

The past decade has seen the taxation of our First Nations' people evolve from a broad exemption originating from Section 87 of The Indian Act to a narrowly defined right as interpreted by the courts.

**First Nations and The Canadian Tax Environment** is one of a series of books offered by BDO Dunwoody LLP to provide assistance on taxation matters. The purpose of this book is to give an overview of the tax environment facing First Nations' people and their businesses and to provide some guidance on structuring their affairs to minimize the tax liability facing them.

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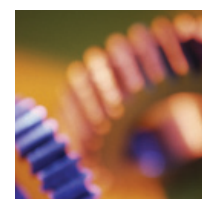


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# Introduction

The past decade has seen the taxation of Indians evolve from a broad exemption originating from section 87 of the Indian Act, to a narrowly defined right as interpreted by the courts. The purpose of this book is to give an overview of the tax environment facing First Nations' people and their businesses, and to provide some guidance on structuring the affairs of Indians to minimize the tax liability facing them.

Section 87 of the Indian Act is the cornerstone on which tax planning for Indians is built.

The section reads as follows:

87(1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely:

- (a) The interest of an Indian or a band in reserve or surrendered lands; and
- (b) the personal property of an Indian or band situated on a reserve.

87(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(a) or (1)(b) or is otherwise subject to taxation in respect of any such property.

A key point to note from section 87 of the Indian Act is that the exemption applies only to individual Indians or bands and not to other entities such as corporations or trusts. The other point is that the exemption relates only to personal property situated on a reserve. Whether property is situated on a reserve has been the subject of much debate and many court cases. It is in the context of these cases and the restrictions they impose that tax planning must be carried out. It is with reference to these court cases that the planning process begins.

Tax planning is a process of arranging your affairs in such a way that the resulting tax liability is minimized. The concept of tax planning was validated by the courts many years ago in the case of *IRC v. Duke of Westminster* (1935) and again reiterated in *Stubart Investments Limited v. The Queen* (1984). The court's view was:

*"Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax."*

**Planning to avoid tax must be clearly distinguished from tax evasion. Evasion involves the suppression or falsification of information in order to reduce or eliminate the tax that would otherwise be payable. Evasion of tax will result in penalties, fines, interest and possibly imprisonment along with the tax owing. It is therefore imperative that Indians and bands examine the tax considerations of all their financial activities rather than making the assumption that they are protected by the Indian Act exemption.**

# Income Earned by Indians

## *Employment Income*

### History of the Exemption

The most contentious issue arising from section 87 of the Indian Act has been its application to employment income. It is on that aspect of the exemption that this section is focused.

#### Pertinent Case Law

The most recent case decided was *Shilling v. The Queen* (see page 5). This case was initially decided in the employee's favour at the Federal Court level, but the Court of Appeal felt otherwise. A unanimous panel rejected all arguments that had been accepted by Sharlow (Federal Court judge) and concluded that the employee's income was taxable.

Under paragraph 81(1)(a) of the Income Tax Act and section 87 of the Indian Act, an Indian's personal property situated on a reserve is exempted from tax. The courts have previously determined that, for purposes of section 87, the reference to personal property includes employment income. Two prior cases that impacted this rationale were *Nowegijick* and *Williams*.

#### Nowegijick (83 DTC 5041)

Gene Nowegijick was an Indian person who lived on a reserve. He was employed by a corporation whose office was on the reserve, but most of his work was done off the reserve. The Supreme Court of Canada held that a right to income was property, and that accordingly, if that right was located on the reserve, the income was not taxable in the hands of an Indian person.

Dickson J (speaking for the majority) noted that the Crown had conceded (correctly, in his view) that the situs of the debt is the location of the debtor—in the employment context, the employer. Therefore, the location of the employer on the reserve meant that the income paid by that employer to a status Indian person was not taxable, regardless of where the work that gave rise to the income was performed.

The Supreme Court rejected the proposition that section 87 applied only to direct taxes, and concluded that it provided an exemption from tax on the

person and tax on property. Of course, the Indian Act concepts predate income taxation in Canada.

#### Williams (92 DTC 6320)

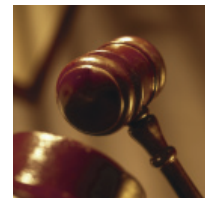
Glenn Williams, an Indian person, was employed by an employer located on the reserve. He was employed on the reserve and was paid on the reserve. Eventually the work ran out and Mr. Williams applied for unemployment insurance benefits. Therefore, he was no longer paid from the reserve but from the Government Distribution Centre in Vancouver.

The "situs of the debtor" argument previously utilized in *Nowegijick* would not provide a tax exemption in this fact situation. The Federal Court of Appeal approached the case (in relation to the basic employment insurance benefits) on that basis. However, the Supreme Court of Canada (with Gonthier J speaking for the majority) took a different approach. It considered the purpose of the exemption from tax in the Indian Act and held that the purpose of section 87 of the Indian Act was to permit an Indian person to hold property on a reserve and thus, to preserve that property from encroachment by taxation or seizure.

The Supreme Court went on to conclude that when a court is determining whether the property of an Indian person is located on a reserve, it must take into consideration the purpose of section 87. The court rejected the normal situs test and instead, looked at whether the taxation of the property would amount to the erosion of the entitlement of an Indian person to property covered by section 87 of the Indian Act.

The Supreme Court decision in *Williams* includes a checklist to use in analyzing cases of this sort in terms of the categorization of property and the types of taxation:

- 1) Identify the relevant connecting factors (for example, factors which connect the payment to an on or off-reserve location).
- 2) Analyze each factor for weight based on:
  - a) The purpose of the exemption in the Indian Act;
  - b) the type of property; and
  - c) the nature of the taxation of that property.





The court went on to analyze the unemployment insurance benefits, and found that there was a strong connecting factor to the employment that gave rise to the benefit. The result was that the income was exempt from tax.

Williams is a departure from past case law in the area of the taxation of Indian peoples. In going beyond the ordinary principles of conflicts of laws, and in looking toward the underlying purpose of the statute, the test seems to have changed to a subjective one. Thus, the question becomes: has the property of an Indian person located on a reserve been eroded by taxation? In creating a test comprised of many “connecting factors,” the “residence of the debtor” test stated in Nowegijick becomes one of many factors to be examined and weighed.

### **Nowegijick and Williams**

Did the Supreme Court of Canada effectively overrule its decision in Nowegijick as a result of its decision in Williams? The only area in which the decisions are in conflict is in the context of the determination of situs. Nowegijick involved a conclusion that the situs of the employment debt was the location of the employer. Williams held that the situs question must be determined not by reference to ordinary conflicts of laws rules, but by reference to the purpose of the exemption from taxation in section 87 of the Indian Act.

It should also be noted that had the analysis in Williams been applied to the facts in Nowegijick, the result would have been the same—Mr. Nowegijick’s income would have been exempt from taxation. Also, the situs issue was not in dispute before the Supreme Court of Canada in Nowegijick, as Crown counsel conceded in argument that the situs of the salary payment was on the reserve.

Of course, the Williams decision will not necessarily provide more exemptions from taxation than would have been the case had the conflicts of laws situs rules alluded to in Nowegijick continued to be applied. Mr. Williams’ unemployment insurance benefits were held to be exempt from taxation, but many corporations structured to be located on reserves, and to pay their employees on reserves (to enable employment income to fall within the situs principle found in the normal conflicts of laws rules), often have insufficient connecting factors to a reserve to provide an exemption from taxation

pursuant to the Williams decision. In both the Shilling and Monias decisions, the Federal Court of Appeal concluded that the taxpayer was not entitled to the section 87 exemption based on the connecting factors test established in Williams.

### **Shilling (2001 FCA 178)**

The Shilling case was a test case involving Rachel Shilling who was a surrogate for about 750 other cases which were being held in abeyance by the Canada Customs and Revenue Agency. Shilling worked at Anishnawbe Health Toronto, an agency that provides services to the city’s aboriginal street people. Shilling argued that she was in fact employed by Native Leasing Services, located on the Six Nations of the Grand River Reserve, near Brantford.

The leasing company provided her services to the health agency under contract. She argued that, because she is technically employed by a reserve based company, her \$46,800 salary should be tax free. She also argued that living and working on a reserve should not be prerequisites for a tax exemption. What should matter is whether she “maintains relationships with native people and her reserve community,” is an accepted member of her reserve, identifies herself as a native person and works for the benefit of natives, she argued.

The requirement to live on a reserve to qualify for a tax exemption “discriminates on the basis of where she lives, contrary to the right of equality before and under the law” as guaranteed in the Charter of Rights and Freedoms, said her court claim.

The Federal Court bought her argument in a decision handed down in the third week of June. Judge Karen Sharlow said in part:

*“The most important factor to be taken into account in determining the location of Ms. Shilling’s employment income is the location of her employer. Because of the substantive legal and economic consequences of her employment relationship, that factor is entitled to considerable weight. Her employer is located on a reserve, which favours the conclusion that her employment income is located on a reserve.”*

But the Court of Appeal felt otherwise. A unanimous panel rejected all the arguments that had been accepted by Sharlow, and interpreted section 87 of the Indian Act narrowly, saying that earning on a reserve means just that, and not in downtown Toronto.

Although Ms. Shilling still retains close ties to her Ojibway reserve near Orillia, Ont., she is part of the “commercial mainstream” which should not benefit from the historic aboriginal right to tax-free status, the court said.

*In this case, only the location of the employer's head office connects the respondent's employment income to a reserve, and there is no evidence to justify giving this factor the significant weight that the learned Trial Judge attached to it. On the other hand, the location and nature of the employment, which have been held to be generally the most important factors in a connecting factors analysis in employment income cases, as well as the respondent's place of residence, indicate that Ms. Shilling's employment income was situated off-reserve. The factors connecting the employment income with an off-reserve location outweigh those connecting it with a reserve. Therefore, Ms. Shilling's employment income for 1995 and 1996 is not situated on a reserve and is not exempt from taxation under paragraph 87(1)(b) of the Indian Act. It follows that Ms. Shilling's employment is to be regarded as in the “commercial mainstream”. This conclusion may appear counter-intuitive when applied to a Native person who identifies with her Band and First Nation, and is working with a social agency delivering programs to assist Native people, in large part through reconnecting them with their culture and traditions.*

It appears from the outcome of Shilling that the courts are applying the connecting factors test as established in the Williams decision. The court concluded that the factors connecting the income off-reserve outweighed the factors connecting income to a reserve. In March 2002, the taxpayer's applications to appeal the decisions to the Supreme Court of Canada were denied.

The Courts continue to support the connecting factors test established in Williams. In the CRA's view, the guidelines continue to represent a reasonable interpretation of the law.

## CRA Guidelines

The CRA established guidelines in June 1994 to deal with the section 87 exemption. The guidelines are an attempt to create some certainty in this area in the light of the inherent subjectivity of the approach in Williams. The guidelines state that they are merely guidelines and acknowledge that they will not be applicable in every situation.

They specifically state that there may be unusual or exceptional circumstances where:

- 1) The income may not be taxable even though it does not fall within one of the guidelines; or
- 2) the income may be taxable even though it appears to fall within one of these guidelines.

The guidelines also note that where artificial connecting factors are created to enable income from employment to fall within the guidelines, the guidelines will not apply.

With a view to assisting the Indian community, the CRA has developed the following guidelines incorporating the various relevant connecting factors that describe the employment situations covered by section 87 of the Indian Act.

### Guideline 1

When at least 90 per cent of the duties of an employment are performed on a reserve, all of the income of an Indian from that employment will usually be exempt from income tax.

It is not necessary for the residence of the native person, or the location of the employer, to be on a reserve.

### Proration Rule

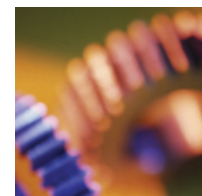
When less than 90 per cent of the duties of an employment are performed on a reserve and the employment income is not exempted by another guideline, the exemption is to be prorated. The exemption will apply to the portion of the income related to the duties performed on the reserve. This guideline differs significantly from the approach taken in case law. The case law approach was “all or nothing”; Indians were entitled to 100 per cent tax-free earnings, or were liable to have 100 per cent of their income taxed in the normal way. The prorating rule is a significant departure from this approach.

### Guideline 2

When:

- The employer is resident on a reserve; and
- the Indian person lives on a reserve.

All of the income of an Indian from an employment will usually be exempt from income tax.





### Guideline 3

When:

- More than 50 per cent of the duties of an employment are performed on a reserve; and
- the employer is resident on a reserve, or the Indian lives on a reserve.

All of the income of an Indian from an employment will usually be exempt from income tax.

This rule will of course refer to *Nowegijick* in connection with the location of the employer, and potentially to *B. McNab v. Canada* [(1992) 2 CTC 2547] in connection with the legal residence of the employee.

