Taxation Aspects of the Sechelt Agreement-in-Principle

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The Sechelt Agreement-in-Principle[1] ("the AIP") under the British Columbia Treaty Commission ("the BCTC") process was signed by Canada, British Columbia, and the Sechelt Indian Band on April 16, 1999. A copy of chapter 17 of the AIP, which concerns taxation, is attached as an appendix to this paper. The AIP is, at the time of writing, the only agreement that has been finalized; thus, the Sechelt Band is the only First Nation to have reached stage 5 of the six-stage treaty process. To those not directly involved in the stage 5 negotiations, it came as a complete surprise when the Sechelt Band Council, on June 1, 2000, announced Sechelt's withdrawal from the BCTC process in favour of a return to the courts. In a press release dated June 6, 2000, Chief Garry Feschuk explained the reasons for this withdrawal, which included the following:

> Another key reason for the failure of treaty talks was the BC government's continued insistence on applying a tax formula where band members would lose their sales tax exemption eight years after the signing of a treaty and their income tax exemption after 12 years.
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> "As even the Certified Management Accountants of BC have stated, taxation is an issue that should be dealt with at the national level, rather than within the confines of the BC Treaty process. Linking the two issues makes it virtually impossible to achieve a treaty," said Chief Feschuk. "By way of example, we have estimated that under the 8 and 12 formula the Sechelt would have ended up paying back in taxes the entire $52 million offered under the treaty even before those funds had been received in their entirety by the Sechelt Indian Band."[2]

To understand this issue, it is important first to recognize that the Sechelt band, although (since 1986) self-governing under its own statute, has remained subject to the income tax provisions set out in the Indian Act.[3] Section 35(3) of the Sechelt Indian Band Self-Government Act[4] provides:

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1 Sechelt Agreement-in-Principle signed by Canada, British Columbia and Sechelt Indian Band at Sechelt on April 16, 1999, as amended.

2 Sechelt Indian Band, "Sechelt Chief sets out facts regarding failure of treaty talks," press release, June 6, 2000, 2.

3 RSC 1985, c. I-5, as amended.

4 Sechelt Indian Band Self-Government Act, SC 1986, c. 27, as amended.

> For greater certainty, section 87 of the Indian Act applies, with such modifications as the circumstances require, in respect of the Band and its members who are Indians within the meaning of that Act, subject to any laws made by the Council in relation to the class of matters set out in paragraph 14(1)(e).

(Paragraph 14(1)(e) concerned only property taxation for local purposes.)

The issues surrounding the taxation of individual band members had been contentious from the very beginning of negotiations. In their "Land and Cash Offer,"[5] signed on August 22, 1997, Canada and British Columbia had proposed phasing out the Indian Act tax exemption for Sechelt band members. The senior governments had made it clear that "transition periods of eight (8) years for transaction taxes and twelve (12) years for income taxes represent the maximum transition periods available under Canada's and British Columbia's mandates for treaty negotiation."[6] In other words, the Nisga'a agreement[7] on this point represented the best deal available to any other First Nation. The Sechelt negotiating team never did accept this "8 and 12" formula. It was not the payment of income taxes that was objectionable per se, but rather the arbitrariness and inequity that would result from this irrational approach. Sechelt had been on record for nearly 20 years with its own position on individual income taxation. In a 1989 proposal for the resolution of the Sechelt land claim, the band stated:

> One more word about contribution towards Canada: in 1980, we submitted to the Federal Government a proposal for Sechelt Band members to enter this country's income tax system. Many people do not realize that Indian people are only exempt from the payment of income taxes while they are working on reserve; once they are off reserve, they are liable to pay the same taxes as everyone else. We see this as an anomaly. Our proposal provided for equality of treatment among all Sechelt Band members and the eventual phase-in of Band members equally into full payment of income taxes. Here is that proposal:
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> TAXATION OF INCOME OF BAND MEMBERS
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> 67. Unless the laws of Canada provide for complete exemption from taxes for all Sechelt Indians, all Sechelt Indians, whether earning income on or off the Band Lands, shall be equally liable to pay income tax. They shall be subject to Federal and Provincial income taxes applied on the basis hereinafter set out, commencing in the tax year following the year in which this Act is enacted:
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> | | |
> |---|---|
> | Years 1 – 5 inclusive: | 10% of normal tax liability |
> | Years 6 – 10 inclusive: | 20% of normal tax liability |
> | Years 11 – 15 inclusive: | 30% of normal tax liability |

5 Canada and British Columbia's Land and Cash Offer to the Sechelt Treaty Negotiations, signed at Sechelt, on August 22, 1997.

