

TOQUAHT NATION GOVERNMENT

GOODS AND SERVICES TAX ACT

TNS 1/2020



This law enacted on February 18, 2020

Signed *Anne Mack*
Anne Mack, ḥaʔwił of the Toquaht Nation

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS

ON 2020/02/20

Kristen Olmser

Signature of Law Clerk

TABLE CONTENTS

PART 1 - INTRODUCTORY PROVISIONS 5

 Short title 5

 Executive oversight 5

 Definitions 5

 Expressions defined in Excise Tax Act 6

 Application of Division X of Part IX of Excise Tax Act 6

 Application of Interpretation Act 6

PART 2 - TAX ON SUPPLIES..... 7

 Imposition of Tax 7

 Supply Made on Toquaht Lands..... 7

 Supply of Specified Motor Vehicle Made on Toquaht Lands 7

 Imported Taxable Supply Made on Toquaht Lands 8

 Bringing of Tangible Personal Property onto Toquaht Lands..... 8

 Exception 8

 Carriers 9

 Amount of Tax – Bringing of Tangible Personal Property onto Toquaht Lands 9

 Reporting and Payment of Tax 10

 Amount of Tax – Supply Made on Toquaht Lands 10

 Powers of the Toquaht Nation Government 11

 Rules 11

PART 3 - ADMINISTRATION, ENFORCEMENT AND REVENUE SHARING 13

 Incorporated and Delegated Authorities 13

 Amounts Payable..... 13

 Administration Agreement 13

 Agreement Affirmed..... 14

 Provisions of Agreement 14

 Revenue Sharing..... 14

PART 4 - REMISSION 15

 Remission by Canada 15

 Application 15

 Amount Deemed to be Tax..... 15

PART 5 - GENERAL PROVISIONS..... 17

 Offences..... 17

 Commencement 17

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Toquaht GST Act.

Executive oversight

1.2 The member of the Executive holding the finance portfolio is responsible for the executive oversight of this Act.

Definitions

1.3 In this Act,

“administration agreement” means an agreement in respect of this Act entered into between the ɥaʔwił on behalf of the Toquaht Nation and the Minister of Finance on behalf of the Government of Canada for, among other things, the administration and enforcement of this Act including the collection of tax imposed under this Act;

“Excise Tax Act” means the Excise Tax Act, R.S.C., 1985, c. E-15;

“Federal Act” means the First Nations Goods and Services Tax Act, S.C. 2003, c.15, s.67;

“ɥaʔwił” means the ɥaʔwił of the Toquaht Nation under the Toquaht Nation Constitution;

“Indian Act” means the Indian Act, R.S.C., 1985, c. I-5;

“Interpretation Act” means the Interpretation Act, R.S.C., 1985, c. I-21;

“net tax” has the same meaning as in subsection 225(1) of the Excise Tax Act;

“Part IX of the Excise Tax Act” means Part IX of the Excise Tax Act and Schedules V to X to that Act;

“tax attributable to the Toquaht Nation” means tax attributable to the Toquaht Nation within the meaning of subsection 5(1) of the Federal Act;

“Toquaht Lands” means the lands that are described opposite the name of the Toquaht Nation in Schedule 1 to the Federal Act; and

“Toquaht Nation Government” means the governing body listed opposite the name of the Toquaht Nation in Schedule 1 to the Federal Act.

Expressions defined in Excise Tax Act

- 1.4 Unless a contrary intention appears, words and expressions used in this Act have the meanings assigned by Part IX of the Excise Tax Act.

