in respect of the management, enhancement or rehabilitation of a similar natural resource.

Nisga'a governments and their agencies may be engaged in a number of activities at any given time: e.g., providing public programs and services funded under fiscal financing agreements, providing programs and services which are contemplated but not funded under fiscal financing agreements, providing public programs and services which are neither contemplated nor funded under fiscal financing agreements, commercial business activities, investment activities, etc. Certain administrative, overhead or other costs incurred by an entity will be allocable to specific activities while other administrative, overhead or costs will be joint costs that benefit the entity's activities as a whole. The inclusion of subparagraph 9(d)(i)(A) in the OSR Agreement clarifies that each reporting entity should analyse its expenditures to ensure that they are charged to, or

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allocated among, its activities on an appropriate and reasonable basis for purposes of determining amounts to be included in own source revenue capacity under paragraph 7.

In addition, subparagraph 9(d)(i)(B) recognises that Nisga'a governments will both govern and exploit the natural resources on Nisga'a Lands, and that certain types of expenses may be common to both roles. Subparagraph 9(d)(i)(B) attempts to draw a line, for resources other than a forestry resource, to distinguish those expenses that commonly would be regarded as being necessary or ordinary to the exploitation of a natural resource by a private entrepreneur, from other expenses incurred by Nisga'a governments or their agencies in respect of the resource. The express exception for forestry resources recognises that, for certain tenures on provincial Crown land, the provincial government incurs expenditures of a type (e.g., construction of roads, bridges, silvaculture, etc.) that, in other circumstances, normally would be the responsibility of the entrepreneur or freehold landowner. Thus, it would not be appropriate to deny the ability to deduct such expenditures in computing income from the forestry resource, simply because the expenditures are comparable in nature to an activity carried on by a provincial government.

Subparagraph 9(d)(i) is included in the OSR Agreement for greater certainty. It does not override provisions of the *Income Tax Act* that require deductible expenditures to be laid out by the taxpayer for the purpose of earning income from a business or property and that they be reasonable in the circumstances.

Subparagraph 9(d)(ii) is an anti-avoidance provision to prevent an entity referred to in paragraph 7 from artificially reducing its own source revenue capacity by making of a tax deductible gift to another entity that provides goods or services primarily to Nisga'a citizens. A gift received by the Nisga'a Nation, a Nisga'a Village or a Nisga'a Institution is expressly excluded from Nisga'a Nation own source revenue capacity pursuant to subparagraph 19(h). Absent subparagraph 9(d)(ii), the Nisga'a Nation and Nisga'a Villages would be able to reduce own source revenue capacity in respect of commercial and investment activities simply by making donations to each other. Subparagraph 9(d)(ii) also prevents the deduction of gifts made to other parties that provide goods or services primarily to Nisga'a citizens. Such gifts could be used to indirectly enrich the Nisga'a Nation or a Nisga'a Village, if the provision of goods or services by the donee satisfies the Nisga'a Nation's obligation under a fiscal financing agreement to provide goods and services to Nisga'a citizens. In such case, the gift by the Nisga'a Nation to the third party would be equivalent to the Nisga'a Nation making a gift to itself, and if allowed as a deduction, could result in the artificial reduction of own source revenue capacity.

Paragraph 9 provides that own source revenue capacity in respect of commercial and investment activities will be determined under paragraph 7 based on the assumption that the Nisga'a Nation and each Nisga'a Village was allowed a deduction in computing corporation capital tax of an amount equal to the carrying value of any estate or interest it held in Nisga'a Lands on which there were no improvements or on which there was a designated improvement.

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Paragraph 10

Subparagraph 10(a) is provided for greater certainty to ensure that, for purposes of calculating depletion expense of an entity referred to in paragraph 7 in relation to an interest in a forest resource on Nisga'a Lands, and for purposes of computing the amount of previously claimed depletion that is recovered through a subsequent sale of that interest, the interest shall be deemed to have been originally acquired by the entity at a cost equal to:

- where the property was last acquired after the effective date of the Treaty from a person with whom the entity was dealing at arm's length (other than the Nisga'a Nation, a Nisga'a Village, or a Nisga'a government corporation), the consideration given to the arm's length party for that acquisition of that interest;
- otherwise, the fair market value of the interest as at the effective date.