### Guideline 4

When:

- The employer is resident on a reserve; and
- The employer is:
  - An Indian band which has a reserve, or a tribal council representing one or more Indian bands which have reserves, or
  - an Indian organization controlled by one or more such bands or tribal councils, if the organization is dedicated exclusively to the social, cultural, educational, or economic development of Indians who for the most part live on reserves; and
- the duties of the employment are in connection with the employers' non-commercial activities carried on exclusively for the benefit of Indians who, for the most part, live on reserves.

All of the income of an Indian from an employment will usually be exempt from income tax.

This excludes mainstream commercial activities; those qualify only if they fall within one of the earlier guidelines. Similarly, it does not extend to any organizations that appear to exist for the benefit of native people. For example, the Saskatchewan Treaty Indian Women's Council, which was the employer in the *McNab* case, was probably not an organization owned by Indian bands or tribal councils. Assuming that it was not, the organization would not fall within this guideline. Thus, Brenda McNab's employment

by it would be subject to taxation unless, of course, the CRA acknowledged that this was one of the circumstances in which, even though the guidelines did not apply, her employment income should be exempt from taxation.

Employees of native-owned organizations located off-reserve, that deal primarily with Indian people living off the reserve (who are becoming an increasingly large part of their constituency), will not be able to obtain the exemption unless sufficient other factors connect their employment to a reserve, for example, if the employee is a resident of a reserve. This, of course, is quite consistent with the wording in section 87 of the Indian Act, which provides an exemption from taxation only for the property of an Indian located on a reserve.

### Employment-Related Income

The receipt of employment insurance benefits, retiring allowances, Canada Pension Plan payments, registered pension plan payments or wage loss replacement plans will usually be exempt from income tax when received as a result of employment income that was exempt from tax. The prorating rule applies to this type of income as well, and one can see that the application of that rule to a particular native person can become quite complex if that person has held different jobs during the course of the person's working life, with different amounts of the income from each being subject to or exempt from income tax.

The above noted guidelines require the meaning of some of the terms used. These definitions are not always strictly in accordance with the decided cases. For example, the residence of an employer is defined as the place where central management and control is actually located. This, of course, may not be consistent with the head office of the corporation. For an Indian person to be regarded as living on the reserve, the principal place of residence and the place that is the centre of the person's daily routine must be located on the reserve. This means that an individual who has a residence on the reserve but lives in a different location during the work week probably will not be regarded, for the purposes of the guidelines, as residing on the reserve.

The guidelines also do not address the nexus between employment and rights protected by treaty

and services established by a decision of government for the general benefit of native people living on reserves. These factors were important in both the Williams and the Clarke (92 DTC 2267) decisions.

One other major point concerning the guidelines is that they do not refer to the intention inherent in section 87 of the Indian Act; namely, to preserve the property of an Indian located on a reserve from encroachment by taxation or seizure by creditors. The Supreme Court of Canada in Williams stated that the various connecting factors must be considered and weighed in light of this purpose.

The absence of this point from the guidelines is puzzling given the importance it assumes in the Williams decision.

The guidelines do bring an element of certainty but it appears only to be the CRA's assessing practices. As shown above, the courts put much more weight to the connecting factors as opposed to following the guidelines blindly. It will remain to be seen how well they function in practice.

## *Investment Income*

In general terms, it is section 87 of the Indian Act, along with paragraph 81(1)(a) of the Income Tax Act, that establishes the exemption from taxation for status Indians. Section 87 of the Indian Act exempts from taxation the personal property of an Indian situated on a reserve. The courts have previously concluded that the reference to personal property in section 87 includes income. In determining whether the income earned by an Indian is situated on-reserve, and thus exempt from taxation, the approach taken by the Supreme Court of Canada in the 1992 case of Glenn Williams v. Her Majesty the Queen (92 DTC 6320) is followed. This approach requires the examination of all factors connecting income to a reserve to determine if the income is located on the reserve and therefore exempt from income tax. The Supreme Court also indicated that the ultimate question is to determine to what extent each connecting factor is relevant in determining whether taxing the particular kind of property in a particular manner would erode the entitlement of an Indian to personal property situated on a reserve. One general direction provided in Williams was that an overly rigid test which identified one or two factors as having

controlling force "...would be open to manipulation and abuse." The Supreme Court rejected the previously adopted test that situs of the debtor was the sole test for determining whether the personal property of an Indian or band was situated on a reserve.

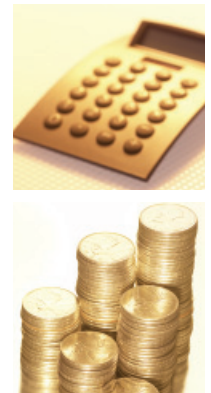
Former Interpretation Bulletin IT-62 provided that "interest on a bank account is earned at the location at which the funds are on deposit, i.e. the specific bank branch address." Accordingly, interest earned by an Indian on an account maintained at a branch that was situated on-reserve was considered to be exempt even though the head office of the bank may have been located off-reserve. However, IT-62, which was published on August 18, 1972, has not been entirely relevant for a number of years, and was cancelled February 23, 1990.

As a result of the Williams case, the CRA is of the view that the location of a savings account on a reserve would not in itself be sufficient to exempt the interest income earned thereon. Where a bank account is considered to be situated at a location on-reserve, this is one factor to weigh in determining whether interest earned on deposits in that account is exempt from taxation. There could be other factors that would connect the income to a location off-reserve. For instance, an Indian may live off-reserve and earn only taxable income, and use an automated teller machine located off-reserve to deposit funds into a bank account located on-reserve. In this example, it is the CRA's view that the interest income would be taxable, notwithstanding that the head office of the financial institution may be located on-reserve.

### **Recalma (98 DTC 6238)**

In the case of Argol Recalma v. Her Majesty the Queen (98 DTC 6238), the Federal Court of Appeal upheld the Tax Court of Canada's decision concerning the taxability of income earned by an Indian living on a reserve, from investments purchased from an on-reserve branch of a bank. The Supreme Court of Canada has dismissed the application for leave to appeal. In Recalma, the following were considered in determining the situs of the investment income:

- 1) The residence of the taxpayer;
- 2) the origin or location of the capital used to buy the securities;





- 3) the location of the bank branch where the securities were bought;
- 4) the location where the investment income is used;
- 5) the location of the investment instruments;
- 6) the location where the investment income payment is made; and
- 7) the nature of the securities, in particular:
  - (i) The residence of the issuer;
  - (ii) the location of the issuer's income generating activity from which the investment is made; and
  - (iii) the location of the issuer's property in the event of a default that could be subject to potential seizure.

In any given situation, a few of these factors might support an argument for exemption. However, the court placed considerable weight on (7)(ii), the location of the income generating activity of the bank. In *Recalma*, the income in question was interest from banker's acceptances and income from mutual fund units. Basically, the court concluded that income from these investments started with companies off the reserve and was passed through a bank on-reserve to the taxpayers. It was held that the investment income of the taxpayer was not personal property situated on a reserve. The court concluded that in making these investments, the taxpayers chose to invest in the economic mainstream of normal business conducted off the reserve.

Since the bank can use the funds received to make loans to Indians off the reserve or to non-Indians or to invest in off-reserve activities, it may not be possible to trace the interest earned on these funds directly to the reserve. Based on this, unless the investment income can be identified as being generated exclusively on the reserve, it is the CRA's position that the income is not exempt from tax.

Interest from guaranteed investment certificates and other interest bearing certificates, such as treasury bills and bonds, is not generally considered to be earned on a reserve. Although the financial instrument may have been purchased through a bank or trust company located on the reserve, the Department considers the interest to be earned and

paid from the payer's principal place of business (which is often the issuer's head office). For example, in the case of a government bond, regardless of where purchased, the interest will be considered earned in and paid from Ottawa.

With regards to dividend income, dividends on shares from a company whose head office, principal business activity and share register are on a reserve will generally be exempt. If the investment gives rise to a capital gain, it will be exempt from tax if the income that the investment generated was itself exempt from tax.

Following the *Recalma* decision, the CRA issued an interpretation, on July 16, 1999 (Tax Windows, Document # 9911687), dealing with the taxation of investment income from on-reserve financial institutions based on the Court's comments in the *Recalma* decision. In summary, the following comments were made:

*In a situation where an on-reserve financial institution has less than 90 per cent of its loans and investments on-reserve, in our view, any investment income earned by an Indian from investments in that financial institution would be taxable. For the Department to consider an Indian's investment income to be tax exempt, as a minimum requirement, the Indian's investment income would have to be from an on-reserve financial institution that generates its income exclusively from investment and loans to Indians on a reserve and it has to be established that the loans and investments are used by Indians for development on the reserve. In addition to the above-mentioned test for the financial institution, in our view, other connecting factors would still have to be present such as the Indian has to live and work on a reserve and the capital with which the Indian made the investments has to be from an exempt source.*

*We are of the view that proration of an Indian's investment income based on the ratio of an on-reserve financial institution's income generating activity on-reserve to its off-reserve income generating activities is not a viable or feasible alternative given the Court's comments on exclusivity. In conclusion, since we would expect that in the vast majority of situations, it would be extremely difficult for all of the above-mentioned connecting factors to be present, generally, the investment income of an Indian would be taxable. In particular, in the case of an Indian living and working off-reserve who has investment income from an on-reserve financial institution, in our view, there would likely not be sufficient connecting factors present because the Indian would be viewed, based on the Court's comments, as having chosen to enter the main economic mainstream of normal business conducted off a reserve and consequently, such investment income would be taxable.*

Therefore, based on the CRA's above stated position, it would appear that unless the on-reserve financial institution's income generating activity is from loans and investments to Indians on a reserve and that such loans and investments are intimately connected to a reserve, then the Indian investment income would be taxable. It appears they would be prepared to accept that this requirement may be met if an "all or substantially all" (i.e., 90 per cent or more) test is used in this determination but it would also be necessary to ensure that the on-reserve financial institution's investments are actually "intimately connected" to the reserve; that is, the investments and loans from the on-reserve financial institution are actually used by Indians for development on a reserve and not, for example, loaned back to off-reserve Indians or non-Indian organizations or invested in securities off the reserve.

This appears to be the court's view also as decided in *Starr* (2002 DTC 1570). In this case the court put considerable weight on the way in which the income had been generated such that the emphasis had to be based on the situs of the source of the income. That situs was where the instruments were located and where their capital had been invested to earn the income and capital in question. Put another way, the connecting factors respecting the income and capital derived by the taxpayer placed it off-reserve and in the general mainstream of the economy.

Most recently, in *Sero and Frazer* (2004 DTC 6037), the Federal Court of Appeal dismissed the taxpayers' appeals with respect to interest income being exempt. The taxpayers were Indians as defined in the Indian Act. They earned interest on money invested at a Royal Bank branch situated on an Indian reserve, and the Minister assessed the taxpayers for tax on that interest income. The Federal Court of Appeal found that the Royal Bank operates in the commercial mainstream and therefore the interest income earned by the taxpayers was in that commercial mainstream and not on a reserve. Applying the connecting factors test, the taxpayers' investment income was not situated on a reserve for purposes of section 87 of the Indian Act and was therefore taxable.

## *Business Income*

Paragraph 81(1)(a) of the Income Tax Act and section 87 of the Indian Act provide a tax exemption for an Indian's personal property situated on a reserve. The courts have previously determined that, for purpose of section 87 of the Indian Act, the reference to personal property includes income. In *Williams* (92 DTC 6320), the Supreme Court of Canada reconsidered the approach to use in determining whether income is situated on a reserve. The proper approach in determining the situs of personal property is to evaluate the various connecting factors which tie the property to one location or another. The Supreme Court indicated that the ultimate question is to determine to what extent each connecting factor is relevant in determining whether taxing the particular kind of property in a particular manner would erode the entitlement of an Indian to personal property situated on a reserve.

One significant factor that serves to connect business income to a location on-reserve or off-reserve is the location where the activities of the business are carried out. Another significant connecting factor would be the location of the customers of the business. For example, if the main aspect of a logging business consists of the felling of trees, the location of the land being cleared would be a connecting factor of major importance with respect to income from such a business.

As a result of recent court decisions, a permanent establishment's location may no longer be sufficient to determine if a business resides on a reserve.

Along with the location of a permanent establishment (if any), the CRA has expanded the criteria to consider in making the determination to include several key factors that indicate where the business is carried on:

- 1) The location of the business office;
- 2) the location where the records are kept;
- 3) the location where business transactions with customers and suppliers are arranged;
- 4) the location where employees report for work and are paid; and
- 5) the location where inventory is ordered and maintained.





Also relevant is the location of physical assets, such as machinery and equipment.

