

Legislative Proposals Relating to the First Nations Goods and Services Tax Act

First Nations Goods and Services Tax Act

1 (1) The definitions *administration agreement*, *governing body* and *lands* in subsection 2(1) of the *First Nations Goods and Services Tax Act* are replaced by the following:

administration agreement means

- (a)** in Part 1, an agreement referred to in subsection 5(2) and entered into with the authorized body of a first nation;
- (b)** in Part 2, an agreement referred to in section 22 and entered into with a council of the band; and
- (c)** in Part 3, an agreement referred to in subsection 33(1) and entered into with the authorized body of a first nation. (accord d'application)

governing body means

- (a)** in Part 1, the body of a first nation that is identified opposite the name of the first nation listed in Schedule 1; and
- (b)** in Part 3, the body of a first nation that is identified opposite the name of the first nation listed in Schedule 3. (corps dirigeant)

lands, of a first nation, means

- (a)** in Part 1, the lands that are described opposite the name of the first nation listed in Schedule 1; and
- (b)** in Part 3, the lands that are described opposite the name of first nation listed in Schedule 3. (terres)

(2) Subsection 2(2) of the Act is replaced by the following:

Expressions defined in subsection 123(1) of the *Excise Tax Act*

(2) Unless a contrary intention appears, words and expressions used in Part 1 and Part 3 have the same meaning as in subsection 123(1) of the *Excise Tax Act*.

(3) Subsection 2(4) of the Act is replaced by the following:

Application of deeming rules

(4) If a provision of Part IX of the *Excise Tax Act* deems certain circumstances or facts to exist, those circumstances or facts are deemed to exist for the purposes of determining the matters in respect of which a first nation may enact a first nation law, as defined in subsection 11(1), 12(1), 39(1) or 40(1).

2 The heading “First Nations Goods and Services Tax Act” before section 3 of the Act is replaced by the following:

First Nations Tax — Goods and Services

3 (1) Subsection 3(1.1) of the English version of the Act is replaced by the following:

Section 89 of *Indian Act*

(1.1) A first nation law, as defined in subsection 11(1) or 12(1), or an obligation to pay an amount that arises from the application of section 14, may, despite section 89 of the *Indian Act*, be administered and enforced by His Majesty in right of Canada, by an agent of the first nation or, if the first nation law is administered by the government of a province under an agreement entered into under section 7 of the *Federal-Provincial Fiscal Arrangements Act*, by His Majesty in right of the province.

(2) Subsection 3(3) of the English version of the Act is replaced by the following:

Binding on His Majesty

(3) If a provision of Part IX of the *Excise Tax Act* is binding on His Majesty in right of Canada or a province, that provision, to the extent that it applies for the purposes of a first nation law, as defined in subsection 11(1) or 12(1), and any provision of the first nation law that corresponds to that provision of that Part, are so binding for the purposes of that law.

4 (1) Paragraph 4(6)(a) of the Act is replaced by the following:

(a) tax became payable by the person in respect of the property under any first nation law, as defined in subsection 11(1), 12(1), 39(1) or 40(1) or section 212 of the *Excise Tax Act* before the property is brought onto the lands of the first nation; or

(2) Subparagraph 4(6)(b)(ii) of the Act is replaced by the following:

(ii) the lands of every other first nation in respect of which a first nation law, as defined in subsection 11(1), 12(1), 39(1) or 40(1) is in force at the time the property is brought onto the lands of the first nation were each a separate participating province,

5 Section 5 of the Act is amended by adding the following after subsection (3):

(3.1) Subsection (3) does not apply to an amendment made to an administration agreement if the agreement authorizes the Minister to make the amendment and the amendment does not fundamentally alter the terms and conditions of the agreement.

6 Paragraph 8(a) of the Act is replaced by the following:

(a) in the case of a first nation law, as defined in subsection 11(1),

(i) if the governing body that enacted the law is a band, the Minister or a person authorized by the Minister, and

(ii) if the governing body that enacted the law is not a band, a person authorized by the governing body; and

7 Subsection 9(3) of the Act is replaced by the following:

Publication of law

(3) The governing body of a band is to provide, on demand, a copy of any law enacted under subsection 4(1) by that governing body and is to publish a copy of every such law on a website maintained by or for the governing body, if one exists, and in a newspaper that has general circulation in the place where the law applies, but no such law is invalid by reason of a failure to publish it.

