



Taxation Issues for Aboriginal Individuals and Organizations

Income Tax Act

81(1) Amounts not included in Income – There shall not be included in computing the income of a taxpayer for a taxation year,

(a) Statutory exemptions – an amount that is declared to be exempt from income tax by any other enactment of Parliament . . .

Indian Act

- ▶ 87 (1) Property exempt from taxation – Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely,
 - (a) The interest of an Indian or a band in reserve lands or surrendered lands; and
 - (b) The personal property of an Indian or a band situated on a reserve
- ▶ Section 83 = money by-laws

Indian Act Tax Exemption

A status Indian's "personal property" is exempt from tax pursuant to paragraph 81(1)(a) of the *Income Tax Act* and section 87 of the *Indian Act*, if that property is "situate on a reserve".

Status “Indian”

"Indian" means a person who pursuant to the Indian Act is registered as an Indian or is entitled to be registered as an Indian

Defining “Personal Property Situated on a Reserve”

- ▶ The courts have concluded that, for the purposes of section 87, income is personal property.
- ▶ Furthermore, in the case of *Dube v R*, 2011, the Supreme Court of Canada confirmed that the expression “situated on a reserve” means any reserve, not just a reserve where the Indian taxpayer resides or to which community he or she belongs.

Income Situate on a Reserve

► In the case of *Bastien (Succession de) c. R.*, 2011, the SCC set out the following two-step connecting factors approach when determining whether income is situated on a reserve:

- (1) identify potentially relevant factors tending to connect the property to a location, and
- (2) then determine what weight they should be given in identifying the location of the property in light of three considerations: the purpose of the exemption from taxation, the type of property, and the nature of the taxation of that property.

Purpose of Tax Exemption

► In *Bastien*, the SCC reviewed, restated and, to some extent, reformulated the purposes underlying section 87:

- Section 87 is not about “remedy[ing] the economically disadvantaged position of Indians” by allowing them to “acquire, hold, and deal with property in the commercial mainstream on different terms than their fellow citizens”. Nor is section 87 about “confer[ring] a general economic benefit upon the Indians” (*Bastien* at para 23).
- “The exemption was rooted in the promises made to Indians that they would not be interfered with in their mode of life” (*Bastien* at para 28).
- The focus is on whether there is a “connection between the property and the reserve such that it may be said the property is situated there for the purposes of the *Indian Act*” and not on whether “the property is integral to the life of the reserve or to the preservation of the traditional Indian way of life” (*Bastien* at paras 26-27).

Type of Income:

(a) Employment Income

Pursuant to the SCC's decision in the case *Nowegijick v R*, 1983, the exemption applies to the income of the individual, not just income derived from property. The receipt of salary income is therefore personal property for the purposes of the exemption under subsection 87(1).

(a) Employment Income (cont'd)

Nowegijick v R, 1983 (SCC)

- ▶ In this case, Mr. Nowegijick was a registered Indian within the meaning of the *Indian Act* and a member of the Gull Bay (Ontario) Indian Band.
- ▶ He maintained his permanent dwelling on the Gull Bay Reserve.
- ▶ Mr. Nowegijick was employed as a logger for Gull Bay Development Corporation, which had its office located on reserve. Mr. Nowegijick was also paid by the Gull Bay Development Corporation.

(a) Employment Income (cont'd)

- ▶ During the taxation years under appeal, Mr. Nowegijick performed his logging services 10 miles from the Gull Bay Reserve.
- ▶ The SCC concluded that the “situs of income” was on reserve despite the fact that much of the forest harvesting work was performed off reserve.

Employment Income

“Connecting Factors”

The following “connecting factors” have been considered by courts when considering employment income:

- (a) The location of the employment (whether employment duties are performed on or off a reserve);
- (b) Whether the individual resides on a reserve;
- (c) Whether the employer is an Indian band or organization;
- (d) Whether the employer is resident on a reserve.