### **Southwind (98 DTC 6084)**

Southwind is the leading case dealing with the business income of an Indian. The case concerns income earned from logging, where a Status Indian lived on-reserve. However, all income earning activities were carried out off-reserve and his sole customer was off-reserve. The Tax Court decided that his income from this logging activity was taxable and the taxpayer appealed this decision. The Federal Court of Appeal rendered its decision on January 14, 1998, confirming the Tax Court's decision. In reaching its decision, the Court used two main connecting factors, namely the location of the sole customer of the Indian and the location where the service is performed. Speaking on behalf of the unanimous bench, Linden J.A. stated:

*“Although Morell Logging is not the appellant's employer, the significance of its off-reserve location lies in that Morell Logging was the appellant's only customer and the debtor in the taxation year. The nature of the appellant's business income must be determined, in part, by reference to the source from which that business income is received. In this respect, the appellant's situation is distinguishable from Nowegijick, where the debtor employer was located on a reserve. Moreover, all of the services performed by the appellant were done off the Reserve, a very significant feature of this case.”*

The fact that the taxpayer sometimes resided on-reserve, and the books and records of the business are kept on-reserve are factors to be given less weight than the others. These factors are not sufficient to connect the business income to a location on-reserve.

Therefore, in a situation whereby all of the logging is done off-reserve and the Indian's three main customers are located off-reserve, it is the CRA's view that the logging business income earned by the taxpayer would be much more connected to a location off-reserve than a location on-reserve. Consequently, the income would not be exempt from taxation.

It appears the courts continue to apply the factors set out in Southwind as illustrated most recently in Gilles Cleary and Danny Cleary v. Her Majesty the Queen (2005 DTC 12). In this case, it was a business partnership determined not to be carried out on a reserve. Taking into account the factors in Southwind, it was difficult to conclude that the taxpayers'

business income was situated on the reserve, since they were living and carrying on the business off the reserve, and were thus subject to the same business conditions as other taxpayers.

In Mitchell v. Peguis Indian Band [(1990) 2 SCR 85], the Supreme Court of Canada described the purpose of the Indian Act as being the preservation of the entitlements of Indians to their reserve lands and the prevention of their erosion through taxation, but not the conferring of a general economic benefit upon Indians. In this respect, La Forest, J. stated that:

*“... one must guard against ascribing an overly broad purpose to ss. 87 and 89. These provisions are not intended to confer privileges on Indians in respect of any property they may acquire and possess, wherever situated. Rather, their purpose is simply to insulate the property interests of Indians in their reserve lands from the intrusions and interference of the larger society so as to ensure that Indians are not dispossessed of their entitlements. Indians have a plenary entitlement to their treaty property; it is owed to them qua Indians. Personal property acquired by Indians in normal business dealings is clearly different; it is simply property anyone else might have acquired, and I can see no reason why in those circumstances Indians should not be treated the same as other people. Property of that nature will only be protected once it can be established that it is situated on a reserve.”*

La Forest, J. concluded that:

*“... Indians, when engaging in the cut and thrust of business dealings in the commercial mainstream are under no illusions that they can expect to compete from a position of privilege with respect to their fellow Canadians.”*

**In addition, we would also like to note that, it is the CRA's view where an arrangement creates an artificial connection between business income and a reserve, the arrangement will carry no weight as a connecting factor.**

# Native-Owned Organizations

## Trusts

The use of trusts are often a useful tool for the receipt and management of proceeds from a land claim settlement. A trust allows for the control of an asset(s) to be separated from its ownership.

### General

A trust is an obligation binding a person (the trustee) to deal with property under their control (the trust property) for the benefit of one or more persons (the beneficiaries). The creation of a trust requires the transfer of property by a person (the settlor) to the trustee. A trust is treated as a separate taxpayer that may earn all types of income including investment, business, and rental income. Where the income of a trust has been paid to the beneficiaries, such income is deducted by the trust and included in the income of the beneficiary.

Providing certain designations are made under provisions of the Income Tax Act, the income received by the beneficiaries will retain the characteristics the income had within the trust.

That is to say, dividends received by the trust will be deemed to be dividends when allocated to the beneficiaries.

The capital of a personal trust can be passed tax-free to the beneficiaries. A personal trust is essentially defined as a testamentary trust or an inter vivos trust in which no beneficial interest was acquired for consideration payable to the trust or any person who has made a contribution to the trust. The trust will be deemed to dispose of the property for its tax cost and the beneficiary will be deemed to acquire the property for that tax cost. When the beneficiary subsequently disposes of the property, the beneficiary will then pay any income tax that may arise.

A trust is deemed to dispose of its property every twenty-one years for proceeds equal to the fair market value of the property. The purpose of the rule is to prevent the use of trusts to defer indefinitely the recognition for tax purposes of gains accruing on capital properties, resource properties and land inventories. This causes the trust to pay taxes on any accrued gains every twenty-one years. The trust

is then deemed to reacquire the property for its fair market value.

The tax burden resulting from this deemed disposition may force the trust to liquidate assets it did not otherwise intend to sell. One option to prevent this is to transfer the capital to the beneficiaries prior to the twenty-one year deadline. This, however, requires relinquishing control of the property to the beneficiaries.

A commercial trust is not defined in the Income Tax Act, but generally refers to a trust other than a personal trust. Typically, beneficiaries of a commercial trust have paid for their interest in the trust. As mentioned above, only personal trusts may transfer trust capital to the beneficiaries without triggering tax. Therefore, where a commercial trust holds assets with large inherent gains, the trust will trigger the gain on the transfer of capital to the beneficiaries or on the deemed twenty-one year disposition.

### Native Trusts

A trust may be useful in directing income to Indian beneficiaries depending on:

- 1) How the trust is settled;
- 2) how the trust is connected to the reserve; and
- 3) the tax treatment that the Indian beneficiary would have received had the property giving rise to the income been held personally.

A trust is not exempt from taxation under section 87 of the Indian Act. Therefore, the trust must distribute its annual income to the beneficiaries to avoid the trust being taxable at the highest marginal rate for individuals.

If an irrevocable trust is settled by persons other than the Indian beneficiaries, for example by the federal government in a land claim settlement, then the income received by the beneficiaries will be taxed based on several connecting factors such as:

- 1) The situs of the trust;
- 2) the residency of the beneficiaries;
- 3) the source of the trust capital; and
- 4) the place of management of the trust.



The CRA's view, as expressed in Interpretation Bulletin IT-447, is that "a trust generally is considered to reside where the trustee, executor, administrator, heir or other legal representative... who manages the trust or controls the trust assets resides." Where more than one trustee is involved, the residence of the dominant trustee would determine the residence of the trust. The dominant trustee will be the person who manages the business/property owned by the trust, does the banking, controls the investment portfolio, etc.

Once it has been established that a trust has reserve situs, the income received from the trust by Indian beneficiaries should be exempt from tax regardless of the Indian's place of residence. The CRA however, takes the position that the source and situs of the underlying trust assets would have to be examined to determine the exempt status of the income. This is to prevent the use of a trust as a vehicle for exempting from taxation income that would otherwise be taxable to the Indian.

The source of the underlying trust assets may strongly indicate reserve situs and, thus, exempt the income from taxation. Such sources include:

- 1) Funds from specific land claim settlements;
- 2) funds received from government pursuant to section 90 of the Indian Act, which deems the property to always be situated on a reserve;
- 3) proceeds from the sale of Indian lands or other Indian property; and
- 4) funds derived from natural resources on Indian land.

The CRA's position, in summary, is to exempt from taxation the income received by the Indian from the trust, provided the income would have been exempt had the Indian received it directly.

A recent advanced ruling by the CRA (2002-0127663), dealt with the taxation of an Indian trust for funds received as part of a treaty settlement. The rulings requested and given were as follows:

### **1. Whether the band is a public body performing a function of government?**

The First Nation will be considered to be a public body performing a function of government in Canada

within the meaning of paragraph 149(1)(c) of the Act and, accordingly, no tax will be payable under Part I of the Act by the First Nation on its taxable income for such a period.

### **2. Whether the receipt of the Settlement funds is taxable?**

Compensation paid to the band is in respect of the loss of their interest in traditional lands. It could be considered as non-taxable damages or arguably, Indian property pursuant to paragraph 90(1)(b) of the Indian Act as it appears to be paid in lieu of treaty rights. Alternatively, it may be considered to be income of the band, which is exempt under paragraph 149(1)(c) of the Income Tax Act.

### **3. Whether subsection 75(2) will apply to the trusts' income?**

Yes, subsection 75(2) will apply to the trust's income. The band will be considered to have constructively received the Settlement Funds and contributed them in the trust. The property of the trust may revert to the band and may be distributed in accordance with the band's direction on consent.

Where subsection 75(2) of the Act applies, any income or loss from the property held by the trust, and any taxable capital gains or allowable capital losses from the disposition of any of the property held by the trust will be attributed to the Contributor while the Contributor exists and is resident in Canada.

In the CRA's view, where subsection 75(2) of the Act applies to attribute income to a person, that income is never income of the trust for tax purposes and consequently, it is not taxable in the hands of the trust nor can it be paid or payable to any beneficiary of the trust for the purposes of subsection 104(13) of the Act. The attributed income becomes capital of the trust and distributions of this capital by the trust are generally not taxable. However, any income earned on this attributed income will not itself be attributable to the individual, and will therefore generally be taxable to the trust to the extent that it is not paid or payable to any or all beneficiaries of the trust pursuant to subsection 104(13) of the Act.

Therefore, the question remains as to whether a T3 return is required to be filed. The CRA has indicated that it is foreseeable that one or more of the conditions described therein could exist, thereby



requiring the filing of a T3 Return. This would be the case if the trust has disposed of a capital property, or if the trust earns income on reinvested attributed income to which subsection 75(2) does not apply. The fact that a band would be the beneficial owner of the property held by the trust will not, in and by itself, exempt the trust from filing a T3 return.

## Corporations

### General

A corporation is a legal entity having an existence separate and distinct from that of its owners. A corporation is, for legal purposes, an artificial person having many of the rights and responsibilities of a real person.

As a separate legal entity, a corporation may own property, enter into contracts, be responsible for its own debts, and pay income taxes on its profits.

Because a corporation is an entity separate from its owners (called shareholders), it can provide protection from both creditors and lawsuits. This is called limited liability (i.e., limited to the net assets of the corporation and the share capital of the shareholders). Creditors of a corporation have a claim against the assets of the corporation, not against the personal property of the shareholders. Thus, the liability of the shareholders is limited to the amount they have invested in the corporation, provided they have not given the corporation's creditors a personal guarantee.

As mentioned above, corporations are taxed on their profits as separate entities. The tax rate faced by corporations can range from approximately 20 to 50 per cent depending on the type, amount and location of the income.

Shareholders receive payments from the corporation in the form of dividends. These dividends represent the distribution of after-tax profits of the corporation and therefore, are not deductible to the corporation. Shareholders that are also employees of the corporation will be remunerated in the form of wages for the services performed for the corporation. These wages will be deductible to the corporation.

### Corporations for Indians

Section 87 of the Indian Act provides a tax exemption for Indians and Indian bands. As a separate legal

entity, corporations cannot rely on this exemption even if all of its shareholders are Indians and the corporation is located on a reserve. The courts have determined that the separate legal existence of a corporation cannot be disregarded. The situs of a corporation is important, however, in determining the status of payments made by the corporation to Indians as we discussed earlier in the section "Investment Income" and "Business Income."

Section 149(1)(d) of the Income Tax Act exempts from taxation corporations owned 90 per cent or more by a Canadian municipality. We will further discuss the band's ability to qualify as a municipality under the section "Indian's Band Status as a Municipality."

## Non-Profit Organizations

### General

As mentioned, corporations do not qualify for exemption from taxation under section 87 of the Indian Act. In many situations, a corporation is organized for purposes other than to earn a profit. These non-profit organizations are exempt from taxation under section 149(1)(l) of the Income Tax Act provided certain requirements are met. These requirements are as follows:

- 1) The organization must be operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit;
- 2) no part of the income can be payable to, or otherwise available for, the personal benefit of any proprietor, member, or shareholder;
- 3) the organization cannot have the power to pay dividends;
- 4) the organization cannot distribute assets to a member or shareholder on amalgamation or wind-up; and
- 5) the organization cannot be a charity.