6 Ibid., under the heading "Taxation."

7 Bill C-9, An Act To Give Effect to the Nisga'a Final Agreement, first reading October 21, 1999; SC 2000, c. 7; given royal assent April 15, 2000.

Years 16 – 20 inclusive:	40% of normal tax liability
Years 21 – 30 inclusive:	50% of normal tax liability
Years 31 – 35 inclusive:	60% of normal tax liability
Years 36 – 40 inclusive:	70% of normal tax liability
Years 41 – 45 inclusive:	80% of normal tax liability
Years 46 – 50 inclusive:	90% of normal tax liability
Years 51 and thereafter:	100% of normal tax liability

68. The formula for payment of income tax provided in section 67 shall also apply to corporations the shares of which are wholly owned by Sechelt Indians or the Band.

69. No Sechelt Indian who has attained the age of 60 years at the date of enactment of this Act shall have to pay income tax.

70. The Band is fully exempt from all taxation.

Revenue Canada did not wish to deal with this proposal during our self-government negotiations so the opportunity was lost at that time. Why? As far as we know, it had to do with bureaucratic misunderstanding. Whether this is true or not, we still think there is much merit in this proposal and we are again prepared to put it forward as part of a land claims settlement package.[8]

In a letter of protest to the Honourable Jane Stewart, then minister of Indian affairs, dated September 2, 1997, the Sechelt Band Council pointed out that the position being insisted upon by her government was a replication of section 28 of the "Taxation" part of the Nisga'a Agreement-in-Principle.[9] In other words, Sechelt was not being given an opportunity to negotiate its own taxation arrangements. The Band Council objected as follows:

Thus, all the time that we thought we were negotiating on this issue, we weren't. Canada and British Columbia had decided long ago how this was to be done. A shameful strategy!

Let us examine the implications of this non-negotiable position, both nationally, provincially and for Sechelt.

1. *Nationally:* If it is the policy of the Federal Government of Canada to end this section 87 exemption in 12 years, then go ahead and do it. We understand that you do in fact have that power. And, if this is the policy, we will leave the new National Chief, Mr. Fontaine, to deal with it. It is too big an issue for us.

2. *Provincially:* British Columbia's Ministry of Native Affairs is issuing Orwellian statements about "fairness and equity." The reality of the Governments' intransigence leads to the opposite!

A majority of First Nations in this Province are trying to secure compensation for the injustices of the past. If, in order to do so, they have to lose existing rights,

8 *A Practical Proposal for Resolving the Indian Land Claim in British Columbia as It Affects the Sechelt Indian Band*, October 9, 1989, 12-13.

9 The February 15, 1996 version of the Nisga'a Treaty Negotiations Agreement-in-Principle.

> the eventual result is easy to foresee. Those First Nations who refuse to be embroiled in the B.C. Treaty Commission process will retain their tax exemptions. So will the Treaty 8 Bands. We will therefore end up in British Columbia with non-treaty Indians with tax exemptions, treaty Indians with tax exemptions and treaty Indians with no tax exemptions. . . . Not much fairness there! And the equities are unknowable; it will all be a roll of the dice.[10]

The council then reminded the minister of its 1980 proposal for "Taxation of Income of Band Members."[11] It had never been clear to the Sechelt leadership why this proposal had not even been considered federally during the more appropriate period of its successful negotiations for self-government. The council reiterated, "[W]e still think there is much merit in this proposal and we are again prepared to put it forward as part of a land claims settlement package."[12] The council concluded with a plea for rational consideration and fair negotiations:

> You were the Revenue Minister before. Was this proposal dusted off and brought to your attention? It's a good one you know. It has logic on its side; it can be supported in a debate; the public respond positively to it . . . unlike the embarrassing "8 year and 12 year" formula that truly sounds like the result of "a roll of the dice."
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> Minister, we have an opportunity here to be creative and ground-breaking. It is reprehensible for Canada and British Columbia to be telling our 950 Band members that, unless we accept this most ill-conceived end to our section 87 exemption, the injustices visited upon the Sechelt people in the 19th century will not be addressed. So let us agree that we can certainly do better than this!
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> . . . In conclusion, this taxation issue is an overwhelming one for our small Band. It needs to be properly considered on a national basis, not just rammed down our throats to get a "victory." Please therefore respond constructively.[13]