(a) Employment Income (cont'd)

In *Monias v R*, 2001, a status Indian was employed by a Native-run childcare agency funded by the federal government through the Minister of Indian Affairs and Northern Development. The employee did not live on the reserve in the years in question. His employer's registered office was not located on a reserve, and most of the employment duties were performed off-reserve, many at a great distance from a reserve.

The COA gave more weight to the fact that the employee resided and performed his employment duties off-reserve. In allowing the Minister's appeal, the COA noted that while the employee's work benefits Indians on reserves and may be integral to maintaining the reserves as viable social units, that was not in itself sufficient to situate the employment income on a reserve.

(a) Employment Income (cont'd)

Similarly, *Shilling v MNR*, 2001, concerned a member of the Rama Band who resided and performed most of her employment duties in Toronto but maintained substantial connections with the Rama reserve.

The COA concluded that the factors connecting the income off-reserve outweighed the factors connecting the income with a reserve.

To the COA, the location and nature of the employment and the place of residence indicated that the employment income was situated off-reserve. In addition, the COA regarded the employment as being “in the commercial mainstream”. Leave to appeal to the SCC was denied in March 2002.

(a) Employment Income (cont'd)

- ▶ In the case of *Boubard v R*, 2009, the employment income of a mill worker at a mill site near the reserve, which lands were formerly part of the reserve but surrendered to allow the construction of the mill, was exempt.
- ▶ In the case of *Clarke v R*, 1997, the COA found that employment income of a hospital administrator at a hospital which was not located on reserve but built to primarily serve a reserve (and to replace a former hospital that was on reserve), was exempt.

Type of Income:

(b) Employment-related income

Employment insurance benefits, retiring allowances, CPP payments, RPP benefits, wage loss replacement plan benefits are generally exempt from income tax when they are received as a result of employment income that is situated on a reserve.

If a portion of the employment income was exempt, then a similar portion of these amounts will be exempt.

Williams v R, 1992

(b) Employment-Related Income

(cont'd)

Williams v. The Queen, 1992 (SCC)

Status Indian residing on a reserve received regular UI benefits for which he qualified because of his former employment on the reserve. He also received “enhanced” UI benefits paid in respect of a job creation project administered on the reserve by the Band pursuant to a written agreement between the Band and the Commission.

The residence of the debtor (i.e. the Crown) and the place where the benefits were paid were of limited importance in the overall context

All of the “connecting factors”, except the residence of the debtor, suggested that the benefits themselves were situated on the reserve.

The SCC concluded that the location of the qualifying employment was on reserve, therefore the benefits received by the taxpayer were also located on the reserve.

CRA Indian Act Tax Exemption for Employment Income Guidelines

- To assist First Nation communities, CRA developed the Indian Tax Exemption for Employment Income Guidelines, incorporating the various connecting factors that describe the employment situations covered by the Indian Act.
- The Guidelines are only an administrative tool and do not necessarily constitute a definitive test.
- However, the Guidelines provide guidance as to how CRA will determine whether employment income earned is “situate on reserve” in any given case.

CRA Indian Act Tax Exemption for Employment Income Guidelines (con't)

A status Indian's employment income must meet the requirements of at least ONE of the following guidelines in order to qualify under section 87 of the *Indian Act*:

Guideline 1

- **All income** is exempt when at least **90%** of the employment duties are performed on reserve.
- When less than 90%, but more than an incidental proportion, of the duties are performed on reserve, and none of the other guidelines apply, only the portion of income that is earned from duties performed on a reserve is exempt from tax.

CRA Indian Act Tax Exemption for Employment Income Guidelines (con't)

Guideline 2

- All employment income is exempt where (1) status Indian employee lives on reserve AND (2) employer is resident on a reserve

Guideline 3

- All employment income is exempt where (1) more than 50% of status Indian employee's duties are performed on a reserve AND (2) the employer is resident on a reserve OR the status Indian employee lives on a reserve.