### Non-profit Organizations for Indians

Non-profit organizations are useful vehicles for native owned operations that have no profit motive. An example would be economic development corporations such as the Gull Bay Development Corporation. The Gull Bay Development Corporation was successful in 1984 in confirming its status as a





non-profit organization. The Letters Patent of the company provided that the objects of the company include:

*“To promote the economic and social welfare of persons of native origin who are members of the Gull Bay Indian Reserve (No. 55) and to provide support for the recognized benevolent and charitable enterprises, federations, agencies and societies engaged in assisting the development, both economic and social, of native people who are members of the Gull Bay Indian Reserve (No. 55).”*

*They further provide that the company may hire employees, maintain offices, and incur reasonable expenses in connection with its objects that the company shall be carried on without purpose of gain for members and that any profits or other accretions to the company will be used in promoting its objects. It is further provided that the directors shall serve without remuneration and no director shall directly or indirectly receive any profit from his position, provided only that he may be paid reasonable expenses incurred by him in the performance of his duties. In the event of dissolution of the company all remaining property is to be distributed or disposed of to incorporated Native Peoples Organizations in Ontario.*

The corporation employed a number of band members. A number of the employees worked in the areas of civic improvement, social and charitable activities. Other employees carried on logging operations, a profitable activity for the corporation. The CRA's position was that the logging operations disqualified the corporation as a nonprofit organization. The court held, however, that the logging operations were incidental to the real objectives of the corporation. The logging operations were to provide training and employment to Indians on the reserve, and to raise funds for the social and charitable activities of the corporation.

The CRA takes the position that the Gull Bay case was fact specific. Therefore, care must be taken to ensure that any commercial activity is incidental to the corporation's other objectives. It is also important to emphasize that profits cannot be accumulated, nor can profits be distributed to the band. The profits must be spent within the corporation. However, where a non-profit occasionally has an excess of income over expenditures, it will not automatically lose its status as a non-profit organization. The non-profit organization must ensure that it does not accumulate an amount in excess of what would reasonably be required to conduct its non-profit activities. It is also not possible for the band to carry out benevolent

activities on the corporation's behalf and still have the corporation retain non-profit status.

The CRA further states that an Indian-owned corporation that competes with other non-Indian-owned business, whether on or off-reserve, will risk its status as a non-profit organization.

## *Indian's Band Status as a Municipality*

### **Municipal Corporation**

Paragraph 81(1)(a) of the Income Tax Act (the “Act”) and section 87 of the Indian Act provide a tax exemption for the personal property of an Indian or band situated on a reserve. Since a corporation is not an “Indian” or “band”, as defined in the Indian Act, it does not qualify for this exemption. Therefore, a corporation will be taxable on its income unless otherwise exempt from taxation under another provision of the Act.

Currently, by virtue of paragraph 149(1)(d.5) of the Act, a corporation may qualify for exemption from Part I tax only where at least 90 per cent of the shares of the corporation are owned by Her Majesty in right of Canada, or a province, or by a Canadian municipality. A proposed amendment to this paragraph expands the shareholder to include a Canadian municipality, or a municipal or public body performing a function of government in Canada. The amendment was in accordance with the Tax Court of Canada decision in *Otineka Development Corporation Limited and 72902 Manitoba Limited v. The Queen* [94 D.T.C. 1234, (1994) 1 C.T.C. 2424], where an entity could be considered a municipality for the purpose of this paragraph on the basis of the functions it exercised. More recently, however, the decision in *Tawich Development Corporation v. Deputy Minister of Revenue of Quebec*, ([1997] 2 C.N.L.R. 187 (Que. Civil Chamber), *aff'd* 2001 D.T.C. 5144 (Que. C.A.)), a decision under the Taxation Act (Quebec), held that an entity could not attain the status of a municipality by exercising municipal functions but only by statute, letters patent or order. From a tax policy perspective, it is desired that the entities previously entitled to the exemption on the basis of the *Otineka* decision continue to have access to the exemption. This amendment resolves the uncertainty resulting from the two conflicting cases. The exemption in paragraph 149(1)(d.5) is therefore

extended to include any corporation, commission or association, at least 90 per cent of the capital of which was owned by one or more entities; each of which, is a municipal or public body performing a function of government in Canada, which is consistent with the bodies described in paragraph 149(1)(c) of the Act. In addition, only 10 per cent or less of the income of the corporation may be earned outside the geographical boundaries of the reserve.

### Otineka (94 DTC 1234)

In *Otineka Development Corporation Limited v. The Queen* (94 DTC 1234), the Tax Court of Canada concluded that, since there is no definition of a “Canadian municipality” in the Act, the term must be given its ordinary meaning and is not to be solely determined by the provincial legislation governing municipalities. In the Court’s view, the powers conferred under the Indian Act and their exercise by The Pas Indian Band created a form of self-government that is an essential attribute of a municipality. In that case, the band had passed by-laws to regulate water and sewers, garbage disposal, weed control, domestic animal control, law and order, the provision of housing and other by-laws. It also provided services to band members in areas such as education, health care, social services, employment and training services, counseling and economic development. In the end, the Court concluded that the band was a municipality for the purposes of paragraph 149(1)(d) of the Act and, therefore, that corporations owned by the band were exempt from taxation as municipally-owned corporations.

As the decision rendered in the *Otineka* case hinged upon the particular facts of the case, only corporations that could demonstrate that they were in a similar position as those in *Otineka* would be exempt under paragraph 149(1)(d) of the Act. The proposed changes to paragraph 149(1)(d.5) now states that the Indian band only has to meet the conditions of being a public body performing a function of government in Canada, an easier test to meet.

### Public Body Performing Function of Government

As an alternative to an Indian Band owned corporation qualifying as a municipal corporation, the Indian band itself may be exempt from tax on any source of income that might otherwise be taxable if it qualifies as a public body performing a function of government. This has particular importance in

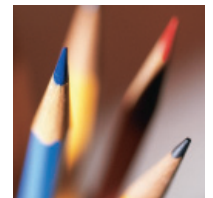
the area of trusts created from land settlement claims and these trusts holding significant amounts of investments. Where an Indian Band has passed bylaws under both sections 81 and 83 of the Indian Act, it is the CRA’s view that the band would qualify for exemption from tax pursuant to paragraph 149(1)(c) by virtue of being a public body performing a function of government in Canada.

Section 81 is a description of the broad subjects on which the band councils have power to pass by-laws. By way of example, paragraphs 81(1)(c) and (d) concern the observance of law and order and the prevention of disorderly conduct and nuisances, respectively. In addition, on summary conviction, an offender may be subject to fine or imprisonment. On the other hand, section 83 of the Indian Act is primarily concerned with the raising of money by bands. Remedies for contravention of section 83 by-laws are the levying of interest charges and the enforcement of payment of amounts owing.

In determining whether an Indian band was acting in a manner similar to how a public body performing a function of government would act, the Department has historically included a requirement to pass at least one by-law under section 83 of the Indian Act. Where a band has passed by-laws under both sections 81 and 83 of the Indian Act, the Department has recognized the band as a public body performing a function of government in Canada.

As noted in Technical Interpretation, Business and Publications Division, dated August 31, 1998, ‘where the investment income of a trust is allocated to an Indian band that is exempt from tax pursuant to paragraph 149(1)(c), the income allocated to the band would not be taxable. Where however, the exemption under paragraph 149(1)(c) does not apply the factors cited in *Recalma* would need to be considered.’

Historically, the CRA has considered that the passage of by-laws under both sections 81 and 83 of the Indian Act (or if the band had reached the advanced stage of development to which section 83 formerly referred) suffice to indicate that the band is performing a function of government. However, it is a question of fact as to whether a band performs a function of government. The CRA will consider the facts of a particular band, reviewing material such as the band’s profile and comments on community involvement or functions of government performed, such as involvement in a treaty land entitlement settlement.





The Indian Act formerly required a band to have reached an advanced stage of development before it could pass a by-law under section 83. Upon that requirement being deleted from the Indian Act, the Department adopted the view that a band could be recognized as a public body performing a function of government and thus exempt from Part I tax by virtue of paragraph 149(1)(c) of the Income Tax Act if it passed by-laws under both sections 81 and 83 of the Indian Act. Obviously, such by-laws can now be passed by bands that have not reached an advanced stage of development, but for those bands that had reached an advanced stage of development but have passed by-laws under only section 81; the Department continues to treat such bands as qualifying under paragraph 149(1)(c).

### *Charitable Donations*

Sections 110.1 and 118.1 of the Income Tax Act (“the Act”) are the relevant sections in the Act that describe the tax consequences of a person making charitable gifts. Section 118.1 entitles donors who are individuals to claim a tax credit, while section 110.1 enables donors that are corporations to make a deduction in calculating their income. Where a gift is made to a Canadian municipality, the municipality may issue an official receipt containing prescribed information as described in Part XXXV of the Income Tax Regulations. Such a receipt must be issued to a donor in order for the donor to obtain a tax credit or deduction, as the case may be.

An Indian band will be able to issue receipts for purposes of sections 110.1 and 118.1 of the Act if the band qualifies as a Canadian municipality. The Tax Court of Canada in the case of *Otineka and 72902 Manitoba Limited v. Her Majesty the Queen* [(1994) 1 CTC 2424] determined that in certain circumstances an Indian band could qualify as a Canadian municipality. Nonetheless, since 1977, the Department has administratively considered those bands that qualify for exemption under paragraph 149(1)(c) of the Act, on the basis of being public bodies performing a function of government in Canada, are Canadian municipalities for purposes only of issuing receipts under sections 110.1 and 118.1.

It is a question of fact as to whether an Indian band may be considered to be a public body performing a function of government in Canada and thereby qualify

administratively as a Canadian municipality for purposes of both subsection 118.1(1) and subparagraph 110.1(1)(a)(iv) of the Act. The Department considers that an Indian band that has passed by-laws under both sections 81 and 83 of the Indian Act is a public body performing a function of government. Those bands that had reached an advanced stage of development as was formerly required by section 83 of the Indian Act are treated similarly.

**The Department will consider any request as to whether a specific band is a public body performing a function of government. In order to make such a determination, a band profile and comments on community involvement or functions of government activities performed, such as involvement in a treaty land entitlement settlement, should be submitted to the Charities division of the CRA for their consideration. The band will then receive written confirmation from the Department confirming that the band may issue official donation receipts for any gifts to the band.**

# Structuring Business Ventures

There are three basic business structures in Canada: sole proprietorships, partnerships and corporations.

## Sole Proprietorship

A sole proprietorship typically is a business operated by an individual. It is the simplest form of business structure, but this by itself does not mean it is best for a given situation. The proprietor owns the business assets and is personally liable for any debts incurred by the business.

Any profits or losses from the business are combined with other income of the individual, and reported on the personal income tax return for the calendar year in which the fiscal year of the proprietorship ends.

## Partnerships

A general partnership is formed by two or more individuals who together carry on a business for profit. There are three basic steps to the formation of the partnership:

- 1) Registration of the partnership where required under provincial law;
- 2) the creation of a partnership agreement; and
- 3) the transfer of capital from the individuals to the partnership.

The registration of a partnership name will allow you to pursue matters in court, if required. This could be important if there is a contract in the partnership name that you are trying to have enforced under law. Some provinces, such as Ontario, require the partnership to be registered.

Partnerships of six or more partners must register with the CRA to obtain a partnership identification number and file annual information returns.

The partnership agreement will provide the basis of understanding between the partners regarding their rights to share in profits and losses, the work for which the parties are responsible, continuity of the partnership where new partners are admitted or others withdraw, and what will happen should the partnership dissolve.

The Income Tax Act has provisions to allow the tax free transfer of assets from an individual or a corporate partner to the partnership. General partners are not protected from the claims of creditors as they are jointly and severally liable for the debts of a general partnership. Another form of partnership is the limited partnership in which there is a general partner along with limited partners. Typically, the limited partners will contribute capital and share in the profits of the business. The expression "limited" means the partners are only subject to losses and liabilities to the extent of their invested capital. Limited partners cannot be involved in the management of the partnership.

The net profits of the partnership are allocated among the partners based on their right to share in income. A partner's share of profit or loss is reported on the income tax return for the year that includes the year-end of the partnership.

## Joint Ventures

Joint ventures are not fully recognized at law as a separate legal entity. A joint venture is an arrangement under which two or more parties agree to contribute resources to a specific project. The resources contributed may be labour, capital, property, expertise or any combination thereof. The parties also agree to pay a share of the project's expenses. In exchange, the parties are entitled to a share of the project's revenue. The benefits of a joint venture are as follows:

- 1) No exposure to liabilities of the co-venturer;
- 2) independence of ownership of venture assets;
- 3) income/losses of the project attributed directly to the ventures as governed by the joint venture agreement; and
- 4) each venturer is able to claim discretionary deductions at the venturer level.