Application of Division X of Part IX of Excise Tax Act

- 1.5 Division X of Part IX of the Excise Tax Act applies for the purposes of determining the application of this Act as if:
- (a) the Toquaht Lands were a participating province;
 - (b) the announcement date, implementation date and specified pre-implementation date for that participating province were the date of the coming into force of this Act that is referred to in section 5.3;
 - (c) the tax imposed under subsection 2.1(a) of this Act were imposed under subsection 165(2) of the Excise Tax Act;
 - (d) the tax imposed under subsection 2.1(b) of this Act were imposed under subsection 220.05(1) of the Excise Tax Act; and
 - (e) the tax imposed under subsection 2.1(c) of this Act were imposed under subsection 218.1(1) of the Excise Tax Act.

Application of Interpretation Act

- 1.6 The Interpretation Act applies, with such modifications as the circumstances require, to this Act.

PART 2 - TAX ON SUPPLIES

Imposition of Tax

2.1 Subject to this section,

- (a) every recipient of a taxable supply made on Toquaht Lands shall pay to the Toquaht Nation tax in respect of the supply calculated in accordance with section 2.10;
- (b) every person who brings tangible personal property onto Toquaht Lands from a place in Canada shall pay to the Toquaht Nation tax in respect of the bringing of the property onto those lands calculated in accordance with section 2.8; and
- (c) every recipient of an imported taxable supply made on Toquaht Lands shall pay to the Toquaht Nation tax in respect of the supply calculated in accordance with section 2.10.

Supply Made on Toquaht Lands

2.2 A supply, other than an imported taxable supply, is made on Toquaht Lands only if at least one of the following conditions is met:

- (a) if the Toquaht Lands 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 11(1) or 12(1) of the Federal Act, 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 13 of the Federal Act, be payable but for the connection of the supply with Toquaht 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.

Supply of Specified Motor Vehicle Made on Toquaht Lands

2.3 Despite section 2.2, for the purposes of subsection 2.1(a), a supply of a specified motor vehicle by way of lease, licence or similar arrangement under an agreement under which continuous possession or use of the vehicle is provided for a period of more than three months is made on Toquaht Lands only if:

- (a) in the case of a recipient who is an individual, the recipient ordinarily resides on Toquaht Lands at the time the supply is made; and

- (b) in the case of a recipient who is not an individual, the ordinary location of the vehicle, determined for the purposes of Schedule IX to the Excise Tax Act at the time the supply is made, is on Toquaht Lands.

Imported Taxable Supply Made on Toquaht Lands

2.4 An imported taxable supply is made on Toquaht Lands 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 Toquaht Lands 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) or 12(1) of the Federal Act, 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 13 of the Federal Act, be payable but for the connection of the supply with Toquaht 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 Tangible Personal Property onto Toquaht Lands

2.5 Subject to section 2.6, a tax in respect of the bringing of tangible personal property onto Toquaht Lands by a person shall be imposed under this Act only if the property was last supplied to the person by way of sale at a time when an administration agreement was in effect 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

2.6 A tax in respect of the bringing of tangible personal property onto Toquaht Lands by a person shall not be imposed if:

- (a) tax became payable by the person in respect of the property under any first nation law, as defined in subsection 11(1) or 12(1) of the Federal Act, or section 212 of the Excise Tax Act before the property is brought onto Toquaht Lands; or
- (b) tax would not be payable under subsection 220.05(1) of the Excise Tax Act in respect of the bringing of the property onto Toquaht Lands if:
 - (i) the Toquaht Lands 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) or 12(1) of the Federal Act, is in force at the time the property is brought onto Toquaht Lands 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 property onto Toquaht Lands.

Carriers

- 2.7** For the purposes of this Act, if a particular person brings tangible personal property onto Toquaht Lands on behalf of another person, the other person, and not the particular person, is deemed to have brought the property onto Toquaht Lands.

Amount of Tax – Bringing of Tangible Personal Property onto Toquaht Lands

- 2.8** For the purposes of section 2.1, the amount of tax that is imposed under this Act in respect of the bringing of tangible personal property onto Toquaht Lands 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 tangible personal property by way of a sale under which the property was delivered to the person within thirty days before the day

on which it is brought onto Toquaht Lands, 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 tangible personal property at the time the property is brought onto Toquaht Lands; and
 - (ii) the value of the consideration referred to in paragraph (a).