This submission received the same lack of response as had the original proposal 17 years earlier. It seemed to Sechelt that the federal government, and British Columbia as well for that matter, could not accept its position that all of its people should be treated equally. We all knew how section 87 had originated, but there did not seem to be anyone in the country who would attempt to rationalize its continued existence in the present form. An anecdote circulated concerning a Sechelt Band member who was working at the Park Royal Shopping Centre in West Vancouver. She was employed at the Royal Bank and paid taxes; had she walked a few yards over and worked at the Bank of Montreal, she would have been tax-exempt. What possible value could there be in maintaining such an artificial regime? Yet the governments have consistently refused to countenance the policy argument that the availability of the income tax exemption only to residents on reserve or on band lands was a disincentive to productivity—that

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10 Letter to the Honourable Jane Stewart, minister of Indian affairs, September 2, 1997, 2.

11 Reproduced in the extract from *Practical Proposal*, supra, at footnote 8.

12 Ibid.

13 Supra footnote 10, at 4.

this geographically restricted exemption encouraged band members, particularly the young, to lobby for employment on reserve rather than pursue job opportunities off reserve.

For 20 years, Sechelt has maintained that, if the purpose of the section 87 exemption was at least in part to foster First Nations economic development, it would clearly make sense to extend it to all native people regardless of residency. And this should be done for a realistic transitional period, not an arbitrary and curtailed one such as 12 years. The Sechelt negotiators have never met a government spokesman who could rationalize the government's treaty position on this issue, and Sechelt has consistently criticized the governmental insistence that individual income taxation must be part of the negotiations.

In a paper presented at a conference on treaty issues in May 1999, Douglas McArthur—to his credit—attempted to explain the broader governmental view.[14] McArthur was formerly deputy minister in the government of former BC premier Glen Clark, and is now a senior fellow in applied public policy at the University of British Columbia. McArthur asked why governments have taken the position that First Nations people, when treaties are concluded, should have the same tax obligations as other citizens with respect to taxes of general application. He suggested a number of reasons, summarized as follows:

> First, all of the opposition of the tax experts to the exemptions is brought to the fore as government defines its interests and needs in negotiations. . . .
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> Second, with treaty making underway, even if the tax exemptions might at some time be determined to be a legal right, treaty making provides for the exchange of this right for other rights and benefits, with consent. . . .
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> Third, the arguments for a level playing field have taken on extra importance and force, in the context of treaty making. . . . And there has been a real and palpable fear that a continuation of the tax exemptions would result in a significant advantage for aboriginal business. . . .
>
> Third [sic], the so-called regularization of Indian people into the tax system has been seen as important in securing a broader base of public support for the treaties. . . .
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> A fourth consideration, somewhat related to the others, has been that if the tax exemptions were continued, a decision would have to be made as to what lands they would apply on after treaties.[15]

McArthur's first reason derives from his observation that "governments, bureaucrats and tax advisors . . . have maintained a long-standing objection to the exemptions," which they view as "complicated, complex and in many ways quite arbitrary."[16] From their perspective, "continuing problems" arise from the

14 Douglas F. McArthur, "The Loss of Tax Exempt Status in Final Treaties," in *Treaty Making: The Hot Issues* (Vancouver: Pacific Business and Law Institute, May 14, 1999), 1-11.

15 Ibid., at 6-7.

16 Ibid., at 2.

section 87 exemption, with resulting "conflict and dissatisfaction."[17] For those who have followed the tortured course of the court decisions concerning section 87, particularly since *Nowegijick v. The Queen et al.*,[18] the description of "complicated, complex and in many ways quite arbitrary" must seem justified. To be blunt, the exemption has created an administrative mess—one that costs the First Nations and taxpayers a great deal of wasted money.

With his second reason, McArthur confronts head-on the popular view that the federal government could eliminate or phase out section 87 with a simple statutory amendment. Indeed, it was a common refrain at Sechelt, during the stage 4 and 5 negotiations, that, if Canada was so determined to eradicate the section 87 exemption, why did it not inform the Assembly of First Nations that it intended to amend the section accordingly? In other words, why is this national issue being foisted on one small group of native people? In response, McArthur suggests that "the actual source of the exemptions could be considerably more complex."[19] He points out:

> The first recognition in statute of the tax exemption came in 1850 in Upper Canada. There is not, to my knowledge, any evidence of the imposition of taxation on Indians or Indian property on Indian lands prior to that, suggesting that the 1850 statute was simply a confirmation of the existing situation. The period prior to 1850 was one in which the single most important element defining the relationship between the government and Indians was aboriginal ownership of lands. The freedom from tax seems, on the face of it, to have been integrally linked to this aboriginal ownership of land. This suggests the possibility that freedom from tax is somehow inextricably linked with aboriginal title.[20]