8 Section 15 of the Act is replaced by the following:

Amendment of Schedule 1

15 The Minister may, by order, amend Schedule 1 by adding, deleting or varying the name of a first nation or of the governing body of a first nation or the description of the lands of a first nation.

9 Section 26 of the Act is replaced by the following:

Publication of law

26 A council of the band is to provide, on demand, a copy of any band law enacted by that council and is to publish a copy of every such law on a website maintained by or for the council of the band, if one exists, and in a newspaper that has general circulation in the place where the law applies, but no such law is invalid by reason of a failure to publish it.

10 Section 29 of the Act is replaced by the following:

Amendment of Schedule 2

29 The Minister may, by order, amend Schedule 2 by adding, deleting or varying the name of a band, the name of a council of the band, the name, or description, of a band's reserves or the name of a specified province.

PART 3

First Nations Tax — Specified Products

Definitions

Definitions

30 (1) The following definitions apply in this Part and in Schedule 3.

alcohol means ethyl alcohol. (*alcool*)

alcoholic beverage means

(a) beer, within the meaning assigned by section B.02.130 of the *Food and Drug Regulations*, that contains more than 0.5% alcohol by volume;

(b) wine, within the meaning assigned by section 2 of the *Excise Act, 2001*;

(c) any beverage that contains more than 0.5% alcohol by volume, that is obtained from the distillation of grains, fruits or other agricultural products or from the distillation of beer or wine; and

(d) any other beverage that contains a combination of any beverage referred to in paragraphs (a) to (c) that is suitable for human consumption and that contains more than 0.5% alcohol by volume. (*boisson alcoolisée*)

cannabis has the same meaning as in subsection 2(1) of the *Cannabis Act*. (*cannabis*)

cannabis product has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit du cannabis*)

fuel means

(a) diesel fuel, including any fuel oil that is suitable for use in internal combustion engines of the compression-ignition type, other than fuel oil that is intended for use and is actually used as heating oil;

(b) gasoline type fuels for use in internal combustion engines; and

(c) propane gas. (*carburant*)

specified product means any of the following products:

(a) alcoholic beverages;

(b) fuel;

(c) cannabis products;

(d) vaping products; and

(e) tobacco products. (*produits visés*)

tobacco product has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit du tabac*)

vaping product has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

Application of other Acts of Parliament

Section 87 of *Indian Act* and similar provisions

31 (1) The obligation to pay tax or any other amount that is required to be paid under a first nation law, as defined in subsection 39(1) or 40(1), applies despite the application of the exemption under section 87 of the *Indian Act* and of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

Section 89 of *Indian Act*

(2) A first nation law, as defined in subsection 39(1) or 40(1), or an obligation to pay an amount that arises from the application of section 43, may, despite section 89 of the *Indian Act*, be administered and enforced by His Majesty in right of Canada, by an agent of the first nation or, if the first nation law is administered by the government of a province under an agreement entered into under section 7 of the *Federal-Provincial Fiscal Arrangements Act*, by His Majesty in right of the province.

Subsection 33(1) applies despite any other Act of Parliament

(3) The governing body of a first nation listed in Schedule 3 may enact a law under subsection 33(1) that imposes a tax despite any other Act of Parliament that limits the authority of the first nation to enact a law that imposes a tax.

Binding on His Majesty

(4) If a provision of Part IX of the *Excise Tax Act* is binding on His Majesty in right of Canada or a province, that provision, to the extent that it applies for the purposes of a first nation law, as defined in subsection 39(1) or 40(1), and any provision of the first nation law that corresponds to that provision of that Part, are so binding for the purposes of that law.

Administration Agreement and Other Taxes

Tax not payable – *Excise Tax Act*

32 If an administration agreement in respect of a first nation law, as defined in subsection 39(1) or 40(1), is in effect, no tax (other than tax imposed under subsection 165(2), 212.1(2) or 218.1(1) or Division IV.1 of Part IX of the *Excise Tax Act*) is payable or deemed to have been paid or collected under Part IX of the *Excise Tax Act* in respect of a supply of a specified product to the extent that tax is payable or deemed to have been paid or collected, as the case may be, in respect of the supply under the first nation law.