Reporting and Payment of Tax

2.9 Tax that is imposed under this Act in respect of the bringing of tangible personal property onto Toquaht Lands shall become payable by the person who brings it onto Toquaht Lands at the time it is brought onto those lands and

- (a) if the person is a registrant who acquired the property for consumption, use or supply primarily in the course of commercial activities of the person, the person shall, on or before the day on or before which the person's return in respect of net tax is required to be filed under this Act for the reporting period in which the tax became payable, pay the tax to the Receiver General and report the tax in that return; and
- (b) in any other case, the person shall, on or before the last day of the month following the calendar month in which the tax became payable, pay the tax to the Receiver General and file with the Minister of National Revenue in the manner authorized by that Minister a return in respect of the tax in the form authorized by and containing information specified by that Minister.

Amount of Tax – Supply Made on Toquaht Lands

2.10 For the purposes of subsections 2.1(a) and (c), the amount of tax imposed under this Act in respect of a supply is equal to the amount of tax that would be imposed under Part IX of the Excise Tax Act in respect of that supply if:

- (a) the Excise Tax Act applied and this 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 that supply;
- (b) the amount were determined without reference to subparagraph (v) of the description of A or subparagraph (vi) of the description of J in the definition “basic tax content” in subsection 123(1) of the Excise Tax Act; and

- (c) no amount of tax under subsection 165(2), 212.1(2) or 218.1(1) or Division IV.1 of Part IX of the Excise Tax Act were included in determining that amount.

Powers of the Toquaht Nation Government

- 2.11** The Toquaht Nation Government may approve and authorize the ḥaʔwił to enter into or to amend from time to time, an administration agreement.

Rules

- 2.12** The following rules apply for the purposes of this Act:

- (a) every provision of Part IX of the Excise Tax Act (other than a provision that creates a criminal offence) applies, with such modifications as the circumstances require, for the purposes of this Act as if tax referred to in each of subsections 2.1(a) and (c) were imposed under subsection 165(1) and section 218 of the Excise Tax Act, respectively and, subject to section 2.9, as if tax referred to in subsection 2.1(b) were imposed under subsection 220.05(1) of the Excise Tax Act in respect of the bringing of property into a participating province, but this Act shall not thereby be construed as imposing a tax except as provided in sections 2.1 through 2.10;
- (b) this Act applies as if tax imposed under Part IX of the Excise Tax Act were imposed under this Act and as if the provisions of that Part (other than a provision that creates a criminal offence) relating to that tax were included in this Act, but this Act shall not thereby be construed as imposing a tax except as provided in sections 2.1 through 2.10; and
- (c) for greater certainty,
 - (i) a person who does anything to satisfy a requirement of this Act that would satisfy a corresponding requirement of Part IX of the Excise Tax Act if the tax imposed under this Act were imposed under that Part is deemed to have satisfied the requirement of this Act;
 - (ii) a person who does anything to exercise an authority, right or privilege under this Act 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 this Act were imposed under that Part is deemed to have validly exercised the authority, right or privilege under this Act;
 - (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 this Act; and
 - (iv) 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 this Act.

PART 3 - ADMINISTRATION, ENFORCEMENT AND REVENUE SHARING

Incorporated and Delegated Authorities

3.1 For the purposes of this Act,

- (a) The Toquaht Nation Government shall have all of the authorities, rights and privileges of the Minister of National Revenue under Part IX of the Excise Tax Act that are also within the jurisdiction of the Toquaht Nation and, as the Toquaht Nation Government may determine for the better operation, administration and enforcement of this Act, the Toquaht Nation Government may delegate its authorities, rights and privileges as provided in the administration agreement, including the authority to exercise any discretion or to perform the duties of the Toquaht Nation Government under this Act; and
- (b) a person who does anything to exercise an authority, right or privilege of the Toquaht Nation Government under paragraph (a) that would be a valid exercise of a corresponding authority, right or privilege of the Minister of National Revenue under Part IX of the Excise Tax Act if the tax imposed under this Act were imposed under that Part is authorized to do that thing without need for further action, exercise of discretion or delegation by the Toquaht Nation Government if the doing of the thing is in respect of the administration or enforcement of this Act, or collection of amounts payable under this Act, by the Government of Canada on behalf of the Toquaht Nation pursuant to an administration agreement.