The main disadvantage of a joint venture is the uncertainty whether a partnership, in fact, has been created. A further disadvantage is that the transfer of assets to the projects results in a deemed disposition for tax purposes at the asset's fair market value. Assuming the joint venture's revenues have reserve





situs, the Indian venturer will receive the income exempt from taxation. CRA Taxation examines similar factors to determine situs as they do in nonventure businesses. These factors would include:

- 1) The location of the joint venture's permanent establishment;
- 2) the location of the books and records;
- 3) the location of the business office;
- 4) the location of inventory;
- 5) the place where customer orders are taken; and
- 6) the place where employees work and are paid.

Whenever possible, the non-Indian venturer should receive the tax deductions from the project. This could be accomplished by having the non-Indian venturer contribute high rate depreciable assets to the project, and finance the acquisition or development of the joint venture assets.

## Corporations

### Corporations for Indians

Section 87 of the Indian Act provides a tax exemption for Indians and Indian bands. As a separate legal entity, corporations cannot rely on this exemption even if all of its shareholders are Indians and the corporation is located on a reserve. The courts have determined that the separate legal existence of a corporation cannot be disregarded. The situs of a corporation is important, however, in determining the status of payments made by the corporation to Indians – as discussed earlier in the “Investment Income” and “Business Income” sections.

Section 149(1)(d.5) of the Income Tax Act exempts from taxation corporations owned 90 per cent or more by a Canadian municipality. See the section on “Indian Band's Status as a Municipality” for further information.

Having outlined the three basic business structures in Canada, it is important to once again emphasize that the exemption under section 87 of the Indian Act applies only to individuals and bands. Therefore, an Indian owned business operated on-reserve should be structured, in most cases, as a sole proprietorship or partnership. This will permit the income of the business to be received by the Indian that runs the

business and will be exempt from taxation. Whether an Indian owned business is operated on-reserve is a question of fact. In many instances, Indian owned businesses operate both on and off the reserve. In such cases it is crucial to ensure reserve situs to preserve the tax exemption. Factors that would assist in providing reserve situs are:

- Store all supplies, parts, etc. at the reserve locations;
- perform all maintenance of vehicles on the reserve;
- conduct all management and staff meetings on the reserve;
- use a reserve address as the official business address;
- maintain the books and records of the business on the reserve;
- ensure all invoices, purchase orders and advertising bear the reserve address;
- where possible, maintain the bank account at a branch of a financial institution located on a reserve. Note that it need not be the same reserve;
- receive all suppliers' invoices at the reserve address; and
- pay all employees from the reserve location.

Where reserve situs cannot be established, the income from the business will be taxable to the Indian. In such cases, it may be desirable to incorporate the business to benefit from lower corporate tax rates. It is important to note that corporations are taxed on their net income. Net income is calculated after deducting any salaries. Where salaries are paid to Indians and there are sufficient connecting factors to tie the income to the reserve, then the salary will be received tax-free by the Indian.

It is not uncommon to pay bonuses to the manager of the corporation to eliminate the taxable income of the corporation. CRA Taxation has taken the position that such payments are not unreasonable since the individual receiving the salary will be subject to tax. In the context of an Indian manager, the CRA is not willing to extend this position since the salary would be exempt from personal taxation. Essentially what the payment of a bonus achieves is to convert taxable

income to tax exempt salary. Therefore, salary paid from a corporation to an Indian must be reasonable in the circumstances. In other words, the wage must represent compensation for services performed and must represent a fair market return.

## Indian and Non-Indian Ventures

Business ventures carried out by both Indian and non-Indian parties require careful tax planning.

This is necessary to ensure that the Indian does not jeopardize the tax exemption available under section 87 of the Indian Act and that the non-Indian maximizes their after-tax return by minimizing their tax liability.

These goals may be achieved by conducting the business on-reserve. In this way, the Indian has access to the tax exemption. In exchange, the non-Indian is allocated the tax preferred items such as start-up losses, interest expense and capital cost allowance.

### Start-Up Losses

It is common for a new business to sustain losses in the first few years. It is preferable to have the non-Indian finance and realize these losses so that the losses may be used to offset other sources of income. As the business grows, the income would be shared so that the non-Indian would be compensated for bearing the start-up losses. The effect is a tax deferral as the non-Indian receives additional income to offset the start-up losses. Keep in mind, however, that subsection 103(1) of the Income Tax Act permits the Minister of National Revenue to reallocate partnership income or losses where the allocation is not reasonable in the circumstances. The section reads as follows:

*Where the members of a partnership have agreed to share, in a specified proportion, any income or loss of the partnership from any source or from sources in a particular place, as the case may be, or any other amount in respect of any activity of the partnership that is relevant to the computation of the income or taxable income of any of the members thereof, and the principal reason for the agreement may reasonably be considered to be the reduction or postponement of the tax that might otherwise have been or become payable under this Act, the share of each member of the partnership in the income or loss, as the case may be, or that other amount, is the amount that is reasonable having regard to all the circumstances including the proportions in which the members have agreed to share profits and losses of the partnership from other sources or from sources in other places.*

CRA Taxation may apply this provision if a partnership agreement is clearly trying to allocate the start-up losses to the non-Indian partner. There may, however, be sound business reasons for the allocation of the start-up losses to the non-Indian such as time spent in the business, funds advanced, etc.

### Capital Cost Allowance

Expenditures of a capital nature are not deductible in computing income for tax purposes in the year the expenditures are made. Instead, capital expenditures are deducted over several years. These annual deductions are referred to as capital cost allowances (CCA). Deductions are not calculated on an asset by asset basis, but rather are grouped or pooled together by "class" of similar property. Each class of property has a rate prescribed by regulation. The prescribed rate times the balance in the pool gives the deduction available for that class for the year. In order to claim the deduction for the year the taxpayer must own the property. It is therefore advisable for the non-Indian to own high-rate depreciable property while the Indian owns low-rate property or property where no deduction is available (such as land).

### Interest Expense

Interest is deductible to the extent the interest was incurred to earn income from business or property. A taxpayer will therefore wish to ensure that deductible interest expense is maximized while minimizing non-deductible interest. This may be achieved by the way in which the non-Indian's investment in the venture is structured. For example, the non-Indian investor could borrow as a partner and advance the funds to the partnership. In this way the interest expense is deductible to the non-Indian and does not affect the Indian's income.

Section 89 of the Indian Act protects the personal property of an Indian or a band from attachment and seizure. However, section 89 does not apply to property interests located on a reserve that are owned by a corporation because a corporation does not qualify as an Indian. As a result, financial institutions often require that an Indian based enterprise be carried out through a corporation in order that the financial institution secure the indebtedness with corporate assets.



# Application of GST to Indians

## *Introduction*

Under section 87 of the Indian Act, the personal property of an Indian or of an Indian band situated on a reserve, and the interest of Indians in reserves or on dedicated lands, are relieved from direct taxation. The GST treatment of Indian purchases is consistent with the Indian Act. The GST treatment of Indian purchases is summarized below:

- 1) The tax does not apply to on-reserve purchases of goods by Indians, bands, or band-empowered entities situated on-reserve, or to off-reserve purchases of goods when the goods are delivered to the reserve by vendors or their agents (e.g., a common carrier or the postal service).
2. The tax does not apply to services purchased on-reserve by Indians where the benefit of the service will be realized on-reserve.
3. The tax does not apply to services purchased by an Indian band or a band-empowered entity situated on-reserve, for band management or in connection with real property located on-reserve.
- 4) Unincorporated Indian-owned businesses are entitled to purchase on the same tax-free basis as individuals.
5. Incorporated Indian-owned businesses are subject to the normal GST rules.
6. Band funding of Indian non-profit organizations is considered equivalent to government funding for the purposes of qualifying for the 50 per cent GST rebate to non-profit organizations.
7. Goods imported by Indians, Indian bands or band-empowered entities are subject to the normal GST rules and are taxable at the time of importation unless they are zero-rated. This rule extends to imported goods delivered to a reserve by the vendor's agent or by Canada Post. In *Francis v. The Queen* (56 DTC 1077), the Supreme Court of Canada held that the Indian Act exemption does not apply to goods imported by Indians, even if the goods are being imported for use on a reserve, as the exemption applies

only to property situated on a reserve and not to property situated elsewhere.

8. Purchases made on-reserve by non-Indians are subject to GST under the normal rules.

An Indian must present proof of registration under the Indian Act to a vendor in order to acquire property or services on-reserve without paying the GST. The CRA, Customs, Excise and Taxation, will accept as proof of registration under the Indian Act the Certificate of Indian Status identification card.

## *Purchases by Indians, Indian Bands and Band-Empowered Entities*

### **Purchases of Property: On-Reserve**

Indians, Indian bands, or unincorporated band-empowered entities may acquire property on-reserve without paying the GST, provided they have the appropriate documentation to show the vendor.

Acquisitions of property on-reserve by non-Indians will be subject to the normal GST rules. Normally, corporations are considered to be separate legal persons from either an Indian or an Indian band and would not be eligible for relief from the GST. However, the tax will not apply to incorporated band empowered entities purchasing property for band management activities.

### **Purchases of Property: Off-Reserve**

Indians, Indian bands and unincorporated band-empowered entities, as well as incorporated band-empowered entities purchasing for band management activities, may acquire property off-reserve without paying the GST, provided:

- 1) They have the appropriate documentation to show the vendor; and
- 2) the property is delivered to a reserve by the vendor or the vendor's agent.

However, if the purchaser uses his or her own vehicle to transport the property to the reserve, the acquisition is subject to the normal GST rules.

Note: There is an exception for remote stores (see section on “Remote Stores”).

## Importations

Importations by Indians, Indian bands or band-empowered entities are subject to the normal import rules; that is, they are taxable at five percent unless they are specifically zero-rated. GST on imported goods is collected by Canada Customs under the authority of the Customs Act at the time of importation.

Importations of goods are subject to the GST even in those instances where, after importation, the property is delivered to a reserve by the vendor’s agent or by Canada Post.

## Purchase of Services

### Individual Indians

- 1) Services for property: If a service is performed totally on-reserve and the property is situated on-reserve at that time, the GST will not apply.
- 2) Services for individuals: If the service is performed totally on-reserve for an Indian who is on-reserve at the time the service is performed, e.g., a haircut given on-reserve, the service will not be subject to the GST.
- 3) Transportation services: GST will apply to these services, unless both the origin and the destination are on a reserve. For example, a taxi service operating within the boundaries of a reserve would not charge GST, but a taxi service provided to an Indian from inside the reserve to a destination off-reserve, or vice versa, will be subject to GST.

Individual Indians must pay the five per cent GST on all taxable services that are not performed or occur totally on-reserve, unless the services are purchased for real property interests on-reserve.

Services are subject to the normal GST rules when they are provided to non-Indians on-reserve.

### Indian Bands and Band-Empowered Entities

Services acquired on or off-reserve by an Indian band or band-empowered entity for band management activities or for real property on-reserve are not subject to GST.

Exception: Indian bands and band-empowered entities will pay the GST on off-reserve purchases of transportation, short-term accommodation, meals and entertainment. However, the band or the band-empowered entity may file a General Rebate application to recover the GST paid on these purchases when these services are purchased for band management activities, or for real property located on-reserve.

The form applicable is GST 66 “Application For GST/HST Public Service Bodies’ Rebate and GST Self-government Refund.”

**Note:** The CRA now demands that separate rebate applications must be made for each reason code identified in the “Reason for Rebate Request” section of the application. Reason codes are for amounts paid in error (Code 1) and purchases for eligible band management activities (Code 8).

**Reason Code 1** should be used for those purchases where tax was incorrectly applied and paid. Sufficient documentation must be provided to demonstrate that the supply was eligible for tax relief.

**Reason Code 8** is for off-reserve purchases of transportation (such as travel, postage, courier, freight, etc.), short-term accommodations, meals and entertainment when purchased for band management activities. You must submit the original receipts with your claim.

The above submission for original receipts may be waived if you obtain authorization from your local Tax Services office to waive the requirement for original receipts. This can be done in writing when you submit the rebate application.

**Other Rebate:** Indian bands and band-empowered entities are entitled to file the applicable Public Service Body Rebate for a partial rebate on the remaining GST that was paid. Please note that band funding of Indian non-profit organizations will be considered equivalent to government funding to qualify for the 50 per cent GST rebate to non-profit organizations.

The applicable form is GST 191 “GST Rebate for Non-registrant Public Service Bodies.”





## Vendor Documentation

In all cases where GST is not charged on Indian purchases, the vendor must maintain adequate evidence that the sale was made to Indians, Indian bands or band-empowered entities situated on-reserve in order to substantiate non-collection of tax.