CRA Indian Act Tax Exemption for Employment Income Guidelines (cont'd)

Guideline 4

-All employment income is exempt where:

- (1) the employer is resident on a reserve; AND
- (2) the employer is an Indian Band which has a reserve, or a tribal council representing one or more Indian Bands which have reserve; OR the employer is an Indian organization controlled by one or more such bands or tribal councils; AND
- (3) the employer is an organization dedicated exclusively to the social, cultural, educational, or economic development of status Indians who for the most part live on reserve; AND
- (4) the duties of employment are in connection the employer's non-commercial activities; AND
- (5) the duties of the employment are carried on exclusively for the benefit of Indians who for the most part live on reserve.

Definition of Relevant Terms

- ▶ **“Indian lives on the reserve”** means a status Indian living on the reserve in a domestic establishment that is his or her principal place of residence and that is the centre of his or her daily routine.
- ▶ **“On a reserve”** means any settlements deemed to be reserves for purposes of the Indian Settlements Remission Order, and any other areas given similar treatment under federal legislation
- ▶ For the purposes of Guideline 4, **“Social, cultural, educational or economic development”** includes the provision of social services such as health care or counselling.

Definition of Relevant Terms: “Employer Resident on a reserve”

- ▶ For purposes of the Guidelines, and pursuant to the decision in *McDonald v R*, an employer is resident on a reserve if a reserve is the place where the central management and control over the employer organization is actually located.
- ▶ Usually considered to be exercised by the group that performs the function of a board or directors of the organization. However, it may be that the real management and control of an organization is exercised by some other person or group.

Definition of Relevant Terms: “Employer Resident on a reserve” (con’t)

- ▶ The location of the employer’s administrative office is a factor typically considered in determining whether an employer is resident on reserve.
- ▶ Generally, management and control are exercised at the principal place of business but it is recognized that this function may be legitimately exercised in a place other than the principal administrative office of the organization.
- ▶ It is largely a question of fact where the central management and control is exercised.

Definition of Relevant Terms:

“Employer Resident on a reserve” (cont’d)

- ▶ Additional factors to consider
- ▶ Storage of supplies, parts, etc. at the reserve location(s)
- ▶ Performing vehicle maintenance on reserve
- ▶ Conducting management and staff meetings on reserve
- ▶ Using a reserve address as the official business address
- ▶ Maintaining the books and records of the business on reserve
- ▶ Ensuring invoices, purchase orders and advertising bears the reserve address
- ▶ Where possible, maintaining the bank account at a branch of a financial institution located on reserve
- ▶ Receiving suppliers’ invoices at the reserve address
- ▶ Paying employees from the reserve location

Caution

An Indian's employment income from a particular employment is not exempt from income tax if one of the main reasons for the existence of that employment relationship is to establish a connecting factor to a reserve.

Employer's Reporting Exempt Income

Employers have to report on a T4 slip employment income that is exempt under section 87 of the *Indian Act*. On the slip, an employer will enter code "71" in the area called "Other information."

Employees do not have to report the exempt employment income on his or her income tax and benefit return.

Canada Pension Plan

- ▶ The employment of a status Indian whose income is exempt from tax is excluded from pensionable employment.
- ▶ Income from employment or self-employment (a business) that is exempt from tax under section 87 of the *Indian Act* is also exempt from CPP contributions. However, an employer can elect to participate in the CPP.
 - See Form CPT 124, *Application for Coverage of Employment of an Indian in Canada under the Canada Pension Plan*.
 - If an employer has chosen not to cover the employment under the CPP, an employee can elect to participate in the CPP by filing Form CPT 20, *Election to Pay Canada Pension Plan Contributions*.

Type of Income:

(c) Business Income

The following “connecting factors” were identified by the Tax Court of Canada in the case of *McDonald v R*, 2011 (at paragraph 36), as relevant in the context of business income:

- a) the type of business and the location of the business activities;
- b) the location of the customers (debtors) of the business and where payment was made;
- c) the residence of the business owners;
- d) where decisions affecting the business are made;
- e) the place where the books for the business are kept; and
- f) the nature of the work and the commercial mainstream.