Amounts Payable

3.2 All amounts payable under this Act

- (a) are debts due to the Toquaht Nation and are recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act; and
- (b) may be recovered by Her Majesty in Right of Canada as debts due to Her Majesty acting on behalf of the Toquaht Nation if they become payable while an administration agreement is in effect or become payable after an administration agreement has ceased to be in effect but relate to taxes, interest, penalties, costs or other amounts that became payable, or to the doing of anything or the failure to do anything, while such an administration agreement was in effect.

Administration Agreement

- #### **3.3** The ḥaʔwił with the approval of the Toquaht Nation Government may enter into, and amend from time to time, an administration agreement with the Government of Canada under which the Government of Canada, on behalf of the Toquaht Nation, will administer and enforce this Act, collect amounts payable under this Act and retain or make payments to the Toquaht Nation in respect of amounts payable under this Act, in accordance with

such terms and conditions, as to administration, enforcement, collection, retention and payment, as the administration agreement may prescribe. The ɥaʔwił is designated as the authorized body for the purposes of a tax administration agreement with Canada.

Agreement Affirmed

- 3.4** An administration agreement that is consistent with this Act and entered into by the ɥaʔwił on behalf of the Toquaht Nation prior to the coming into force of this Act is affirmed as if it were entered into under this Act.

Provisions of Agreement

- 3.5** An administration agreement shall, among other things, provide for
- (a) a revenue sharing mechanism; and
 - (b) payments, and the eligibility of the Toquaht Nation for payments, by the Government of Canada to the Toquaht Nation in respect of, and the method for estimating, tax attributable to the Toquaht Nation.

Revenue Sharing

- 3.6** The Toquaht Nation is authorized to share in accordance with the terms of the administration agreement:
- (a) the tax attributable to the Toquaht Nation, and
 - (b) tax and other amounts payable under this Act that are not included in the tax attributable to the Toquaht Nation.

PART 4 - REMISSION

Remission by Canada

- 4.1** The Toquaht Nation hereby delegates to Canada the authority to remit any amount payable under this Act where Canada considers that the collection or the enforcement of the payment of the amount is:
- (a) unreasonable;
 - (b) unjust; or
 - (c) otherwise not in the public interest.

Application

- 4.2** Section 4.1 applies to any amount that is paid or becomes payable while an administration agreement is in effect and to any amount that becomes payable after an administration agreement has ceased to be in effect but that relates to an amount that became payable while such an administration agreement was in effect.

Amount Deemed to be Tax

- 4.3** Where section 4.1 applies, an amount payable under this Act shall, for the purposes of section 4.1, be deemed to be “tax” as defined in the Financial Administration Act (Canada).

PART 5 - GENERAL PROVISIONS

Offences

- 5.1 Where a person commits an act or omission in respect of this Act that would be an offence under a provision of Part IX of the Excise Tax Act or regulations made under that Act if the act or omission were committed in relation to that Part or those regulations, the person is guilty of an offence under this Act punishable on summary conviction and is liable on conviction to the punishment provided for in that provision upon summary conviction.

Proof of Act

- 5.2 A copy of this Act that is certified by the ḥaʔwił to be a true copy is evidence that this Act was duly enacted by the Toquaht Nation Government without proof of the signature or official character of the ḥaʔwił.

Commencement

- 5.3 This Act comes into force on the date it is enacted.