## On-Reserve Purchases

When the purchaser is an individual Indian, a notation made on the vendor's copy of the invoice of the nine or ten digit registry number, or the band name and family number, taken from the purchaser's Certificate of Indian Status card is adequate evidence. When the purchaser is an Indian band or band-empowered entity, the purchaser must provide a certificate, similar to the following, to be retained by the vendor:

*This is to certify that the property acquired is being acquired by (name of band or band-empowered entity) on (name of reserve) and is therefore not subject to the Goods and Services Tax.  
(Signature of Authorized Officer)*

## Off-Reserve Purchases

In order for GST not to apply on supplies of goods made to an Indian, an Indian band, or a band-empowered entity by an off-reserve vendor, the goods must be delivered to a reserve by the vendor or his agent. An agent includes an individual or company under contract to the vendor for making deliveries but does not include a carrier under contract with the recipient of the goods.

Off-reserve vendors are required to maintain proof of delivery to a reserve, as well as proof of the purchaser's Indian status or the certification discussed above. Where the vendor's agent delivers the property, proof of delivery would be a freight bill, a courier way-bill, or a postal receipt indicating the destination of the property as a reserve. Where the vendor delivers the property to the reserve in his own vehicle, he must maintain proof of delivery to the reserve on such internal records as mileage logs and dispatch records.

An agent of the vendor includes an individual or company under contract to the vendor for making deliveries (e.g., postal services, trains, boats, couriers, etc.). The vendor would normally bear all the risks of the agent during the course of the delivery as if these risks were the vendor's own, unless specifically covered in the agency agreement.

A carrier who is under contract with the recipient is not regarded as the agent of the vendor. In addition, undertakings by purchasers of property to deliver the property to themselves as agents of the vendor are not acceptable to the Department.

If the purchaser uses his own vehicle to transport the property to the reserve, GST applies to the purchase in the normal manner.

There is an exception to the requirement for goods purchased off-reserve to be delivered to a reserve. This exception applies to vendors in "remote locations" whose regular trading zone (the area in which at least 90 per cent of the vendor's customers reside) includes a reserve which is not in the vendor's immediate vicinity. In such cases, the requirement for delivery of goods would represent an onerous obligation for the vendor. The CRA will therefore waive the requirement for delivery to a reserve in either of the following circumstances:

- 1) Where the regular trading zone of the vendor includes a reserve, the vendor is located in a "remote location", and 50 per cent of all sales during the previous year were made to Indians, Indian bands or band-empowered entities situated on-reserve. A location is considered to be "remote" when surface transportation is not available on paved or gravel roads linking the vendor with the nearest established community, or when the location, although serviced by a year-round access road, is located more than 350 km from the nearest community with a population of 5,000 or more.
- 2) Where a vendor is located within 10 km of the reserve and 90 per cent of his sales during the previous year were made to Indians, Indian bands or band-empowered entities situated on-reserve. Property purchased from a vendor meeting either of these criteria will not have to be delivered to a reserve in order to be purchased free of tax. The vendor will, nevertheless, be required to maintain the relevant documentation verifying the tax-free entitlement of the purchaser to justify the non-payment of GST on otherwise taxable sales.

Vendors choosing to operate under these special provisions must advise the CRA each year in writing of their decision to do so.

# Sales by Indians, Indian Bands and Band Empowered Entities



Businesses owned by Indians, Indian bands or band-empowered entities whose annual sales of property and services are more than \$30,000 are required to register for the GST. Like other businesses, once registered, they must collect the tax on their sales of property and services (unless the sales are made to Indians, bands or band-empowered entities under conditions in which the GST is not payable), claim input tax credits for the GST paid on purchases made in carrying out their business and remit the balance to the CRA Excise/GST.

Businesses, whether owned by Indians or non-Indians, selling property or services to Indians must include their taxable sales to Indians, even if no GST was charged, in their calculation of annual revenue to determine if they must register for the GST. Sales of property and services taxable at five per cent are considered to be tax relieved when sold to Indians, Indian bands or band-empowered entities under those circumstances described in the section entitled “Purchases By Indians, Indian Bands and Band-Empowered Entities;” however, they are still considered taxable sales.

Incorporated businesses owned by Indians must pay the GST on their purchases of taxable goods

and services. Incorporated band-empowered entities are not required to pay GST on property acquired for use in band management activities and GST will not apply when services are acquired for band management activities, or for real property on-reserve.

Sole proprietorships and partnerships owned by Indians receive the same treatment on purchases as individual Indians. If they are registered for the GST, they, like all other businesses, must collect the GST on their sales of taxable property and services (unless they are made to Indians, bands or band-empowered entities under the conditions in which the GST is not payable) and can recover any GST they do pay on their business purchases by claiming input tax credits.

In the case of purchases made by partnerships, tax relief is available for purchases made in either the Indian purchaser’s own name or the partnership name. Where a partnership has both Indian and non-Indian participants, relief from GST will apply fully to the partnership. However, all conditions for the Indian or band partner to receive tax relief on the acquisition must be met, i.e., property must be acquired on-reserve or delivered to a reserve and the proper documentation must be maintained.

## QST System in Quebec

The QST system in Quebec is, in general, harmonized with the GST system.

One of the main differences is that large businesses (taxable sales over \$10 million in Canada, including associated persons) can not recover as input tax

refunds the QST they pay on road vehicles under 3000 kg, fuel for such vehicles, electricity, heating, telecommunications, meals and entertainment. But these restrictions do not apply to the 50 percent rebate to non-profit organizations.

# Application of Retail Sales Tax to Indians

## *Introduction*

It is important to note that each province has its own rules with respect to RST as it relates to First Nations and their people. Following are some areas of interest from Ontario, British Columbia and Manitoba.

### **Ontario**

#### **General**

Status Indians, Indian bands and band councils may purchase most goods or services without paying RST, as long as the goods are for use on the reserve. Services, such as commercial parking, transient accommodation, and telecommunication services, must be provided on the reserve in order to be exempt from RST.

To claim an exemption, Status Indians must show vendors their federal “Certificate of Indian Status” identity card. Indian bands and band councils must provide the vendor with a valid Purchase Exemption Certificate (PEC).

#### **Insurance Premiums**

The RST does not apply to contracts of insurance entered into by Status Indians, Indian bands or band councils in respect of property located on a reserve.

If a Status Indian resident on a reserve works for an employer located off-reserve, the premium payments made by both the Status Indian and the employer for group insurance are exempt from RST. RST is also not charged on amounts paid into a benefits plan, either by or for a Status Indian resident on a reserve.

#### **Motor Vehicles**

Status Indians, Indian bands and band councils may purchase motor vehicles on-reserve exempt from Retail Sales Tax (RST), including the tax for fuel conservation, regardless of the address to which these vehicles are registered.

When Status Indians, Indian bands and band councils purchase motor vehicles off-reserve and

register them to a non-reserve address, they are entitled to an exemption from RST provided the purchaser shows their “Certificate of Indian Status” identity card (individual Status Indians) or issues a valid PEC (Indian bands and band councils) to the vendor, and the vendor arranges to have the vehicle delivered to a reserve.

When motor vehicles are purchased off-reserve and registered to a reserve address, Status Indians, Indian bands and band councils are eligible for an exemption from RST provided the purchaser shows their “Certificate of Indian Status” identity card (individual Status Indians) or issues a valid PEC (Indian bands and band councils) to the vendor.

The vendor must record on the invoice the Status Indian’s federal “Certificate of Indian Status” identity card number, name, and Indian band or registry number to substantiate the non-collection of RST.

Status Indians may claim an exemption from RST when purchasing repair parts over the counter or repairs (parts and labour in a single transaction or labour only) by presenting their federal “Certificate of Indian Status” identity card. The vendor must record on the invoice the Status Indian’s card number, name and Indian band or registry number to substantiate the non-collection of RST. Indian bands and band councils must issue a valid PEC.

#### **Leases of Motor Vehicles**

RST does not apply to lease payments, or short-term rentals (i.e., less than 12 months), on motor vehicles leased on-reserve by Status Indians, Indian bands or band councils regardless of the address to which these vehicles are registered.

When Status Indians, Indian bands and band councils lease motor vehicles off-reserve and register them to a non-reserve address, they are entitled to an exemption from RST provided the lessee shows their “Certificate of Indian Status” identity card (individual Status Indians) or issues a valid PEC (Indian bands and band councils) to the lessor, and the lessor arranges to have the vehicle delivered to a reserve.



When motor vehicles are leased off-reserve and registered to a reserve address, Status Indians, Indian bands and band councils are eligible for an exemption from RST provided the lessee shows their “Certificate of Indian Status” identity card (individual Status Indians) or issues a valid PEC (Indian bands and band councils) to the lessor, the address on the lease agreement is a reserve address, the plate is registered to the reserve address (this does not apply to daily/weekly rentals) and the insurance for the vehicle is registered to the reserve address.

The vendor must record on the lease agreement the Status Indian’s federal “Certificate of Indian Status” card number, name, and Indian band or registry number to substantiate the non-collection of RST. Indian bands and band councils must provide the vendor with a valid PEC.

### **Building Materials**

Contractors may purchase building materials exempt from Retail Sales Tax (RST) for certain buildings and structures situated on reserves. To qualify for the exemption, the cost of such projects must be paid for by the band council, and the buildings, such as a community centre, hospital, school, etc., must provide a community service for the reserve. When entering into a construction contract for an exempt community building project, the contract should be made on an RST-excluded basis.

If an Indian band or band council rents reserve housing to individual Status Indians, and the cost of the housing construction is paid directly by an Indian band or band council, the contractor may purchase the materials incorporated into the housing exempt from RST by giving suppliers a valid PEC. The rental of housing by an Indian band or band council is considered to be the provision of a community service. Indian bands and band councils should request that contractors quote tenders on an RST-excluded basis.

The exemption for contractors applies only to the preceding conditions detailed in this section. Contractors, including contracting corporations owned by Status Indians, Indian bands and band councils, must pay RST on items purchased for a building or structure, such as a house, built for Status Indians on a reserve. Since contractors are the end consumers of all items purchased for real property contracts, they

are responsible for determining how RST applies when entering into this type of contract.

Individual Status Indians can purchase building materials exempt from RST if the materials are purchased for their own use on a reserve. The vendor must record the Status Indian’s federal “Certificate of Indian Status” card number, name, and Indian band or registry number on the invoice.

### **Taxable Purchases**

#### **Off-Reserve**

Goods purchased off-reserve are taxable when they will be used or consumed off-reserve. For example, Status Indians, Indian bands and band councils must pay RST on goods delivered to an off-reserve address. Transient accommodation (i.e., lodging for stays of less than one month), prices of admission over \$4.00, telecommunication services, and parking are also taxable when rendered off the reserve.

#### **Prepared Foods**

Status Indians, Indian bands and band councils must pay RST on purchases of take-out meals and prepared food products, costing more than \$4.00, when these products are picked up by the Status Indian, Indian band or band council for consumption on or off the reserve, or are delivered to an address off the reserve.

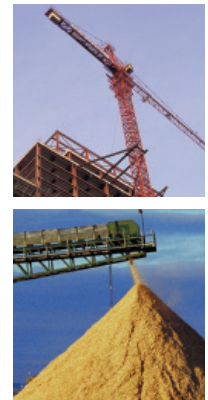
RST does not apply if the prepared food products are delivered directly to a Status Indian, Indian band or band council on the reserve for consumption on the reserve.

#### **Alcoholic Beverages**

Status Indians, Indian bands and band councils are required to pay RST on alcoholic beverages purchased off the reserve, regardless of whether the beverages are consumed off or on the reserve. Sales of alcoholic beverages are exempt from RST only when they are sold on the reserve to Status Indians, Indian bands or band councils for consumption on the reserve. Sales of alcoholic beverages made on reserves to anyone other than Status Indians, Indian bands or band councils are taxable.

#### **Other Persons**

Taxable goods and services acquired on reserves by persons other than Status Indians, Indian bands or band councils are subject to Retail Sales Tax (RST).





## Corporations

The RST exemptions for Status Indians, Indian bands and band councils are not available to corporations owned by Status Indians, Indian bands or band councils. Such corporations must pay RST on taxable goods, taxable services, and insurance premiums, in the same manner as other corporations.

## Refunds

Status Indians, Indian bands and band councils, and contractors who believe they have incorrectly paid RST, may apply to the Ontario Ministry of Revenue for an RST refund within four years of the date they paid the RST, by completing a General Application for Refund of Retail Sales Tax form.

## British Columbia

The sales tax applicable in the province of British Columbia is known as the social service tax (also referred to as the provincial sales tax (PST)).

In order to be eligible for an exemption from PST, all of the following conditions must be met:

- The purchaser or lessee must be either an Indian or an Indian band and the item purchased or leased must be for the personal use of the individual or for the use of the band.
- Indian purchasers or lessees must be in possession of a Certificate of Indian Status card issued by Indian and Northern Affairs Canada. Persons purchasing or leasing on behalf of an Indian band must have written authorization from the band to act for it, showing the band name and number, and signed by the appropriate band official.
- Corporations or co-operatives with Indian shareholders, tribal councils and Band-empowered entities do not qualify as Indians under the Indian Act (Canada). Purchases or leases by such organizations are therefore subject to PST, even if the organization is located on reserve land, or if the goods are located on such land at the time of sale or lease. The only exception is with respect to purchases of legal services.