(c) Business Income (cont'd)

In the case of *Southwind v. the Queen* 98 DTC 6084 (FCA), the Taxpayer was an Indian residing on a reserve and operating a logging business as a sole proprietor. He provided his logging services exclusively to a non-Indian business not situated on a reserve.

Based on the connecting factors analysis – income was found to be taxable.

Location of the sole customer, and location where services are performed

(c) Business Income (cont'd)

In the case of *Dickie v R, 2012*, the Tax Court of Canada explained that, since the majority of the customers were off reserve and the payment site was on reserve, these factors neutralized each other in terms of weight (at para 53). The TCC found the exemption to be valid in light of the other connecting factors (at para 72).

(c) Business Income (cont'd)

- ▶ It is significant to note that, in the case of *Kelly v Canada*, 2013, the FCA emphasized that, the test is not whether the taxpayer held his income from business as part of the entitlement of “an Indian *qua* Indian on a reserve”. Rather, “the overarching test is that set out in the statutory language, namely whether the property, here business income, is situated on a reserve”.
- ▶ The FCA was of the view that business income is more complex and nuanced than just the physical location from time to time of the person providing the services and the books and records of the business.
- ▶ In setting aside the TCC decision and remitting the matter for the TCC judge’s redetermination, the FCA concluded that “placing significant weight on the percentages of time Mr. Kelly was physically present on or off reserves or where he maintains his books and records fastens on only one aspect of the nature of the income. The FCA was of the view that of more significance is “...what he was doing at various times and the connection of those activities to the reserves, all viewed in light of the purposes underlying section 87”.

(c) Business Income – CRA's Views

► CRA is of the view that the following connecting factors are relevant when considering whether business income is situated on a reserve:

- (a) whether or not the individual lives on a reserve;
- (b) whether the individual maintains an office on a reserve or takes business orders from a location on a reserve;
- (c) whether the business books and records are kept on a reserve; and
- (d) whether the business' administrative, clerical, or accounting activities take place on a reserve.

(c) Business Income - CRA Examples

Example 1: John is a self-employed Indian logger who lives on a reserve. He cuts timber on land off the reserve and sells it off the reserve. John's income from this business is considered to be **taxable**, because his income-earning activities and customers are off the reserve.

Example 2: Delia is an Indian who owns a retail store on a reserve. The store sells goods to both Indian and non-Indian customers. Since Delia's business activities take place on a reserve, her income from this business is **tax-exempt**.

Example 3 (prorating): Arnold is an Indian who works as a self-employed plumber. Arnold lives off a reserve, and operates out of an office that is located off a reserve. He earns 60% of his revenue from providing plumbing services for customers who live on a nearby reserve. As a result, 60% of Arnold's plumbing income is **tax-exempt**, since the income-earning activities take place on a reserve. Arnold can deduct 40% of his business expenses from the 40% of his plumbing income that is subject to tax, unless the facts indicate that it would be more reasonable to allocate his revenue and expenses differently.

Type of Income:

(d) Investment Income

- ▶ In *Bastien Estate v R*, 2011, the SCC considered whether the taxpayer's interest income earned on term deposits with the Caisse populaire Desjardins du Village Huron was exempt from income taxation because it was personal property situated on a reserve. In that case, the SCC rejected the view in *Recalma v R*, 1998, that the availability of the exemption depends on whether the property is integral to the life of the reserve or to the preservation of the traditional Indian way of life.
- ▶ The SCC was of the view that Mr. Bastien simply made a loan to the on-reserve Caisse and that The Caisse's income-producing actions and contracts after Mr. Bastien invested in term deposits cannot be deemed his own and do not diminish the many and clear connections between his interest income and the reserve.
- ▶ In finding that the income was exempt from tax, the SCC concluded that all potentially relevant factors connected the investment income to the reserve. The fact that the Caisse produced its revenue in the “commercial mainstream” off the reserve was considered irrelevant.