Given his understanding that "the courts have never really clearly expressed themselves on the source of the exemption in the Indian Act,"[21] McArthur recognizes the immense risk to government of an adverse ruling based on source if it should "ever [be] contemplating anything so drastic as an elimination or legislative erosion of the Indian Act provision."[22] He concludes that a negotiated elimination is the most realistic solution, and that modern-day treaties offer the best opportunity for achieving it. Even if First Nations do arguably have the right to be exempt from taxation outside the provisions of the Indian Act, through the treaty process this right could be exchanged or substituted for rights that are more certain.

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17 Ibid.

18 83 DTC 5041; [1983] CTC 20 (SCC).

19 Supra footnote 14, at 4.

20 Ibid.

21 Ibid., at 5.

22 Ibid.

I cannot concur with McArthur on this point. Even if freedom from tax "is somehow inextricably linked with aboriginal title"—and I have strong doubts of this—I remain of the view, as does my former client Sechelt, that this whole question of individual income taxation does not properly form part of a treaty negotiation. I will return to this opinion later.

McArthur's third reason—the "real and palpable fear that a continuation of the tax exemptions would result in a significant advantage for aboriginal business"[23]—does not stand up to scrutiny. In my 30 years of on-reserve experience, I have found generally that the difficulties of attracting businesses to invest in reserve development and enterprises are formidable. Investors tend to shun the weird world of the Indian Act and its bureaucratic overseers in the Department of Indian Affairs and Northern Development. Against all the negativity, First Nations people have a single card to play: their section 87 exemptions. There is no level playing field now, and the loss of the exemptions would tilt it even further against the native interest. As a Sechelt Band member complained to me, "I'm just getting my business up and running, and now the Federal government wants to take away my only advantage."[24]

Later in his paper, McArthur does acknowledge "that aboriginal people generally experience a tremendous array of disadvantages and obstacles to their full participation in economic life,"[25] and he accordingly recognizes that the tax exemptions "are to some degree a counterbalance to those obstacles."[26] But, in the final analysis, the influential thinkers in government, according to McArthur, have concluded that tax exemptions do not constitute a particularly effective form of affirmative action. They need to be "more tightly targeted and more carefully designed to be effective."[27] I agree that geographically restricted exemptions lack effectiveness, but an exemption for the individual, regardless of residency, on a phased basis, would overcome these concerns.

The apparent public support for the ending of the tax exemptions, as enunciated in McArthur's second "third" reason, is somewhat deceptive, and it is a point that is debated often. There is not much doubt that most people, if asked, would agree that native people should pay the same taxes as everyone else. But this is not the real question, and that is why I consider this "reason" illusory. I suggest that the real question should be worded along the following lines: "Would you insist on status Indians losing their tax exemptions if, as a result of

23 Ibid., at 7.

24 Statement from Valerie Bourne, Sechelt band member.

25 Supra footnote 14, at 8.

26 Ibid.

27 Ibid.

that insistence, no treaties in British Columbia could be completed?" It is my experience that this fundamental reality is not being conveyed to the public. To try to negotiate collectively while reducing the prosperity of individuals will likely lead to a "No" vote in the required ratification process. I realize that the Nisga'a voted for it, and they may have had good reason to do so. But insisting on the "8 and 12" formula everywhere else is clearly misconceived, because the effects will be dramatically different depending on the level of individual incomes. With the affluent native community at Westbank, for example, the present level of treaty packages being negotiated could not possibly compensate for the proposed loss of the income tax exemption after 12 years. This governmental notion does need to be rethought.

McArthur's final reason merely serves to reiterate the inconsistencies that emerge from a geographically based exemption. He comments:

> Applying them [the exemptions] to settlement lands generally would vastly expand their base of application, and for this reason has been outright rejected by the tax authorities in government. But the continuation of their application to former reserve territory only could have a perverse affect [sic] on future developmental patterns, in that it would create a bias or distortion on location decisions within the new aboriginal lands.[28]

This observation is merely indicative of the continuing problems arising from a tax exemption that relates to location and not to the individuals concerned. If, as Sechelt had proposed, *all* its band members were treated equally, this objection would not arise.

