



Restoration of the Section 87 Tax Exemption and Taxation on Nisga'a Lands

December 19, 2023

Is the section 87 tax exemption being restored on January 1, 2024?

Yes.

Starting January 1, 2024, Nisga'a citizens who have status will be able to use their tax exemption on Nisga'a former reserves, the former reserves of other BC modern treaty nations, and band reserves through-out the country. The exception is where the band or modern treaty nation government has imposed a tax on that reserve or former reserve.

Also starting January 1, 2024:

- individuals with status may purchase goods on Nisga'a former reserves both PST-free and GST-free, and
- individuals with status will be exempt from income tax if their income is "situated on" a Nisga'a former reserve.

The boundaries of the Nisga'a former reserves are not the same as the Nisga'a Village Lands.

Will my employment income be exempt under section 87 of the Indian Act?

Whether the section 87 tax exemption applies to income, including employment income, is complicated.

The Canada Revenue Agency has published the Indian Act Exemption for Employment Income Guidelines to provide guidance to employers and employees on when employment income is exempt under section 87 of the *Indian Act*: <https://www.canada.ca/en/revenue-agency/services/indigenous-peoples/indian-act-exemption-employment-income-guidelines.html>

Nisga'a Lisims Government recommends that you consult the Guidelines, and your financial advisors, to assess whether your employment income would be exempt under section 87 of the *Indian Act*. Please

note that the Canada Revenue Agency has indicated that “almost” fitting within a Guideline is not good enough to be exempt.

If your employment income is exempt, you can choose to report the part of your income that is exempt from tax on Form T90, Income exempt under the Indian Act, so that the Canada Revenue Agency can determine your Canada Training Credit Limit, your Canada workers benefit, and calculate your family's provincial or territorial benefits: <https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t90/t90-22e.pdf>

What about Canada Pension Plan Premiums?

If your employment income is exempt from income tax, you are also exempt from Canada Pension Plan contributions, unless an election has been made to opt-in to the CPP.

Nisga’a Lisims Government has made an election to opt-in to the CPP for all of its status employees, and so will continue to deduct and remit CPP premiums (both the employee premium and the employer premium) in respect of its employees whose income is exempt in accordance with the Guidelines.

If your employer has not made the opt-in election, you can ask them to make the election, or you can make an individual election to opt-in to CPP premiums as part of your tax return, which NLG recommends that you do.

What about Employment Insurance Premiums?

Your employment income is still subject to employment insurance premium deductions even if your income is tax exempt under section 87 of the *Indian Act*.

I operate a business on a Nisga’a former reserve, what do I have to do to sell goods PST-free or GST-free to individuals with status?

Purchases made on former Nisga’a reserves are still subject PST and GST unless the buyer has status. That means you may still need to: be registered for PST and GST, file returns; and collect and remit in respect of purchases by buyers who do not have status.

The Governments of British Columbia and Canada have published guidance for businesses for administering the section 87 tax exemption. In both cases, you must maintain careful records to prove that the buyer was entitled to the tax exemption.

For PST, please see the Government of British Columbia’s Bulletin PST 314:

<https://www2.gov.bc.ca/assets/gov/taxes/sales-taxes/publications/pst-314-exemptions-first-nations.pdf>

For GST, please see the Canada Revenue Agency’s publication B-039, in particular the section “Documentary evidence to be retained by vendors”: <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/b-039/gst-hst-administrative-policy-application-gst-hst-indians.html# Toc22031119>

Why are some Nisga'a Citizens not entitled to the section 87 tax exemption?

The *Indian Act* provides that only "Indians" are entitled to the tax exemption:

"s. 87 (1) ... subject to section 83 [of the Indian Act] and section 5 of the *First Nations Fiscal Management Act*, the following property is exempt from taxation: [...] the property of an Indian or a band situated on a reserve."

Under the Nisga'a Treaty, the Nisga'a Nation has control over who can become a Nisga'a Citizens, while the *Indian Act* continues to determine who is an Indian. As a result, being a Nisga'a citizen does not entitle someone to be registered as an "Indian". A Nisga'a citizen must meet the criteria set out in the *Indian Act* to be registered as an "Indian". As a result, some Nisga'a citizens are not "Indians".

(It should be noted that, even under the *Indian Act*, being on a "band list" controlled by the band under section 10 of the *Indian Act* is not sufficient to entitle the person to be registered as an "Indian".)