## Purchases

The item purchased must be located on reserve land at the time the sale takes place, or title to the goods must only pass to the purchaser once the goods have been delivered to a reserve location. For title to pass on reserve land, the goods must be delivered to the Indian purchaser by the seller or by a common carrier under contract with the seller, and the seller must retain ownership and responsibility for the goods until they are delivered to the purchaser on reserve land.

## Leases

To qualify for exemption, the Indian lessee must reside on reserve land.

## Delivery to Reserve Land

To qualify as delivered to reserve land, the goods must be taken to the reserve location by the seller or by a common carrier under contract with the seller, off-loaded, and left for the Indian purchaser at the reserve location. At this point, the Indian purchaser accepts receipt of the goods and the transaction with the seller and common carrier is completed. The commercial reality of the transaction must be that the delivery is to the reserve, not to another location through the reserve.

If the purchase occurs on designated land, the seller must be in possession of a letter from the ministry authorizing exempt sales from that location. Retailers located on designated land may obtain such authorization by contacting the Ministry.

## Sales and Leases That Do Not Meet the Criteria

### Taxable Transactions

All sales and leases to Indians or Indian bands that do not meet the criteria previously outlined are subject to PST.

Sales to Indians or Indian bands at stores or other commercial establishments not located on reserve land are subject to PST because title to the goods passes to the purchaser at an off-reserve location. This applies even though the goods may later be delivered or taken by the vendor or purchaser to a location on reserve land.

The only exception is sales made F.O.B. reserve land, where delivery to a reserve is a condition of the sale, and the delivery meets the criteria for exemption outlined above.

The seller is required to collect and remit PST on all sales and leases which do not qualify for exemption. If the seller fails to do so, the seller may be held liable for an amount equal to the PST that should have been collected.

## PST Exemptions

### General Sales

The following types of sales to Indians or to Indian bands are not subject to PST provided the items purchased are intended for the personal use of the purchaser.

- Private sales between Indians of goods situated on reserve land at the time of sale.
- Sales to Indians/Indian bands from stores located on reserve land.
- Sales to Indians or Indian bands where sellers have brought goods onto reserve land to solicit sales from Indians or Indian bands for immediate delivery at the time of sale.
- Sales made F.O.B. reserve land, provided that the goods are delivered by the seller or by a common carrier under contract with the seller, to reserve land as a condition of the sale. Title to the goods cannot pass to the purchaser until the goods are located on reserve lands. To qualify as delivered to reserve land, the goods must be taken to the reserve location by the seller or by a common carrier under contract with the seller, off-loaded, and left for the Indian purchaser at the reserve location. At this point, the Indian purchaser accepts receipt of the goods and the transaction with the seller and common carrier is completed. The commercial reality of the transaction must be that the delivery is to the reserve, not to another location through the reserve.
- Sales of items which are exempt under the Social Service Tax Act.

### Leases (Rentals)

The application of PST to leased goods depends upon whether the interest in the lease is located on reserve land. Therefore, where the lessee is an Indian

or Indian band resident on reserve land, the lease payments are exempt from the PST. This applies whether the lessee takes possession of the leased item on or off reserve. Where the lessee cannot provide evidence to substantiate residency on a reserve or designated land, PST applies to the lease payments even if the lessee is an Indian in possession of a Certificate of Indian Status card, the lease is signed on reserve, and/or the goods are delivered to a reserve location.

### Legal Services

Indians are exempt from PST on purchases of legal services if the legal services relate to real property situated on reserve, or the legal services are performed on a reserve. Purchases of legal services related to Aboriginal treaty or land claims negotiations are also exempt from PST if the services are purchased by an Aboriginal organization representing the interests of Indians and Indian bands in such negotiations.

### Taxable Services

A taxable service is any service provided to install, assemble, dismantle, repair, adjust, restore, recondition, refinish or maintain tangible personal property. PST applies to purchases of these services.

No PST is payable in respect of a taxable service purchased by an Indian or an Indian band if all the taxable service is provided on reserve.

### Electricity and Natural Gas

Electricity and natural gas delivered to a location on reserve land and billed to an Indian or Indian band are exempt from PST.

### Pay Television

Charges for pay television, specialty service channels and non-programming channels are exempt from PST provided the cablevision outlet is located in a building situated on reserve land and the charges for the service are billed to an Indian or Indian band.

### Telecommunication Services and Equipment

Residential telephone services, excluding long distance telephone charges, are exempt from PST under the Social Service Tax Act.

Charges for other telecommunication services, including non-residential telephone services, long





distance charges, data transmission, fax and cellular phone services, are exempt from PST when placed from, or charged to, equipment located on reserve land and billed to an Indian or Indian band. Services charged to non-subscriber calling cards, where there is no service at the location to which the charges are billed, are subject to the PST.



### **Contracts to Improve Real Property**

Where Indians or Indian bands enter into contracts with non-Indian contractors for the construction, improvement or repair of real property on the reserve, they may only obtain the benefit of the exemption if they are the actual purchasers of the tangible personal property that becomes real property upon installation.

Under a lump sum or fixed price contract to improve real property, contractors are the purchasers and consumers of all tangible personal property used in carrying out the terms of the contract. It is the contractor who is responsible for payment of PST on the tangible personal property. The exemption for which the Indian customer may otherwise be eligible is not transferable to the contractor.

For an Indian or Indian band to obtain the benefit of the exemption, the contract to improve real property must be structured as a time and material or cost-plus contract. Under such a contract, the customer is the purchaser and user of the materials incorporated into the real property.

The contractor is not required to collect PST on the sale of materials to the Indian customer provided that all of the following conditions are met:

- The value of the time (labour) and the value of the material must be separately stated or accounted for in the contract.
- Under the terms of the contract, title to the material passes to the customer prior to installation or incorporation into real property.
- Title to the material passes to the Indian customer at a location on reserve land.

Where the above conditions are met, the Indian or Indian band is the purchaser of the tangible personal property and may acquire the property without payment of PST. The contractor may also obtain the materials exempt from PST on the basis that they are being purchased for resale.

## **Manitoba**

Manitoba provides a sales tax exemption to Status Indians and Indian Bands residing on a reserve when the seller of the goods delivers the goods directly or by common carrier to a reserve address. In this situation, the invoice for the goods being purchased must show the:

1. Status Indian's name or band name, when the purchaser is an Indian band.
2. Status Indian's Certificate of Indian Status Registry No., or band number.
3. Status Indian's signature, or authorized band representative's signature when the purchaser is an Indian band.
4. Address to which the goods are being delivered (which must be a reserve address).
5. Method of delivery to that reserve address.
6. Status Indian's resident reserve address or band reserve address (when the purchaser is an Indian band), where the sale involves leased goods or cellular telephone services.

If a Status Indian or Indian band takes possession of taxable goods at an off-reserve location at the time of sale, the seven per cent Manitoba retail sales tax must be applied.

### **Note:**

- 1) There is no sales tax exemption on purchases made by corporations owned by an Indian band.
- 2) There is no sales tax exemption available on accommodation provided off-reserve.

### **Motor Vehicles**

Status Indians and Indian bands may purchase vehicles RST-exempt provided:

- The title to the vehicle is transferred on a reserve;
- the purchase documents are signed on a reserve; and
- the purchaser takes possession of the vehicle on a reserve (the dealer delivers the vehicle or ships it by common carrier F.O.B. to the reserve).

To qualify for exemption on a lease the Status Indian must reside on a reserve, in addition to the above conditions:

- Corporations held by Status Indians or Indian bands do not qualify for the RST exemption available to Status Indians and Indian bands. The dealer must collect the tax on all sales to these corporations.
- Dealers must document tax-exempt sales with the following information on the sale invoice/lease contract or a statement attached to the invoice:
  - The purchaser's Certificate of Indian Status card number (or band number if the sale is to an Indian band);
  - the name of the reserve on which legal title to the vehicle was transferred and to which the vehicle was delivered;
  - the purchaser's address on reserve for RST-exempt lease contracts;
  - a statement signed by the purchaser, and by an official of the dealership, confirming the title was transferred on the reserve, the dealer delivered the vehicle to the reserve, and the customer took possession on the reserve. When a common carrier ships the vehicle on behalf of the dealer to the reserve, the dealer must retain the shipping documents.

## **Sales by Indians, Indian Bands and Band-Empowered Entities**

Businesses owned by Indians, Indian bands or band-empowered entities may be required to obtain a vendors' permit.

Only sales to non-natives are taxable sales for purposes of RST. These businesses would need to obtain a vendors' permit and collect and remit any RST on sales to non-natives. If the sales are not to the end user then no RST needs to be charged as the purchaser would be providing you with a Purchase Exemption Certificate.

Sales of property and services otherwise considered taxable sales are generally considered to be tax relieved when sold to Indians, Indian bands or band-empowered entities under those circumstances described in the section entitled "*Purchases By Indians, Indian Bands and Band-Empowered Entities.*"



# Miscellaneous Income Tax Issues

## First Nations Taxation

In the 1997 and 1998 budgets, the federal government indicated its willingness to put into effect taxation arrangements with interested First Nations. While they are not self-government agreements, these arrangements are consistent with the federal government's acknowledgement of the inherent right of aboriginal self-government, and the shared goal of aboriginal self-sufficiency. Since that time, the CRA has issued the publication First Nations Tax (FNT) RC4072 Rev .01. This publication provides more details about these First Nation taxes, including the definition of the products subject to FNT. The appendix to the publication provides a chart that names the First Nations whose band councils have passed by-laws to impose FNT on their reserves. This list is updated periodically to include any other First Nations who choose to implement the FNT.

## First Nations Goods and Services Tax

In budgets since 1997, the government has expressed a willingness to enter into taxation arrangements with interested First Nations. To date, arrangements have been made with certain First Nations to allow the taxation on reserves of sales of tobacco, fuel and alcohol. The government and eight self-governing Yukon First Nations have also entered into personal income tax collection and tax sharing arrangements.

In 2003, legislation was introduced to allow for a First Nations Goods and Services Tax to interested First Nations. The government has expressed a willingness to facilitate similar arrangements between interested First Nations and the provinces/territories.

On July 1, 2004, the Canada Revenue Agency announced the First Nation Goods and Services Tax (FNGST) that replaces the GST of eight First Nations in the Yukon. The CRA will administer the FNGST on behalf of these First Nations.

Under the FNGST, essentially everyone, including Indians (with the exception of some provincial and territorial governments) will have to pay FNGST on the taxable supplies they buy on First Nation Lands where FNSGT applies.

The following First Nations have signed Tax Administration Agreements with the Government of Canada and have passed their own laws to implement FNGST:

- Champagne and Aishihik First Nation
- Kluane First Nation
- Little Salmon/Carmacks First Nation
- Nacho Nyak Dun First Nation
- Selkirk First Nation
- Ta'an Kwach'an Council
- Teslin Tlingit Council
- Tlicho First Nation
- Tr'ondëk Hwëch'in First Nation
- Tsawout First Nation
- Vuntut Gwitchin First Nation

More information on the FNGST is available in the CRA publication RC4365 First Nation Goods and Services Tax (FNGST).

## Income Tax Remission Orders

A remission order is an order-in-council that eliminates a tax obligation pursuant to the Financial Administration Act, R.S. 1985, c. F-11. A remission order may be granted on the recommendation by the Treasury Board whenever they consider it in the public interest to remit any tax, fee or penalty.

Every year, a number of taxpayers benefit from orders-in-council remitting federal income tax and related interest. Such remission orders are not often granted, but are of interest because they represent powerful tools that can rectify inequities or provide a compassionate alternative to the harsh rigours of law. Requests for remission orders are considered by a Remission Committee at the head office of CRA Taxation.

In the Manitoba Treaty land entitlement settlement, signed May 1997, a framework agreement was developed by the Treaty Land Entitlement Committee of Manitoba Inc. (the Committee) and the governments of Canada and Manitoba. The amounts negotiated by the Committee for land acquisition,

restitution and implementation were premised on the assumptions that land acquisitions would be exempt from transaction taxes (GST and land transfer tax). However, none of the sources of exemptions generally available seemed to provide a complete answer. Therefore, in an effort to have some assurance, Canada and Manitoba provided assurances that land acquisitions by Manitoba TLE First Nations would not be subject to tax. The framework agreement committed Canada to issue a remission order remitting GST that may otherwise be payable on the selection or purchase of land by a Manitoba TLE First Nation. It also committed Manitoba to exempt such a transaction from land transfer tax under the Revenue Act (Manitoba).