(d) Investment Income – CRA's Views

- ▶ The CRA will apply SCC's decisions in Bastien in similar situations to exempt an Indian's interest income from tax for the 2011 and following tax years.
- ▶ A similar situation means that **all** of the following conditions are met:
 1. you earn interest income from a savings or chequing account, or from a term deposit or guaranteed investment certificate (GIC);
 2. you opened the savings or chequing account, or obtained the term deposit or GIC, at a financial institution (including a bank branch) located on a reserve;
 3. the financial institution is required to pay the interest income to you at a location of the financial institution on a reserve; and
 4. if your investment is a term deposit or GIC, then the interest rate is fixed or can be calculated at the time you obtain the investment.

Type of Income: (e) Income from Trusts

Income earned by a trust is taxable. However, the trust can deduct the amounts paid or payable to its beneficiaries in the year in calculating its taxable income. The amount the trust deducts has to be included in the income of the particular beneficiaries who received a payment or who are entitled to receive a payment from the trust.

If a trust has claimed a deduction for amounts that were paid or payable to you, you have to include these amounts in your income, unless the connecting factors indicate that the trust income is located on a reserve.

CRA is of the view that the primary connecting factor is the source of the trust's income, which might be business income and/or investment income depending on the particular trust involved.

(e) Income from Trusts (con't)

In the case of *Pelletier v Canada*, 2011, the taxpayer (Mr. Pelletier) was a member of the Red Rock Indian Band. The property in this case was Mr. Pelletier's income derived from a logging business. His business office was on reserve and he had a residence both on reserve and off reserve.

Mr. Pelletier transferred his business to an inter vivos trust and earned his income through the trust.

The FCA ignored the trusts and focused whether the income was business income situated on a reserve or off reserve. Ultimately, the FCA upheld the denial of a tax exemption on the basis that the logging business logged off reserve and had customers off reserve.

Corporations

Section 87 of the *Indian Act* does not apply to corporations.

A corporation, as a separate legal entity, is not eligible for a tax exemption even if all of its shareholders are Indians and the corporation is located on a reserve.

Municipal or Public Body Performing a Function of Government

- subs. 149(1)(c) of the *Income Tax Act* provides exemption from tax for municipal authorities.
- The Act was amended in 1948 to include a tax exemption for “a municipality or a municipal or public body performing a function of government (“MPBPG”)”.
- Through the Indian Act, an Indian Band may pass by-laws, similarly to a municipality.
- CRA is of the view that all bands created under the Indian Act meet the criteria to be considered a municipal or public body performing a function of government in Canada and are therefore exempt from tax (See CRA Interpretation 2016-064503117).

Municipal or Public Body Performing a Function of Government (con't)

Local government

By-laws under the Indian Act

Section 81 (Health, law and order, etc.)

Section 83 (money by-laws / taxation)

Section 85.1 (by-laws relating to intoxicants)

Services provided

E.g. education, health care, social services, employment and training, economic development, housing, sewage and water, fire protection, etc

Indian Band Owned Corporations

If 90% or more of the shares or capital of a corporation are owned by an Indian Band, then the corporation's income from a particular year may be exempt under paragraph 149(1)(d.5) of the Income Tax Act.

Note: no more than 10% of the income earned outside geographical boundaries of MPBPFG.

Geographical boundaries mean reserve land in the case of First Nations (149(11))

Paragraph 149(1)(d.5) overruled the decision in *Tawich Development Corporation v Deputy Minister of Quebec*, 2001, which held that an entity could not attain the status of a municipality simply by exercising municipal functions.