The reference to the Nisga'a Nation, Nisga'a Villages and Nisga'a government corporations above and in subparagraph 10(a)(ii) is included in order to prevent entities referred to in paragraph 7 from artificially increasing the base for depletion by trading interests in forest resources on Nisga'a Lands. Proceeds from the sale of Nisga'a Lands or Nisga'a fee simple Lands are not taken into account in determining Nisga'a Nation own source revenue capacity, by virtue of paragraph 18(a) of the Fiscal Relations Chapter (except as discussed in "Paragraph 19" below). Thus, absent the reference in subparagraph 10(a)(ii) to the prescribed entities, it would have been possible to sell interests between the parties at fair market value without own source revenue capacity consequences and thereby artificially increase future depletion allowances on the transferred interests.

Subparagraph 10(b) is included for greater certainty. It provides that, for purposes of determining own source revenue capacity under paragraph 7, no deduction will be allowed in respect of an outlay or expenditure in relation to the management or development of a forest resource, except to the extent that the outlay or expenditure was made or incurred for the purpose of earning income from the resource and is reasonable in the circumstances. This provision is consistent with and mirrors the general provisions in paragraph 18(1)(a) and section 67 of the *Income Tax Act*.

Paragraph 11

Paragraph 11 provides that, for purposes of determining own source revenue capacity in respect of the exploitation of an interest in a mineral, petroleum or natural gas resource, the relevant amount is to be computed as if the Income Tax Act were read without reference to paragraphs 12(1)(o), 12(1)(z.5), 18(1)(m) and 20(1)(v.1) and subsections 69(6) and (7) thereof.

The foregoing provisions of the Income Tax Act, in effect, prohibit taxpayers in the resource

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industries from deducting Crown royalties and similar payments in computing income for federal income tax purposes and, instead, replace the lost deductions with a special “resource allowance” approximately equal to 25% of the taxpayer’s resource profits. These rules were introduced in the early 1970's in recognition of significant increases in provincial Crown royalty rates which, had provincial Crown royalties continued to be deductible for federal tax purposes, would have shifted a significant portion of the federal government’s share in resource profits away from Canada to the host provinces.

Pursuant to paragraph 20 of the Lands Chapter of the Treaty, Nisga’a Lisims Government will have exclusive authority to determine collect and administer any fees, rents, royalties or other charges in respect of mineral resources on or under Nisga’a Lands. As a result, the entities referred to in paragraph 7 will not be liable for any provincial Crown royalties in respect of those resources and, as a consequence, the amounts referred to in paragraphs 12(1)(o) and 18(1)(m) and subsections 69(6) and (7) of that *Act* will be nil in respect of those resources. Similarly, with the elimination of Crown royalty payments, there is no need to compensate the entities for any inability to deduct those payments for federal tax purposes and, thus, there is no need for any reference to the “resource allowance” provisions in paragraphs 12(1)(z.5) and 20(1)(v.1) of the *Act* when computing own source revenue capacity in respect of the resources.

Paragraph 12

Paragraph 12 defines own source revenue capacity in respect of Nisga’a taxes¹⁰, for purposes of determining Nisga’a Nation own source revenue capacity under paragraph 5 for a fiscal year.

Under paragraph 12, the Nisga’a Nation will calculate an own source revenue capacity for each type of Nisga’a tax for each fiscal year. The amount for each tax will be calculated in accordance with the rules in subparagraph 16(c) of the Fiscal Relations Chapter, as modified by the rules in paragraph 12. The amounts so determined for all of the types of Nisga’a tax will then be added together to determine the “own source revenue capacity for the fiscal year in respect of Nisga’a taxes” for purposes of paragraph 5.

Paragraph 16(c) of the Fiscal Relations Chapter recognizes that any Nisga’a tax will be imposed under two possible circumstances:

- under the authority of paragraph 1 of the Taxation Chapter, in which case, the tax will apply only to Nisga’a citizens on Nisga’a Lands; and

¹⁰“Nisga’a tax” is defined in paragraph 2 to be a direct tax imposed under a law made by Nisga’a Government on Nisga’a citizens or on other persons, if authority to tax such other persons has been delegated by Canada or British Columbia under an agreement with the Nisga’a Nation, and any fine, penalty or interest paid to the Nisga’a Nation or a Nisga’a Village in respect of the tax.