First Nations Specified Products Tax Law

Authority to impose tax

33 (1) Subject to this section, the governing body of a first nation that is listed in Schedule 3 and that is a band or has the power to enact laws that has been recognized or granted under any other Act of Parliament or under an agreement that has been given effect by any other Act of Parliament may enact a law that imposes

(a) a tax in respect of taxable supplies, made on the lands of the first nation, of specified products listed in Schedule 3 opposite the name of that governing body;

(b) a tax in respect of the bringing of specified products listed in Schedule 3 opposite the name of that governing body onto the lands of the first nation from a place in Canada; and

(c) a tax in respect of imported taxable supplies, made on the lands of the first nation, of specified products listed in Schedule 3 opposite the name of that governing body.

Supply made on lands

(2) For the purposes of subsection (1), a supply, other than an imported taxable supply, is made on the lands of a first nation only if at least one of the following conditions is met:

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

(i) the lands of every other first nation in respect of which a first nation law, as defined in subsection 39(1) or 40(1), is in force at the time the supply is made were each a separate participating province, and

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

(b) tax under Part IX of the *Excise Tax Act* is not payable in respect of the supply and such tax would, without section 32, be payable but for the connection of the supply with those lands and the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

Imported taxable supply made on lands

(3) For the purposes of paragraph (1)(c), an imported taxable supply is made on the lands of a first nation only if at least one of the following conditions is met:

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

(i) the lands of the first nation were the particular participating province referred to in that subsection,

(ii) the lands of every other first nation in respect of which a first nation law, as defined in subsection 39(1) or 40(1), is in force at the time the supply is made were each a separate participating province,

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

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

(b) tax under Part IX of the *Excise Tax Act* is not payable in respect of the imported taxable supply and such tax would, without section 32, be payable but for the connection of the supply with those lands and the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

Bringing of specified products onto lands

(4) Subject to subsection (5), a tax in respect of the bringing of specified products onto the lands of a first nation by a person is to be imposed under a law of the first nation enacted under subsection (1) only if the specified products were last supplied to the person by way of sale at a time when an administration agreement was in effect in respect of that law and tax would have been payable under Part IX of the *Excise Tax Act* in respect of the supply otherwise than at the rate of zero but for the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

Exception

(5) For the purposes of paragraph (1)(b), a tax in respect of the bringing of specified products onto the lands of a first nation by a person is not to be imposed if

(a) tax became payable by the person in respect of the specified products under any first nation law, as defined in subsection 11(1), 12(1), 39(1) or 40(1), or section 212 of the *Excise Tax Act* before the specified products are brought onto the lands of the first nation; or

(b) tax would not be payable under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of specified products onto the lands of the first nation if

(i) the lands of the first nation were the particular participating province referred to in that subsection,

(ii) the lands of every other first nation in respect of which a first nation law, as defined in subsection 11(1), 12(1), 39(1) or 40(1), is in force at the time the specified products are brought onto the lands of the first nation were each a separate participating province,

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

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

Carriers

(6) For the purposes of this Part, if a particular person brings specified products onto the lands of a first nation on behalf of another person, the other person, and not the particular person, is deemed to have brought the specified products onto those lands.

Amount of tax — bringing of specified products onto lands

(7) For the purposes of subsection (1), the amount of tax that may be imposed under the law of a first nation in respect of the bringing of specified products onto the lands of the first nation by a person is equal to the amount determined by the formula

$$A \times B$$

where

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

B is

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

(b) in any other case, the lesser of

(i) the fair market value of the specified products at the time the specified products are brought onto the lands of the first nation, and

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

Reporting and payment of tax

(8) Tax that is imposed under a law of a first nation enacted under subsection (1) in respect of the bringing of specified products onto the lands of the first nation becomes payable by the person who brings them onto the lands at the time they are brought onto the lands and

(a) if the person is a registrant who acquired the specified products for consumption, use or supply primarily in the course of commercial activities of the person, the person is to, on or before the day on or before which the person's

return in respect of net tax is required to be filed under the law of the first nation for the reporting period in which the tax became payable,