Partnerships

- For tax purposes, the partnership level income should be calculated as if the partnership were a separate person resident in Canada.
- Each of the partners will then be required to file their own return, reporting their allocated share of the net income of the partnership (whether it is a general partnership or a limited partnership).
- Where individual partners are status Indians under *Indian Act*, the income attributed to such partner may be exempt from tax by virtue of s. 87 of the *Indian Act*.
- It is a question of fact whether business is on or off reserve
- Connecting factors test applies (previously discussed in the business income slides)

Partnerships (con't)

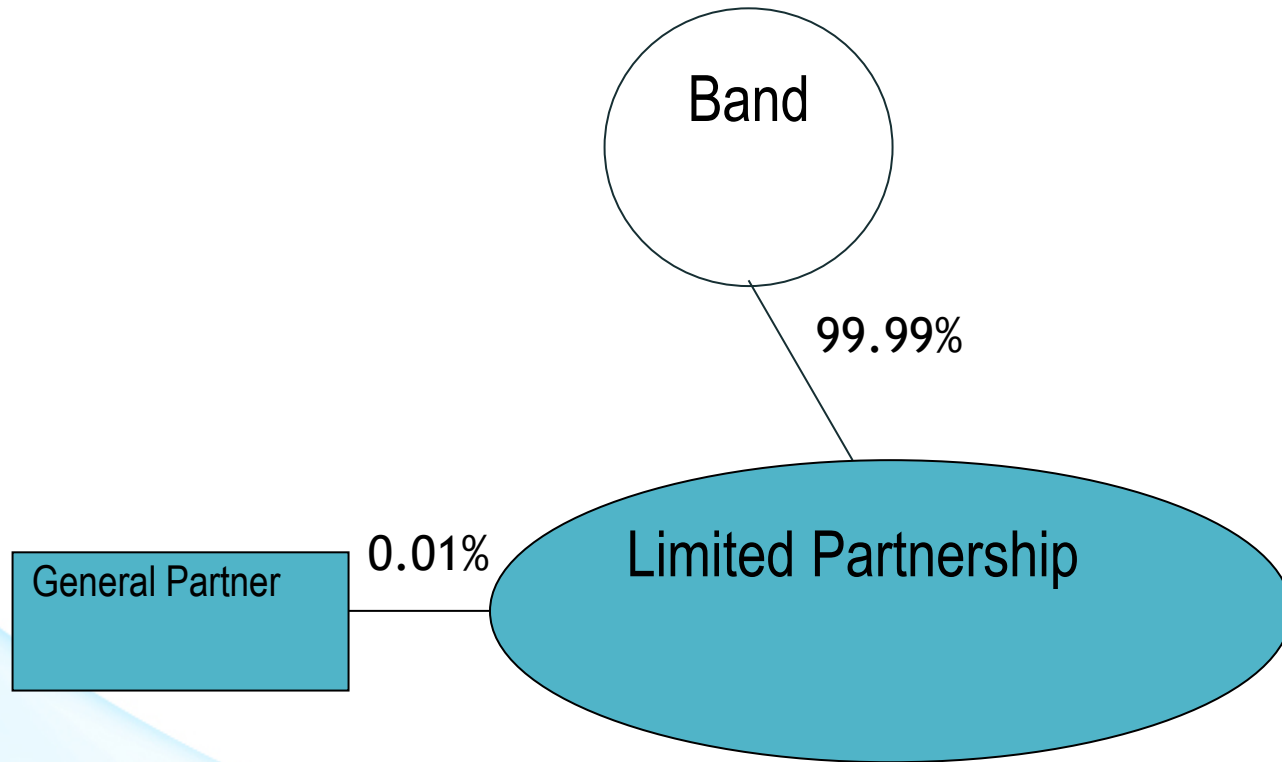
Partnerships (including limited partnerships) do not themselves pay tax.

Governmental authorities are exempt from tax under s. 149(1)(c) of the Income Tax Act.

Therefore, a partnership or a limited partnership structure with a band as a limited partner results in no tax being paid on the income allocated to the band.

See example of organizational chart on next slide.