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- under delegated authority of Canada or British Columbia to impose the tax on other persons on Nisga'a Lands.

In both cases, the Nisga'a authority to impose the tax will run concurrently with that of Canada and British Columbia and may be exercised with or without the agreement of those Parties to provide the Nisga'a Nation or Nisga'a Village with the room to impose its tax. With tax coordination agreements (see paragraph 3(b) of the Taxation Chapter), the parties will be able to negotiate the sharing of tax room so that individual taxpayers are not taxed excessively relative to taxpayers living in other similar communities.

Paragraph 16(c) of the Fiscal Chapter, as modified by paragraph 12, provides that the own source revenue capacity of a Nisga'a tax will not exceed the sum of:

- i. the amount of tax room that is made available in respect of the tax by Canada or British Columbia, plus
- ii. where the tax is similar to a tax generally imposed by local authorities in British Columbia (e.g., real property taxes):
 - A. where the tax is only imposed on Nisga'a citizens, 50% of the amount by which the Nisga'a tax revenues exceed the amount determined under (i) above, or
 - B. otherwise, the amount by which the Nisga'a Government's "tax capacity" in respect of the tax exceeds the amount determined under (i) above,

minus the reasonable costs incurred by the Nisga'a Government in developing and administering the tax system in respect of the tax and in collecting the tax.

For the purposes of (ii)(B) above, the Nisga'a Government's "tax capacity" in respect of the tax will be determined on a fair and reasonable basis, taking into account the circumstances in the Nisga'a communities and in similar communities in northwest British Columbia.

Example 1: assume the Nisga'a Nation imposes a sales tax regime on transactions occurring on Nisga'a Lands:

- a. *if the tax is imposed in full replacement of the 7% provincial tax (i.e., because British Columbia has vacated the sales tax field to the extent required to give the Nisga'a Nation the room to impose a comparable 7% tax), the own source revenue capacity in respect of the Nisga'a tax will be equal to the social services tax that British Columbia otherwise would have expected to collect had it not given up that tax room (regardless*

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of whether the Nisga'a tax is imposed at 7%, 10%, or not at all), minus the reasonable costs incurred in respect of the tax by the Nisga'a Nation,

- b. if, British Columbia decides to remain in the field but agrees to drop its own rate to 3%, the own source revenue capacity in respect of the Nisga'a tax will be equal to the additional social services tax that British Columbia would have expected to collect had it continued to impose tax at 7%, rather than at the reduced rate of 3% (again, regardless of the rate, if any, at which the tax is imposed by the Nisga'a Nation), minus the Nisga'a Nation's reasonable costs, and*
- c. if British Columbia continues to impose its own tax in addition to the tax imposed by the Nisga'a Nation, there will be no own source revenue capacity in respect of the Nisga'a tax. The tax collected by the Nisga'a Nation will not affect the amount of the net transfer to be received under the fiscal financing agreements. (This situation is most likely to occur only while British Columbia's remission of sales tax paid by Nisga'a citizens on Nisga'a Lands remains in effect, i.e., only during the first eight years following the effective date. That is, the Nisga'a Nation is not likely to impose a sales tax while its citizens remain fully subject to provincial sales tax, since to do so would increase the effective tax burden on Nisga'a Lands above that of the surrounding area).*

Example 2: assume a Nisga'a Village institutes a real property tax regime on its Village Lands:

- a. if the tax applies only to Nisga'a citizens, the own source revenue capacity in respect of the tax is equal to 100% of the tax room made available in respect of the tax by British Columbia, minus the Village's reasonable costs in respect of the tax room, plus 50% of any revenues received by the Village in excess of that tax room. If no tax room is granted by British Columbia, then the own source revenue in respect of the tax will be 50% of every dollar of tax collected by the Village,*
- b. if the tax applies to all persons on the Village Lands, then the own source revenue capacity will be 100% of the "tax capacity" in respect of the tax, minus the Village's reasonable costs.*

Paragraph 13

Paragraph 13 defines own source revenue capacity in respect of Nisga'a settlement trusts, for purposes of determining Nisga'a Nation own source revenue capacity under paragraph 5 for a fiscal year.