McArthur's paper is useful in explaining why the senior governments wanted to deal with taxation in the treaty process. But neither as deputy minister nor in this paper did he attempt to justify the manner in which the governments intend to phase out the exemption. It seems to me that, unless Canada and British Columbia come to grips with this immense problem, the BCTC process will not succeed. The Sechelt Band did explore the idea of constructing its own fair system operating behind the veil of "8 and 12"; that is, it would set aside a fund from which to operate, for a transitional period of 25 years, a scheme of income taxation that would afford complete equality for all its members, regardless of residency. However, the impact of two events put paid to that possibility. First came the decision in *Shilling v. The Queen*,[29] which suggested to the more sophisticated band members living off the band lands that there were other ways to obtain the desired result. Second, and most tellingly, there was the completion, after the signing if the AIP, of the McLeod Lake Treaty Adhesion, whereby a treaty negotiated in 1899 left native people in a conspicuously better position than they would be in our own enlightened era. After this, the Sechelt people made their

28 Ibid.

29 99 DTC 5441; [1999] 3 CTC 415 (FCTD).

displeasure known, and it became obvious to the leaders that a ratification vote would fail. Thus, the positions of Canada and British Columbia on the income tax exemption were a significant factor in the withdrawal of Sechelt from treaty negotiations, as confirmed by Chief Feschuk.

In my opinion, Canada and British Columbia should abandon their attempt to deal with the immensely complex issue of individual taxation concurrently with the immensely complex issue of aboriginal title. Otherwise, it will be difficult to persuade band members to vote for a collective package. Alternatively—a much less attractive position—Canada and British Columbia could accept the logic of a universal tax exemption that is gradually phased out as band members gradually enter the income tax system. On policy grounds, this approach seems commendable, but the phase-out would have to be extended over a period realistically long enough to allow First Nations to develop their economies and to build a foundation for long-term prosperity in First Nation communities.

In some ways, it is regrettable that a single issue so strongly dominated the stage 5 negotiations on taxation. In fact, a great deal of valuable taxation work was carried out during these months. Not only was there a Final Agreement taxation chapter to be negotiated, but also the AIP called for a separate Taxation Agreement. In these areas, which did not involve individual income taxation, excellent progress was made. Sechelt had retained taxation specialists to advise on these complex and occasionally unprecedented issues, and this proved to be well worthwhile. However, because of the breakdown between the parties over the issue of individual income taxation, none of the stage 5 drafts were completed to the point at which they could be made public. If negotiations ever do resume with a prospect for success, this work should provide a solid basis for proceeding to completion.

APPENDIX

THE SECHELT AGREEMENT-IN-PRINCIPLE: CHAPTER 17—TAXATION

17.1.0 Capital Transfer

17.1.1 The Capital Transfer to Sechelt will not be taxable.

17.1.2 A recognition under the Final Agreement of the ownership by the Sechelt of the Capital Transfer will not be taxable.

17.1.3 For the purposes of sections 17.1.1 and 17.1.2, an amount paid to a Treaty Participant will be deemed to be a transfer of the Capital Transfer under the Final Agreement if the payment:

a. reasonably can be considered to be a distribution of the Capital Transfer received by Sechelt; and

b. becomes payable to the Treaty Participant within 90 days, and is paid to the Treaty Participant within 270 days, after Sechelt receives the Capital Transfer.

17.2.0 Sechelt Treaty Land

17.2.1 Sechelt is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to its interest in unimproved Sechelt Treaty Land and Sechelt Treaty Land on which are improvements that the Parties agree are improvements, termed "designated improvements," that are used for public purposes and are not used for the purposes of profit.

17.2.2 Prior to the Effective Date, the Parties will make best efforts to reach agreement on a detailed definition of "designated improvements."

17.2.3 Section 17.2.1 does not exempt from taxation the disposition of capital by Sechelt, nor does it affect the taxation of any person other than Sechelt.

17.2.4 Where within 20 years of the Effective Date, Canada or British Columbia enacts legislation pursuant to a land claim agreement applicable within British Columbia that provides that all of the lands of the First Nation will cease to be the lands reserved for Indians within the meaning of subsection 91(24) of the *Constitution Act, 1867* and that provides tax powers or exemptions to a band or other Aboriginal polity in the Sunshine Coast or Lower Mainland areas of British Columbia that are not available to Sechelt, Canada and British Columbia, at the request of Sechelt, will negotiate and attempt to reach an agreement with Sechelt to provide appropriate adjustments to the tax powers and exemptions available to Sechelt taking into account the particular circumstances of the other First Nation and of its land claim agreement.