Example: Limited Partnership with Band



Non-profit Organizations

- ▶ Do not qualify for tax exempt status under Section 87 of the Indian Act
- ▶ Exempt from taxation under 149(1)(l) of ITA if
- ▶ Operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit
- ▶ No part of the income can be payable to / available for the personal benefit of any proprietor / member / shareholder
- ▶ The organization cannot have the power to pay dividends
- ▶ The organization cannot distribute assets to a member or shareholder on amalgamation or wind-up, and
- ▶ The organization cannot be a charity
- ▶ Any commercial activity must be incidental to the corporation's other objectives
- ▶ Any profits must be spent within the corporation

Registered Charities

- ▶ must be established and operate exclusively for charitable purposes
- ▶ The courts have identified four categories of charity:
 - ▶ the relief of poverty;
 - ▶ the advancement of education;
 - ▶ the advancement of religion; and
 - ▶ certain other purposes that benefit the community in a way the courts have said is charitable.
- ▶ can issue official donation receipts for income tax purposes
- ▶ must spend a minimum amount on its own charitable activities or as gifts to qualified donees
- ▶ is designated by the CRA as a charitable organization, a public foundation, or a private foundation
- ▶ must file an annual information return (Form T3010) within six months of its fiscal period end
 - ▶ NPOs may have to file a T2 return (if incorporated), and/or an information return (Form T1044) within six months of fiscal period end
- ▶ cannot use its income to personally benefit its members
- ▶ is exempt from paying income tax

GST/HST

Who has to Register?

- ▶ A business located on a reserve that does not qualify as a small supplier, including those owned by a First Nation or one of its members, must register for GST/HST and collect and remit any tax payable on all taxable sales (see *Pictou v R*, 2003, FCA, leave to appeal denied).
- ▶ You are a small supplier if your worldwide revenues from taxable supplies of goods and services, including zero-rated *and on-reserve tax-relieved sales made to Indians, Indian bands, and band-empowered entities*, are \$30,000 (or \$50,000 if you are a public service body) or less in a single calendar quarter or for the past four consecutive calendar quarters (See definition of a small supplier under subsections 148(1), 123(1) and 148(2) of the *Excise Tax Act*).
- For clarification, sales made to Indians, Indian bands, and band-empowered entities are not exempt or zero-rated supplies; they are taxable supplies that are relieved of tax if certain conditions are met.

GST/HST

Who has to register? (con't)

- ▶ Therefore, you have to register for the GST/HST when your worldwide revenues from taxable sales exceed \$30,000 (or \$50,000 if you are a public service body) in the past four consecutive calendar quarters or in a single calendar quarter.
- ▶ Note: A special small supplier test applies to charities and public institutions.
- ▶ GST/HST is a “flow-through” for businesses that carry on a “commercial activity” and does not necessarily represent a true cost for the business.

GST/HST

Sales made on a reserve (CRA's Guide)

- ▶ GST/HST does not apply to goods bought on a reserve by Indians, Indian bands, and unincorporated band-empowered entities.
- ▶ Goods bought off a reserve by Indians, Indian bands, and unincorporated band-empowered entities are subject to GST/HST, unless the goods are delivered to a reserve by the vendor (or the vendor's agent).
- ▶ Incorporated band-empowered entities are not entitled to tax relief on goods bought on a reserve or delivered to a reserve unless the goods are purchased for band management activities.

GST/HST

Sales made on a reserve (con't)

- ▶ The exemption under section 87 of the *Indian Act* does not apply when an Indian, an Indian band, or a band-empowered entity buyer takes possession of goods off a reserve and self-delivers the goods to the reserve.
- ▶ CRA may waive the delivery requirement for qualifying remote stores that deal mainly with customers who are Indians, Indian bands, and band-empowered entities.
- ▶ See CRA's P-246 Remote stores and other off-reserve stores with significant sales to Indians, Indian bands and band-empowered entities.
- ▶ Generally, all non-Indians must pay the GST/HST on taxable supplies unless the goods or services acquired are subject to tax at the rate of zero percent or are supplied by a small supplier who is not registered for the GST/HST.
- For more information, see [Technical Information Bulletin B-039R](#), *GST Administrative Policy: Application of GST to Indians*.