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Under paragraph 13, the Nisga'a Nation will determine the taxable income of each Nisga'a settlement trust for the "taxation year" of the trust which ends in the Nisga'a Nation's fiscal year. That "taxable income" will then be multiplied by the "composite tax rate", as defined in paragraph 14, to arrive at an own source revenue capacity in respect of the particular trust. The amounts so determined in respect of all of the trusts will then be added together to determine the "own source revenue capacity for the fiscal year in respect of Nisga'a settlement trusts" for purposes of paragraph 5.

Paragraph 15

Paragraph 15 provides for greater certainty that "taxable income" and "taxation year" in paragraphs 13 and 14 have the same meanings as in the *Income Tax Act*.

Thus, the "taxable income" referred to in paragraphs 13 and 14 will be determined, for example, by including, among other things, 125% of amounts received by the trust on account of dividends from corporations resident in Canada and 75% of the capital gains realised by the trust in the year, and by deducting, among all other amounts deductible in computing the taxable income of a trust under the *Income Tax Act*, the amount of the income of the trust that is paid or made payable to its beneficiaries in the taxation year.

Under the *Income Tax Act*, the "taxation year" of an *inter-vivos* trust is the calendar year.

Paragraph 19

Paragraph 19 sets out the revenue sources that will not be taken into account in determining Nisga'a Nation own source revenue capacity. Paragraph 19 applies notwithstanding any other provision of the OSR Agreement.

Subparagraph 19(a) provides that Nisga'a Nation own source revenue capacity will not include any amount in respect of proceeds from the sale of Nisga'a Lands or Nisga'a Fee Simple Lands, other than revenues received by the Nisga'a Nation, a Nisga'a Village or a Nisga'a government corporation in the course of renting or licensing the lands, or taking production from the lands, or revenues that reasonably can be considered to represent a recovery of depletion or depreciation that has been claimed as a deduction in the calculation of own source revenue capacity.

Example: Nisga'a Village A owns a parcel of forested Category B Lands outside Nisga'a Lands. On the effective date, the parcel had a fair market value of \$200,000 and a residual value (i.e., the fair market value after removal of all merchantable timber) of \$50,000.

Nisga'a Village A removed approximately one half of the original timber from the Category B parcel over a fifteen year period following effective date. Over that period, Nisga'a Village A

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claimed total depletion of \$75,000, in respect of the removed timber, when computing its income for purposes of calculating Nisga'a Nation own source revenue capacity under paragraph 7. As a result, the parcel's undepreciated capital cost to Nisga'a Village A currently stands at \$125,000.

As per subparagraph 19(a)(iii), if Nisga'a Village A were to sell its parcel for \$250,000, the Nisga'a Nation would be required to report \$75,000 of income, for purposes of calculating Nisga'a Nation own source revenue capacity, computed as follows:

Proceeds for purposes of computing own source revenue capacity:

Lesser of:

<i>Proceeds, otherwise determined</i>	<u><i>\$250,000</i></u>	
<i>Original capital cost</i>	<u><i>\$200,000</i></u>	<i>\$200,000</i>
<i>Less: undepreciated capital cost</i>		<u><i>125,000</i></u>
<i>Addition to income for purposes of calculating own source revenue capacity ("recaptured depreciation")</i>		<u><i>\$ 75,000</i></u>

Paragraph 20

Paragraph 20 sets out the manner in which Nisga'a Nation own source revenue capacity is to be applied in fiscal financing agreements.

The net transfers by British Columbia and Canada, referred to in paragraph 20, are defined, respectively, in paragraphs 51 and 52 of the fiscal financing agreement.

Paragraph 51 of the fiscal financing agreement defines the net transfer by British Columbia for a fiscal year to be the annual funding amount specified in Schedule A of that agreement. That amount is not directly affected by Nisga'a Nation own source revenue capacity.

In contrast, Canada's net transfer will be affected by Nisga'a Nation own source revenue capacity, as outlined in paragraph 52 of the fiscal financing agreement and paragraph 20 of the OSR Agreement. Under paragraph 52 of the fiscal financing agreement, the net transfer by Canada for a fiscal year will be the amount otherwise determined under the fiscal financing agreement:

- b. without adjustment for Nisga'a Nation own source revenue capacity, where the year includes the effective date; and
- c. in any other case, as adjusted for Nisga'a Nation own source revenue capacity in accordance with paragraph 20 of the OSR Agreement.