17.3.0 Indian Act Tax Exemption

17.3.1 Subject to section 17.3.2, section 87 of the *Indian Act* applies to a Treaty Participant and a Band Member who is an Indian only to the extent that an Indian other than a Treaty Participant or a Band Member, or the property of that Indian, would be exempt from taxation in similar circumstances by reason of the applicability of section 87 of the *Indian Act*.

17.3.2 Section 87 of the *Indian Act* has no further application to a Treaty Participant and a Band Member who is an Indian:

a. in respect of transaction tax, as of the first day of the first month that starts after the eighth anniversary of the Effective Date;

b. in respect of income tax, as of a date, to be decided by the Parties, that commences no later than January 1 of the first calendar year that starts on or after the twelfth anniversary of the Effective Date; and

c. in respect of any other tax as of the Effective Date.

17.4.0 Remission Orders

17.4.1 Subject to sections 17.4.2 and 17.4.3, as of the Effective Date, Canada and British Columbia will each grant a remission of, respectively, federal and provincial transaction taxes and income tax imposed or levied in respect of:

a. the estate or interest of an Indian in Sechelt Land previously treated as a "reserve" pursuant to section 35(3) of the *Sechelt Indian Band Self-Government Act* for the purposes of section 87 of the *Indian Act*, prior to the Effective Date, and that are within Sechelt Land;

b. the personal property of an Indian situated on Sechelt Land that, prior to the Effective Date, was:

i. previously treated as a "reserve" pursuant to section 35(c) of the *Sechelt Indian Band Self-Government Act* for the purposes of section 87 of the *Indian Act*, and

ii. within Sechelt Land; and

c. an Indian's ownership, occupation, possession or use of any property referred to in (a) or (b) above.

17.4.2 A remission of tax under section 17.4.1 will be granted only where the property referred to in subsection 17.4.1(a) or 17.4.1(b), or the Indian in respect of the ownership occupation, possession or use of the property referred to in subsection 17.4.1(a) or 17.4.1(b) would, but for this Agreement, be exempt from taxation by reason of the applicability of section 87 of the *Indian Act*.

17.4.3 The orders authorizing the remissions of tax referred to in section 17.4.1 will cease to be effective:

a. in respect of transaction tax, as of the first day of the first month that starts after the eighth anniversary of the Effective Date; and

b. in respect of income tax, as of a date, decided by the Parties, that commences no later than January 1 of the first calendar year that starts on or after the twelfth anniversary of the Effective Date.

17.5.0 Taxation Agreement

17.5.1 On the Effective Date, the Parties may enter into a Taxation Agreement. The Taxation Agreement does not form part of the Final Agreement.

17.5.2 The Taxation Agreement is not intended to be a treaty or land claim agreement, and is not intended to recognize or affirm Aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

17.5.3 The provisions of the Taxation Agreement will be given effect under federal and provincial law.

Tax treatment of Sechelt (sections 17.5.4 to 17.5.7 will form part of the Taxation Agreement.)

17.5.4 For the purposes of subsection 149(1)(c) of the *Income Tax Act*, Sechelt is deemed to be a public body performing a function of government in Canada.

17.5.5 For the purposes of subsections 149(1)(d) to 149(1)(d.6) and subsections 149(1.1) to 149(1.3) of the *Income Tax Act*, Sechelt is deemed to be a municipality in Canada.

Mineral resource taxes

17.5.6 Where the Sechelt Indian Band retains the ownership interest in mineral rights on Sechelt Treaty Land, British Columbia will agree to withdraw from taxation of minerals under the *Mineral Tax Act*, the *Mining Tax Act*, and the *Petroleum and Natural Gas Act*.

17.5.7 In the Taxation Agreement, Sechelt will be exempt from the *Mineral Land Tax Act*, on Sechelt Treaty Land.

17.6.0 Further Negotiation

17.6.1 Prior to the Effective Date, for the purposes of section 17.5.1, the Parties shall make best efforts to negotiate and reach agreement on the following elements to be included in the Taxation Agreement:

a. the tax treatment of Sechelt including any institution established by Sechelt (such as a trust, board, corporation or commission), in respect of a provincial transaction tax and the federal goods and services tax;

b. the tax treatment of real property of Sechelt and of a Treaty Participant and Band Member in respect of Sechelt Treaty Land;

c. the tax treatment of gifts made to Sechelt and of donations of cultural property made to Sechelt;

d. conformity of Sechelt legislation with relevant obligations agreed to by Canada under international treaties or protocols in respect of taxation; and

e. any other taxation-related matter that the Parties agree to include in the Taxation Agreement.