(i) report the tax in that return, and

(ii) pay the tax to the Receiver General, or, if the law of the first nation is administered by the government of a province under an agreement entered into under section 7 of the *Federal-Provincial Fiscal Arrangements Act*, to the appropriate minister for that province; and

(b) in any other case, the person is to, on or before the last day of the month following the calendar month in which the tax became payable,

(i) file with the Minister of National Revenue or, if the law of the first nation is administered by the government of a province under an agreement entered into under section 7 of the *Federal-Provincial Fiscal Arrangements Act*, with the appropriate minister for that province a return in respect of the tax, in the manner and in the form authorized by the Minister of National Revenue and containing information specified by that Minister, and

(ii) pay the tax to the Receiver General or to the appropriate minister for that province, as the case may be.

Amount of tax — supply made on lands

(9) For the purposes of paragraphs 1(a) and (c), tax may be imposed under the law of a first nation in respect of a supply at the rates at which tax would have otherwise been imposed under subsections 165(1) and (3) of the *Excise Tax Act* in respect of that supply.

Administration and enforcement

(10) A law enacted under subsection (1) by the governing body of a first nation is to be administered and enforced, and the tax imposed under that law is to be collected, in accordance with an administration agreement entered into under subsection 39(2) by the authorized body of the first nation.

Law under subsection 33(1) — specified products

34 A law enacted under subsection 33(1) is to provide which specified products are subject to the law.

Coming into force — law under subsection 33(1)

35 (1) A law enacted under subsection 33(1) may come into force only on or after the later of the day on which a copy of the law is received by the Minister and the day on which an administration agreement in respect of that law comes into effect.

Law deemed not in force

(2) A law enacted under subsection 33(1) is deemed to not be in force at a particular time unless an administration agreement in respect of that law is in effect at that time.

Tax not applicable

(3) A tax imposed under a law enacted under subsection 33(1) by the governing body of a first nation in respect of a specified product is not applicable at a particular time unless that specified product is listed at that time in Schedule 3 opposite the name of that governing body.

Not subject to the *Statutory Instruments Act*

(4) A law enacted under subsection 33(1) is not subject to the *Statutory Instruments Act*.

Proof of law

36 A copy of a first nation law, as defined in subsection 39(1) or 40(1), enacted by the governing body of a first nation is, if it is certified to be a true copy, evidence that the law was duly enacted by the governing body and, in the case of a law enacted under subsection 33(1), was received by the Minister, without proof of the signature or official character of the person certifying it to be a true copy if that person is,

- (a) in the case of a first nation law, as defined in subsection 39(1),
 - (i) if the governing body that enacted the law is a band, the Minister or a person authorized by the Minister, and
 - (ii) if the governing body that enacted the law is not a band, by a person authorized by the governing body; and
- (b) in the case of a first nation law, as defined in subsection 40(1), a person authorized by the governing body.

Law of a band

37 (1) A law enacted under subsection 33(1) by the governing body of a band is valid only if the power of the governing body to enact the law is exercised in conformity with paragraph 2(3)(b) of the *Indian Act* and no such law is invalid by reason of any defect in form.

Expenditures

(2) The power of the governing body of a band to expend moneys paid by the Government of Canada pursuant to an administration agreement in respect of a law enacted under subsection 33(1) by the governing body is validly exercised only if the power is exercised in conformity with paragraph 2(3)(b) of the *Indian Act*.

Publication of law

(3) The governing body of a band is to provide, on demand, a copy of any law enacted under subsection 33(1) by that governing body and is to publish a copy of every such law on a website maintained by or for the governing body, if one exists, and in a newspaper that has general circulation in the place where the law applies, but no such law is invalid by reason of a failure to publish it.

Indian moneys

(4) Moneys raised pursuant to a tax imposed under a law enacted under subsection 33(1) are not Indian moneys within the meaning of subsection 2(1) of the *Indian Act*.

First nation — provisions of other Acts of Parliament

38 (1) Subject to subsection (2), if any other Act of Parliament or an agreement that has been given effect by any other Act of Parliament recognizes or grants a power of a first nation, other than a band, to enact a law and that Act or agreement contains provisions relating to such matters as the expenditure of moneys raised under a law of the first nation relating to taxation, the style, form or registration of such a law or the procedure for enacting, publishing and providing copies of such a law, the provisions of that Act or agreement apply, with such modifications as the circumstances require, for the purposes of a law of the first nation that is enacted under subsection 33(1).