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Paragraph 20 of the OSR Agreement provides that the Parties, in determining the amount of the net transfers for a given year will adjust the amount otherwise determined for the year under the fiscal financing agreement, by decreasing the amount for some items, and increasing it for others. The net total adjustments can be a negative or a positive amount.

Paragraph 20 provides that the sum of the net transfers otherwise determined will be **decreased** by:

- a. the “estimated Nisga’a Nation OSRC amount” for the year. The “estimated Nisga’a Nation OSRC amount” used in calculating the net transfer is a preliminary estimate of, or provision for, the actual Nisga’a Nation own source revenue capacity that will be eventually calculated in respect of the year. Any difference between that preliminary amount and the actual Nisga’a Nation own source revenue capacity for a year will be accounted for in an adjustment, described in (b) or (d) below, of the net transfer for the second year following that year.

Paragraph 21 stipulates that the “estimated Nisga’a Nation OSRC amount” to be used in a given year will be an amount equal to:

- i. the aggregate amount (i.e., the aggregate amount referred to in paragraph 5) used to calculate the Nisga’a Nation own source revenue capacity for the second year preceding the year at hand, multiplied by
- ii. the “specified percentage” referred to in paragraph 22¹¹ for the year at hand.

Once the system is mature, and once the “specified percentage” for all years is 100%, the “estimated Nisga’a Nation OSRC amount” for a given year will simply be, in effect, an amount equal to the Nisga’a Nation own source revenue capacity for the second year preceding the given year;

- b. any adjustment required where actual Nisga’a Nation own source revenue capacity, for the second year preceding the year at hand, exceeded the estimated Nisga’a Nation OSRC amount used in calculating the net transfer for that second preceding year; and
- c. any amount owed by the Nisga’a Nation to Canada or British Columbia as a result of a change to the Nisga’a Nation own source revenue capacity calculated for a preceding fiscal year, where the requirement for the change was confirmed through resolution of a disagreement with the amount originally reported by the Nisga’a Nation.

¹¹The “specified percentages” in paragraph 22 are the same as those in paragraph 6.

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Paragraph 20 further provides that the sum of the net transfers otherwise determined will be **increased** by:

- d. any adjustment required where the estimated Nisga'a Nation OSRC amount used in calculating the net transfer for the second year preceding the year at hand, exceeded actual Nisga'a Nation own source revenue capacity for that second preceding year; and
- e. any amount owed by Canada or British Columbia to the Nisga'a Nation as a result of a change to the Nisga'a Nation own source revenue capacity calculated for a preceding fiscal year, where the requirement for the change was confirmed through resolution of a disagreement with the amount originally reported by the Nisga'a Nation.

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Example:

Calculation of Net Transfer

	Year 1	Year 2	Year 3	Year 4	Year 5
<i>Net Transfer, otherwise determined</i>					
<i>Adjustment (a):</i>	\$ 30,000	\$ 30,900	\$ 31,827	\$ 32,782	\$ 33,765
<i>aggregate referred to in paragraph 5 for the second preceding year</i>	\$ 0	\$ 0	\$ 322	\$ 510	\$ 698
<i>specified percentage</i>	0.00%	0.00%	5.00%	5.00%	10.00%
<i>estimated Nisga'a Nation OSRC amount</i>	\$ 0	\$ 0	(\$ 16)	(\$ 26)	(\$ 70)
<i>Adjustment (b)</i>					
<i>Nisga'a Nation own source revenue capacity for the second preceding year</i>	\$ 0	\$ 0	\$ 0	\$ 0	(\$ 35)
<i>estimated Nisga'a Nation OSRC amount for the second preceding year</i>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 16
<i>net adjustment (b)</i>	\$ 0	\$ 0	\$ 0	\$ 0	(\$ 19)
<i>Adjustment (d)</i>					
<i>estimated Nisga'a Nation OSRC amount for the second preceding year</i>					
<i>Nisga'a Nation own source revenue capacity for the second preceding year</i>					
<i>net adjustment</i>					
<i>Net transfer</i>	\$ 30,000	\$ 30,900	\$ 31,811	\$ 32,756	\$ 33,677
<u><i>Amount reported in Nisga'a Nation OSRC Annual Report</i></u>					
<i>aggregate referred to in paragraph 5</i>	\$ 322	\$ 510	\$ 698	\$ 887	\$ 1075
<i>specified percentage</i>	0.00%	0.00%	5.00%	5.00%	10.00%
<i>Nisga'a Nation own source revenue capacity</i>	\$ 0	\$ 0	\$ 35	\$ 44	\$ 108