For Ontario Only: Off-Reserve Purchases

When full relief of the GST/HST is not available on off-reserve purchases, in Ontario, relief of the provincial part of the HST may apply to status Indians, Indian bands, and councils of Indian bands, as the Government of Ontario has announced that effective September 1, 2010, there is relief equal to the 8% Ontario part of the HST on qualifying off-reserve property or services at the point of sale.

- See the *Credit for Provincial Relief (HST) Regulations*—ed.
- For information on qualifying property and services, who is eligible for relief, and the documentary requirements to support amounts credited to status Indian purchasers, contact the Government of Ontario at 1-866-668-8297.
- As well, GST/HST Info Sheet GI-106, *Ontario First Nations Point-of-Sale Relief—Reporting Requirements for GST/HST Registrant Suppliers*, provides additional information concerning the Ontario point-of sale relief.

GST/HST

Responsibilities of the vendor

Vendors are responsible for ensuring the sale meets all of the criteria for tax relief. Sufficient documentation must be retained with the business records to confirm the purchaser was not required to pay the tax.

Vendors must maintain documentation verifying that the goods were sold to an Indian, Indian band or a band-empowered entity. Although there is no prescribed form, vendors must document the name, address, and status card information of the Indian purchaser, or keep the certificate provided by the Indian band or band-empowered entity as evidence that the sale was made relieved of the GST/HST (see sample certificate in CRA's Technical Bulletin B-039).

If sufficient documentation has not been retained, the CRA may issue an assessment equal to the GST/HST that should have been collected, plus applicable interest.

GST/HST

Eligibility for relief of tax

- ▶ Only individuals who are registered as an Indian are eligible for the tax relief when acquiring goods or services from a vendor. This does not include Métis, Inuit, or Indians from the United States. The Certificate of Indian Status (or status card) issued by Indian and Northern Affairs Canada is the only document recognized for this purpose.
- ▶ Vendors are required to document the purchaser's name and registry number or the band name and family number on each invoice or document supporting the tax-relieved sales.
- ▶ Tax relief will also not apply on the lands or reserves of a First Nation that has implemented the First Nations Tax (see next slides).

First Nations Tax

- ▶ The First Nations tax (FNT) is a tax on the sale of listed products on some First Nations reserves. Some band councils have passed bylaws that impose FNT on listed products. A listed product refers to alcoholic beverages, fuel, and tobacco products that are specifically mentioned in the band's bylaw.
- ▶ FNT may be referred to by a different name in the bylaw. For example, it might be called a community improvement fee.
- ▶ On reserves where FNT applies, everyone has to pay FNT on the listed products they buy. The tax rate for FNT is 5%, the same as the goods and services tax (GST) and the federal part of the harmonized sales tax (HST).
- ▶ For more information see the CRA guide called First Nations Tax (FNT).

First Nations Tax (cont'd)

- ▶ First Nations whose band councils have passed by-laws to impose FNT on their reserves
- ▶ Westbank (B.C.)
- ▶ Tk'emlúps te Secwépemc (B.C.)
- ▶ Sliammon (B.C.)
- ▶ Stz'uminus (B.C.)
- ▶ Adams Lake (B.C.)
- ▶ Tzeachten (B.C.)
- ▶ Cowichan (B.C.)
- ▶ Little Shuswap Lake (B.C.)

Miscellaneous

- ▶ Where one spouse earns exempt income and one spouse earns taxable income, the full spousal tax credit will be available to the spouse earning taxable income.
- ▶ In the same situation, childcare expenses would not provide any tax benefit, because lower income spouse has nil income.

Note

Due to various remission orders, etc., general rules may be overridden by specific rules

E.g. for years prior to 1992 CPP income was taxable

For years after 1992, exempt to the extent derived from tax-exempt income

The remission order did not provide an exemption for CPP

Many First Nations that have “settlement lands” as opposed to fully recognized reserve lands are entitled to the same exemption rights mentioned herein – this is pursuant to “The Indian and Bands in Certain Settlements” Remission Order (May 14, 1992)