Exception

(2) Subsection (1) does not apply to the extent that provisions relating to the matters referred to in that subsection are contained in a law of a first nation that is enacted under a power recognized or granted under any other Act of Parliament or under a power recognized or granted under an agreement that has been given effect by any other Act of Parliament.

Meaning of first nation law

39 (1) In this section, **first nation law** means a law enacted under subsection 33(1).

Administration agreement

(2) The authorized body of a first nation may enter into an administration agreement in respect of a first nation law enacted by the governing body of the first nation.

Rules where agreement

(3) If the authorized body of a first nation and the Minister have entered into an administration agreement in respect of a first nation law,

(a) every provision of Part IX of the *Excise Tax Act* (other than a provision that creates a criminal offence) applies, with any modifications that the circumstances require, for the purposes of the first nation law as if tax referred to in each of paragraphs 33(1)(a) and (c) imposed under the first nation law were imposed under subsection 165(1) and section 218 of the *Excise Tax Act*, respectively, and, subject to subsection 33(8), as if tax referred to in paragraph 33(1)(b) imposed under the first nation law were imposed under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of specified products into a participating province, but the first nation law is not to be construed as imposing a tax except as provided in section 33;

(b) the first nation law applies as if tax imposed under Part IX of the *Excise Tax Act* were imposed under the first nation law and as if the provisions of that Part (other than a provision that creates a criminal offence) relating to that tax were included in the first nation law, but the first nation law is not to be construed as imposing a tax except as provided in section 33;

(c) Part IX of the *Excise Tax Act* applies, other than for the purposes of paragraph (a), as if tax imposed under the first nation law were imposed under that Part and as if the provisions of the first nation law relating to that tax were included in that Part, but that Part is not to be construed as imposing a tax except as provided in that Part;

(d) all Acts of Parliament, other than this Act and Part IX of the *Excise Tax Act*, apply as if tax referred to in each of paragraphs 33(1)(a) and (c) imposed under the first nation law were imposed under subsection 165(1) and section 218 of the *Excise Tax Act*, respectively, and, subject to subsection 33(8), as if tax referred to in paragraph 33(1)(b) imposed under the first nation law were imposed under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of specified products into a participating province; and

(e) for greater certainty,

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

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

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

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

(v) a person who is a registrant for the purposes of Part IX of the *Excise Tax Act* is a registrant for the purposes of both that Part and the first nation law,

(vi) a person who is a registrant for the purposes of the first nation law is a registrant for the purposes of both that law and Part IX of the *Excise Tax Act*,

(vii) if a proceeding may be taken under any other Act of Parliament in respect of the tax imposed under Part IX of the *Excise Tax Act*, that proceeding may be taken in respect of the tax imposed under the first nation law, and

(viii) nothing in this Part is to be construed as conferring on a governing body the power to make an enactment in respect of criminal law.

First Nation Law Enacted Under Separate Power

Meaning of *first nation law*

40 (1) In this section, ***first nation law*** means a law enacted by the governing body of a first nation listed in Schedule 3 under a power recognized or granted under any other Act of Parliament or an agreement that has been given effect by any other Act of Parliament, if that law and its application are consistent with subsections 33(1) to (9), section 34, subsection 35(3), paragraphs 39(3)(a) and (b) and subparagraphs 39(3)(e)(i) to (iii), (v) and (viii).

Rules where agreement

(2) If the authorized body of a first nation and the Minister have entered into an administration agreement in respect of a first nation law,

(a) Part IX of the *Excise Tax Act* applies as if tax imposed under the first nation law were imposed under that Part and as if the provisions of the first nation law relating to that tax were included in that Part, but that Part is not to be construed as imposing a tax except as provided in that Part;

(b) all Acts of Parliament, other than this Act and Part IX of the *Excise Tax Act*, apply as if tax referred to in each of paragraphs 33(1)(a) and (c) imposed under the first nation law were imposed under subsection 165(1) and section 218 of the *Excise Tax Act*, respectively, and, subject to subsection 33(8), as if tax referred to in paragraph 33(1)(b) imposed under the first nation law were imposed under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of specified products into a participating province; and

(c) for greater certainty,

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

(ii) a person who is a registrant for the purposes of the first nation law is a registrant for the purposes of both that law and Part IX of the *Excise Tax Act*, and

(iii) if a proceeding may be taken under any other Act of Parliament in respect of the tax imposed under Part IX of the *Excise Tax Act*, that proceeding may be taken in respect of the tax imposed under the first nation law.