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Example (Cont'd):

Calculation of Net Transfer

	Year 6	Year 7	Year 8	Year 9	Year 10
<i>Net Transfer, otherwise determined</i>					
<i>Adjustment (a):</i>	\$ 33,765	\$ 34,778	\$ 35,822	\$ 36,896	\$ 38,003
<i>aggregate referred to in paragraph 5 for the second preceding year</i>	\$887	\$1,075	\$229	\$0	\$1643
<i>specified percentage</i>	15.00%	20.00%	30.00%	40.00%	55.00%
<i>estimated Nisga'a Nation OSRC amount</i>	(\$133)	(\$215)	(\$69)	\$0	(\$904)
<i>Adjustment (b)</i>					
<i>Nisga'a Nation own source revenue capacity for the second preceding year</i>	(\$44)	(\$108)			(\$493)
<i>estimated Nisga'a Nation OSRC amount for the second preceding year</i>	\$26	\$70			\$69
<i>net adjustment (b)</i>	(\$19)	(\$38)	\$0	\$0	(\$424)
<i>Adjustment (d)</i>					
<i>estimated Nisga'a Nation OSRC amount for the second preceding year</i>			\$133	\$215	
<i>Nisga'a Nation own source revenue capacity for the second preceding year</i>			(\$34)	\$0	
<i>net adjustment</i>			\$99	\$215	
<i>Net transfer</i>	\$ 33,613	\$ 34,525	\$ 35,852	\$ 37,111	\$ 36,675
<u><i>Amount reported in Nisga'a Nation OSRC Annual Report</i></u>					
<i>aggregate referred to in paragraph 5</i>	\$229	\$0	\$1643	\$1832	\$2022
<i>specified percentage</i>	15.00%	20.00%	30.00%	40.00%	55.00%
<i>Nisga'a Nation own source revenue capacity</i>	\$34	\$0	\$493	\$733	\$1,112

Paragraph 24

Paragraph 24 provides that the Nisga'a Nation OSRC annual report will include an analysis which compares:

- a. the own source revenue capacity for the year in respect of commercial and investment activities with
- b. the amount that would be determined, if the own source revenue capacity from commercial and investment activities of each entity referred to in paragraph 7 were calculated:
 - i. based on the consolidated net accounting incomes of those entities from those activities, and

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- ii. using the prevailing combined federal and British Columbia corporate income tax rates on business income¹².

This analysis is to be prepared for purposes of providing information for negotiation of the next own source revenue agreement.

For this purpose, the calculation of consolidated net accounting income will be subject to the provisions of subparagraphs 16(d), 16(e) and paragraph 18 of the Fiscal Relations Chapter and paragraphs 4, 9 and 10¹³ and subparagraphs 19(a), (g), (h) and (i) of this agreement.

Paragraph 25

Paragraph 25 provides any of the Parties the right to object within the prescribed time limit to any amount reported in a Nisga'a Nation OSRC annual report for a fiscal year. After notice is given under paragraph 27, the objection will be resolved in accordance with process described in paragraphs 28 and 29.

For greater certainty, this provision does not limit a Party from lodging a subsequent objection to an amount determined in conjunction with, or arising from, the resolution of an objection referred to in paragraph 25, nor does the resolution of an objection in respect of one amount included in a Nisga'a Nation OSRC annual report prevent a Party from raising a subsequent objection in relation to another amount included that report, provided notice of the subsequent objection is given within the time limit described in paragraph 25.

Paragraph 26

See commentary under "Paragraph 25" above.

¹²In 1999, these are 21.62% on the first \$200,000 of active business income for the year, and 45.62% on the balance.

¹³With appropriate modification of the words in subparagraph 10(a).