### Employee Leasing for Indians

Employee leasing is an arrangement whereby a company or an organization, rather than hiring people to work for them directly will instead contact a leasing agency and ask the leasing company to hire people and send them to the company or organization.

With respect to First Nations' people, one such organization that attempted this structure was the O.I. Employee Leasing Inc. company. The main reason this company was created was to develop an aboriginal self-supporting network. But as they researched the concept further they discovered that if they combined the employee leasing concept with the Canadian tax laws as they apply to First Nations' people, they may be able to offer Status Indian people leased through O.I. with tax free income.

Based on the Supreme Court decision in *Nowegijick*, the O.I. group felt that if a legitimate employer was situated on-reserve it could employ people and have them work off-reserve, and if they were Status Indians they would be exempt from tax. Since the O.I. Employee Leasing company was situated on-reserve, they claimed tax exempt status for all their Status Indian employees. As a result of the *Williams* decision however, the CRA changed its assessing policy and as of January 1995 all Status Indians of the O.I. group working off-reserve were taxable.

Based on this, the O.I. Group and its employees challenged the legality of the CRA's guidelines restricting off-reserve tax exemption for Status Indian people. As discussed previously under "Employment Income 'Pertinent Case Law'" we discussed the case of *Shilling v. The Queen*. This was one of the four test

cases, agreed to by the CRA, in order to test whether or not the CRA's implementation of section 87 of the Indian Act, through the Guidelines it adopted in 1994, were correct.

As noted previously, the Federal Court of Appeal concluded that the taxpayer's income was not exempt and therefore any attempt to exempt employment income through an employee leasing structure should be viewed very cautiously.

### Registered Retirement Savings Plan (RRSP)

It is the CRA Taxation's position that income that is exempt from taxation by virtue of section 87 of the Indian Act is not earned income for purposes of RRSP limit. As such, exempt income creates no RRSP contribution limit. An Indian who has only exempt income and contributes to an RRSP will be subject to tax under Part X.1 of the Income Tax Act for contributions in excess of \$2,000.

The CRA Taxation was formerly of the view that payments from an RRSP to an Indian would be taxable unless the head office of the financial institution making the payment was situated on a reserve. The CRA now takes the position that payments from an RRSP will be exempt if the contributions to the RRSP were from income that was exempt. Where only part of the income contributed to the RRSP was exempt, the exemption of the RRSP payments would be prorated.

In light of the *Recalma* case, a consideration should be given to the investment income earned on RRSP contributions. Withdrawals of contributions would not be taxable, however, the income earned by the contributions would generally be taxable.

A recent CRA windows document #2002-0122817 deals with RRSP over contributions made by an Indian. We reproduce below the CRA's response and the potentially significant penalty that may be applicable:

Re: RRSP Over-Contributions

*This letter is in response to your e-mail of February 7, 2002 in which you ask our views on several issues as they relate to Registered Retirement Savings Plan (RRSP) over-contributions made by members of the XXXXXXXXXXXX First Nation.*

Our Comments

*For purposes of this memorandum, the expression "Indian" has the meaning assigned by subsection 2(1) of the Indian Act.*



An Indian may be subject to tax under Part X.1 of the Act in respect of over-contributions to an RRSP. The tax is computed with reference to the Indian's "cumulative excess amount" as defined in subsection 204.2(1.1) of the Act. As noted in paragraph 30 of Interpretation Bulletin IT-124R6, the cumulative excess amount is generally equal to the excess of the taxpayer's undeducted RRSP premiums over the aggregate of the taxpayer's RRSP deduction limit and \$2,000 (the reference to \$8,000 in IT-124R6 is due to the fact that IT-124R6 does not reflect amendments to the Act passed subsequent to the printing of the bulletin).

A taxpayer's RRSP deduction limit is based on the taxpayer's "earned income", as this expression is defined in subsection 146(1) of the Act. However, income that is exempt from tax pursuant to paragraph 81(1)(a) of the Act and section 87 of the Indian Act is not included in the calculation of an Indian's earned income. Consequently, unless the Indian has earned income, the Indian will not have an RRSP deduction limit and, therefore, the Indian's cumulative excess amount contributed to the RRSP will be subjected to tax under Part X.1 of the Act.

Question

Will the Canada Customs and Revenue Agency (CRA) require that a T1-OVP be filed by an Indian?

Response

Yes. Where an Indian is liable for any tax under Part X.1 of the Act, pursuant to subsection 204.3(1) of the Act, a Part X.1 return (T1-OVP) is required to be filed and the tax must be paid within 90 days after the end of the year in which a cumulative excess amount exists.

Question

Will the CRA allow the over-contributions to remain within the RRSP without being subjected to taxes under Part X.1 of the Act until such time as the First Nation signs its final agreement?

Response

No. There is no provision in the Act that would allow an Indian to over-contribute to his or her RRSP without being subjected to the taxes under Part X.1 of the Act.

Question

Will the CRA waive any assessment under Part X.1 of the Act based on the circumstances? If so, will the Indian be required to withdraw the over-contribution from the RRSP?

Response

Pursuant to subsection 204.1(4) of the Act, the Minister may waive the Part X.1 taxes where the Minister is satisfied that the cumulative excess amount arose as a consequence of a reasonable error and reasonable steps are taken to eliminate the cumulative excess amount. Consequently, we would require the withdrawal of the cumulative excess amount from the RRSP within a reasonable time period before considering any waiver of taxes under Part X.1 of the Act. We also note that the Minister also has the authority to waive the requirement to file returns (subsection 220(2.1) of the Act) and any late-filing penalties and interest (subsection 220(3.1) of the Act). In our view, these waivers will only be provided where the cumulative excess amount is withdrawn from the Indian's RRSP. The determination of whether these relieving provisions should be applied will only be done on a case-by-case basis and this determination is the responsibility of the local tax services office.

Question

Will the withdrawal from the RRSP be exempt since the income was exempt?

Response

Where an Indian's contributions to an RRSP relate to tax-exempt income, withdrawals of the contributions would continue to be tax-exempt. However, the withdrawal of any investment earnings may be taxed as ordinary investment income. Based on the case of *Arnold Recalma v. The Queen* (96 DTC 1520, 98 DTC 6238), it would be necessary to determine the location of the RRSP issuer's income generating activity with respect to the RRSP's investments. In our view, unless the RRSP investment income can be identified as exclusively generated on a reserve, the income will not be exempt from tax.

Question

Can the CRA provide a letter to the financial institution advising that they are not required to withhold tax on the withdrawal because it is exempt or must a T3012A be completed for each taxpayer?

Response

Since withdrawals from the RRSP may consist of tax-exempt contributions and taxable investment income, you should discuss this issue with the Individual Returns and Payment Processing Division (IRPPD) in Headquarters.

## Workers' Compensation

The Department generally views the Indian Act exemption as applying to Workers' Compensation Board (WCB) benefits received if the employment income to which such payments relate was exempt. Otherwise, WCB benefits are not exempt under the Indian Act. In a case where the employment income to which the WCB benefits relate to was partially exempt and partially taxable, the WCB benefits will be pro-rated between the exempt and taxable categories in the same ratio as the employment income.

With respect to WCB premiums being remitted on behalf of a status employee by the employer, there is some question as to whether these premiums are a tax and therefore possibly exempt and not payable.

Section 87 of the Indian Act exempts from taxation the personal property of an Indian or band situated on a reserve. Therefore, in order for workers' compensation assessments to be exempt they must be a tax in respect of such property. The courts have not come to a clear conclusion on whether the assessments are a tax for purposes of the exemption.

To be characterized as a tax, a levy must have the following attributes:

- 1) It must be imposed by the express authority of a legislature;
- 2) it must be enforceable by law; and
- 3) it must be imposed for a public purpose.

It would appear that workers' compensation assessments meet this criteria, and could be considered a tax. In practice however, it is generally accepted that the employer remits the WCB premiums on behalf of all status employees for the protection and benefit of the employee.

## Old Age Security Benefits

OAS pension and supplement benefits are neither related to income nor earned on the reserve. Therefore, the Indian Act exemption does not apply to OAS benefits.

## Employer Health Tax (EHT)

Remuneration paid to Status Indians on the reserve is not subject to EHT, assuming the employment income is exempt from income tax.





# Definitions

## Indian

An “Indian” is a person who is registered or entitled to be registered under the Indian Act. An Indian does not have to live or maintain a residence on a reserve. Such a person may be issued a Certificate of Indian Status by the Department of Indian Affairs and Northern Development. The Certificate of Indian Status identification card is issued by the Department of Indian Affairs and Northern Development to eligible Indians. The certificates are laminated identifications that display the Canadian maple leaf logo, followed immediately by Indian and Northern Affairs Canada. The certificate may also bear the photograph and description of the individual, a registry number, the name of the band to which the individual belongs, and the family number.

There can be three different numbers appearing on the Certificate of Indian Status card:

- 1) The registry number is found on the most recent cards. It is a nine or ten digit number that can be used to designate the individual. The first three digits are the band’s number and the next four or five are the family number within the band, with the last two designating the individual family member.
- 2) The band name, followed by a family number can be found on most cards. The family number is commonly referred to as a band or treaty number. It is a genealogical division within the band and makes up the middle four or five digits of the registry number.
- 3) A card serial number is on all cards. This number is the numeric sequence of the card issue and is not a number used to identify the individual or to document his/her status and has no application for GST purposes.

## Indian Band

An “Indian band” means a body of Indians who share the use and benefit of reserve lands or who share the use and benefit of moneys held by Her Majesty or who are declared by the Governor in Council to be a band for purposes of the Indian Act. For purposes of the GST, this includes both a band council and a tribal

council. The band council is the primary unit of an Indian government.

## Tribal Council

A “tribal council” is another level of Indian government. It is a grouping of bands with a common interest who have joined together to provide advisory or program services for two or more bands. Band council members are often appointed to the tribal council Board of Directors.

## Band-Empowered Entity

A “band-empowered entity” is a corporation, board, council, association, society, or other organization that is owned or controlled by a band, a tribal council, or a group of bands other than a tribal council. This is applicable to those band-empowered entities situated on a reserve. A band-empowered entity is considered to be situated on a reserve when the entity maintains a presence on-reserve.

An entity is considered to be owned by a band, a tribal council or a group of bands other than a tribal council if:

- 1) The band, tribal council or group of bands owns all or substantially all (90 per cent) of the shares, or holds all or substantially all of the memberships of the entity; or
- 2) the band, tribal council or group of bands holds title to the assets of the entity or controls its disposition, such that in the event of wind up or liquidation, these assets are vested in the band.

An entity is considered to be controlled by the band, tribal council or group of bands if:

- 1) The band, tribal council, group of bands or individual members of the band, tribal council or group of bands, appoint or elect a majority of the members of the governing body of the entity (e.g., directors); and
- 2) the entity is required by legislation, by-laws, or an operating agreement, to submit to the band, tribal council or group of bands, its operating budget and where applicable, its capital budget for review and approval.

## Band Management Activities

This definition is relevant for GST taxation issues. “Band management activities” are activities or programs undertaken by a band or band-empowered entity that are not commercial activities for which they would otherwise be entitled to an input tax credit. In determining whether the acquisition of a supply is for band management, the output of the activity or program will be the determining factor, as opposed to the objectives of the activity or program. For example, a band’s objective or program may be to provide employment and training to band members. To achieve this objective, the band may form a commercial enterprise which will provide on-the-job training and also create employment. Although the band’s objective is to train persons, the output is a commercial activity for which there is an entitlement to input tax credits. As a result, supplies acquired for use in this band program are not considered to have been acquired for use in band management activities.

## Reserve

A “reserve” means a reserve within the meaning of the Indian Act; that is, a tract of land which has been set apart for the use and benefit of a band within the meaning of the Indian Act, and equivalent lands under self-government legislation, i.e. the Cree-Naskapi (of Quebec) Act and the Sechelt Indian Band Self-Government Act. “Reserve” also includes “designated land,” which, according to the Indian Act, is a tract of land whose legal title remains vested in Her Majesty and in which the band for whose use and benefit it was set apart as a reserve has, conditionally released or surrendered its rights or interests.

The settlements affected by the Indians and bands on Certain Indian Settlements Remission Order are also included in the definition of reserve. A limited number of settlements in Alberta, northwestern Ontario and Quebec, are covered by the Remission Order. These settlements are listed in the pamphlet entitled Indians and Bands on Certain Indian Settlements Remission Order, available from district CRA Excise/GST offices.



National Office  
36 Toronto Street  
Suite 600  
Toronto, Ontario  
M5C 2C5  
1.800.805.9544  
[www.bdo.ca](http://www.bdo.ca)

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# First Nations and the Canadian Tax Environment



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