Cessation of agreement

(3) If an administration agreement in respect of a first nation law ceases to have effect at any time, this Part applies after that time in respect of the first nation law as if the first nation law had been repealed at that time.

Tax Attributable to a First Nation

Tax attributable to a first nation

41 (1) An administration agreement in respect of a first nation law, as defined in subsection 39(1) or 40(1), of a particular first nation is to provide for payments by the Government of Canada to the particular first nation in respect of that law based on an estimate for each calendar year (in this section referred to as “tax attributable to the first nation”) of the amount by which

(a) the total of all amounts each of which is an amount of tax that, while that first nation law was in force, became payable in the year under a first nation law, as defined in subsection 39(1) or 40(1), or Part IX of the *Excise Tax Act* (other than subsections 165(2), 212.1(2) and 218.1(1) and Division IV.1) and that is attributable to property or a service that is for consumption or use on the lands of the particular first nation;

exceeds

(b) the total of all amounts each of which is included in the total determined under paragraph (a) and

- (i) is included in determining an input tax credit or in determining a deduction that may be claimed in determining the net tax of a person,
- (ii) can reasonably be regarded as an amount that a person is or was entitled to recover by way of a rebate or refund or otherwise under a first nation law, as defined in subsection 39(1) or 40(1), or under any Act of Parliament, or
- (iii) is an amount of tax in respect of a supply to a person who is, under any Act of Parliament or any other law, exempt from paying the tax.

Administration agreement

(2) The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement in respect of a first nation law, as defined in subsection 39(1) or 40(1), of a first nation with the authorized body of the first nation and, among other things, the agreement is to provide

- (a) the method for estimating, in accordance with the formulae, rules, conditions and data sources specified in the agreement, the tax attributable to the first nation;
- (b) for the sharing, if any, between the first nation and the Government of Canada of the tax attributable to the first nation;
- (c) for the retention by the Government of Canada, as its property, of
 - (i) the portion, if any, of the total tax imposed by the first nation under the first nation law that is not tax attributable to the first nation, and
 - (ii) the Government of Canada's share, if any, under paragraph (b) of the tax attributable to the first nation;
- (d) for the payments, and for the eligibility for payments, by the Government of Canada to the first nation in respect of the tax attributable to the first nation out of the Consolidated Revenue Fund to which the first nation is entitled under the agreement, the time when and the manner in which the payments will be made, and the remittance by the first nation to the Government of Canada of any overpayments or advances by the Government of Canada or the right of the Government of Canada to set off any overpayments or advances against amounts payable by the Government of Canada to the first nation under the agreement;
- (e) for the administration and enforcement of the first nation law by the Government of Canada or, if the first nation law is administered by the government of a province under an agreement entered into under section 7 of the *Federal-Provincial Fiscal Arrangements Act*, by the government of the province and for the collection, by the Government of Canada or the government of the province, as the case may be, of amounts imposed under that law;
- (f) for the provision by the Government of Canada or, if the first nation law is administered by the government of a province under an agreement entered into under section 7 of the *Federal-Provincial Fiscal Arrangements Act*, by the government of the province to the first nation of information acquired in the administration and enforcement of the first nation law or, subject to section 295 of the *Excise Tax Act*, of Part IX of that Act, and for the provision by the first nation to the Government of Canada or the government of the province, as the case may be, of information acquired in the administration of the first nation law;
- (g) for the accounting of tax attributable to the first nation in accordance with the agreement;
- (h) for the payment by the Government of Canada and its agents and subservient bodies of amounts imposed under the first nation law or any other first nation law, as defined in subsection 39(1) or 40(1), and for the payment by the first nation and its agents and subservient bodies of amounts imposed under that law, any other first nation law, as defined in subsection 39(1) or 40(1), or Part IX of the *Excise Tax Act*;
- (i) for the accounting for the payments referred to in paragraph (h);

(j) for the compliance by the Government of Canada and its agents and subservient bodies with the first nation law and any other first nation law, as defined in subsection 39(1) or 40(1), and for the compliance by the first nation and its agents and subservient bodies with that law, any other first nation law, as defined in subsection 39(1) or 40(1), and Part IX of the *Excise Tax Act*; and

(k) for other matters that relate to, and that are considered advisable for the purposes of implementing or administering, the first nation law.

Amending agreements

(3) The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement with the authorized body of a first nation amending or varying an administration agreement with the first nation or an agreement under this subsection.

Amending agreement — exception to general rule

(4) Subsection (3) does not apply to an amendment made to an agreement if the agreement authorizes the Minister to make the amendment and the amendment does not fundamentally alter the terms and conditions of the agreement.

Payments to first nation

(5) If the Minister, on behalf of the Government of Canada, has entered into an administration agreement with the authorized body of a first nation, the Minister may pay to the first nation out of the Consolidated Revenue Fund

(a) amounts determined in accordance with the agreement as provided, and at such times as are specified, in the agreement; and

(b) in accordance with the agreement, advances in respect of the amounts referred to in paragraph (a).

Payments to other persons

(6) Subject to subsection (7), if an administration agreement has been entered into in respect of a first nation law, as defined in subsection 39(1) or 40(1), payments may be made to a person out of the Consolidated Revenue Fund on account of any amount that is payable to the person under that law in accordance with the agreement unless the first nation law is administered by the government of a province under an agreement entered into under section 7 of the *Federal-Provincial Fiscal Arrangements Act*.

Recoverable advance out of Consolidated Revenue Fund

(7) If no amount is held on behalf of a first nation from which payment under subsection (6) may be made in accordance with an administration agreement, or the amount of the payment exceeds the amount so held, payment under subsection (6) may be made as a recoverable advance out of the Consolidated Revenue Fund if the repayment of the amount or excess by the first nation is provided for in the agreement.

Statutory authority to make payments

42 Despite any other Act of Parliament, the payments made under an administration agreement under the authority of subsection 41(5), (6) or (7) may be made without any other or further appropriation or authority.

Offences

Offences

43 When an administration agreement in respect of a first nation law, as defined in subsection 39(1) or 40(1), is in effect and a person commits an act or omission in respect of that law that would be an offence under a provision of Part IX of the *Excise Tax Act* or regulations made under that Part if the act or omission were committed in relation to that Part or those regulations,

(a) subject to paragraph (b), the person is guilty of an offence punishable on summary conviction;

(b) the Attorney General of Canada may elect to prosecute the person by indictment if an offence under that provision may be prosecuted by indictment; and

(c) the person is liable on conviction to the punishment provided for in that provision.

General

Amendment of Schedule 3

44 The Minister may, by order, amend Schedule 3 by adding, deleting or varying the name of a first nation or of the governing body of a first nation, the description of the lands of a first nation or the specified products listed opposite the name of a first nation.

Information reports

45 (1) If an administration agreement entered into by the authorized body of a first nation is in effect in respect of a first nation law, as defined in subsection 39(1) or 40(1), the Minister of National Revenue or, if the first nation law is administered by the government of a province under an agreement entered into under section 7 of the *Federal-Provincial Fiscal Arrangements Act*, the appropriate minister for that province may, for the purposes of the administration agreement, require any person having a place of business, or maintaining assets of a business, on the lands of the first nation to make a report respecting supplies of specified products relating to that business made by the person or respecting specified products acquired or imported for consumption, use or supply in connection with those lands and that business.

Form and manner of filing

(2) A report under subsection (1) is to be made in the manner and form authorized by the Minister of National Revenue and at the time and containing information specified by that Minister. The report is to be filed with the Minister of National Revenue or, if a first nation law is administered by the government of a province under an agreement referred to in that subsection, with the appropriate minister for that province.

11 The Act is amended by adding, after Schedule 2, Schedule 3 set out in the schedule to this Act.

SCHEDULE 3

(Subsections 2(1), 30(1), 31(3), 33(1), 35(3) and 40(1) and section 44)

List of Names of First Nations and Governing Bodies, Description of Lands and List of Specified Products

Column 1	Column 2	Column 3	Column 4
First Nation	Governing Body	Lands	Specified Products