

# OUR LAND IS OUR FUTURE

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UNION OF B.C. INDIAN CHIEFS  
40<sup>TH</sup> ANNIVERSARY ANNUAL GENERAL ASSEMBLY  
SEPTEMBER 16<sup>TH</sup> – 18<sup>TH</sup>, 2009  
HARRISON HOT SPRINGS, B.C.

Resolution no. 2009-41

## RE: Support for work regarding Harmonized Sales Tax (HST) and related Tax Matters

**WHEREAS** First Nations affirm our rights as Indigenous Peoples to be involved in all decisions regarding our Aboriginal Title lands and resources;

**WHEREAS** Given our proprietary and inherent rights to our respective territories, lands and resources, First Nations have a right to be involved in the development of policies and decisions that impact our communities, lands and resources;

**WHEREAS** The *United Nations Declaration on the Rights of Indigenous Peoples* provides in Article 18 that Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, and in Article 19 that States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;

**WHEREAS** The Supreme Court of Canada has clearly stated in *Haida* that the Crown owes a duty of consultation to a First Nation when the Crown contemplates conduct that might adversely affect rights or title claimed by the First Nation;

**WHEREAS** The provincial government of British Columbia announced its intentions on September 1, 2009 to adopt the proposed Harmonized Sales Tax ('HST') which combines B.C.'s 7% provincial sales

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tax (PST) with the 5% federal Goods and Services Tax (GST), and would be applied to the same tax base as GST is currently applied to;

**WHEREAS** On July 22, 2009 the provincial government of British Columbia signed a Memorandum of Agreement (MOA) with the Government of Canada concerning a Canada-British Columbia Comprehensive Integrated Tax Co-ordination Agreement (CITCA); and according to the MOA, Canada and B.C. will use their best efforts to enter into the CITCA on or before September 30, 2009 and subject to both parties signing and subject to legislative approval, the implementation date for HST will be July 1, 2010;

**WHEREAS** The proposed HST will create increased savings for businesses and industry, while increasing costs for consumers because all goods and services currently subject to the 5% GST would be subject to an additional 7% provincial tax under the HST, with exceptions;

**WHEREAS** First Nations in Canada have a tax exemption for personal and real property situated on reserves under section 87 of the *Indian Act 1985*;

**WHEREAS** According to current federal policy and the *First Nations Goods and Services Tax Act*, First Nations are exempt from paying any tax on goods and services sold on reserves except for those that have implemented the First Nations Sales Tax (FNST) or the First Nations GST (FNGST), and HST will not be applied where FNST and/or the FNGST apply, although a continuation of this policy has not been confirmed;

**WHEREAS** It is not clear how the HST will affect and impact on First Nation bands, individuals and companies;

**WHEREAS** Neither the federal government nor the provincial government consulted with B.C. First Nations on the implementation of HST and are working to quickly put the HST into place without consultation with B.C First Nations;

**WHEREAS** Given that exploitative industries such as mining and forestry will benefit through financial savings from the proposed HST, First Nations should also benefit as these developments often occur on First Nations lands; and

**WHEREAS** Many current PST exemptions to environmentally sustainable goods and services will not be continued under HST, but instead will be subject to the full 12% HST, and this shift in policy signifies a step away from provincial commitments to environmental preservation and sustainability;

**THEREFORE BE IT RESOLVED** That the Chiefs-in-Assembly direct the UBCIC Executive to take immediate action to raise concerns with the Ministries of Finance of the provincial and federal governments regarding the HST and its impacts on BC First Nations and to call for meaningful consultation and accommodation, including:

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- Commitments to develop appropriate information packages regarding the application of HST to First Nations;
- Inclusion of specific non-derogation language regarding the preservation of section 87 of *Indian Act* tax exemption and continuing rights of First Nations taxation rights under the *First Nations Goods and Service Tax Act* and First Nations Sales Tax prior to B.C. and Canada signing the Comprehensive Integrated Tax Co-ordination Agreement (CITCA) on September 30, 2009;

**THEREFORE BE IT FURTHER RESOLVED** That the Chiefs-in-Assembly direct the UBCIC Executive to take immediate action to raise concerns with the Ministries of Finance of the provincial and federal governments respectively regarding the prospective implementation of a CITCA and call for the establishment of distinct consultation mechanisms and processes for inclusion of First Nations in all implementation;

**THEREFORE BE IT FINALLY RESOLVED** That the Chiefs-in-Assembly direct the UBCIC Executive to strike a representative Chiefs Committee and seek adequate resources to support its work, and engage technical advisors to:

- 1) Prepare a report analysing the HST and its potential impact on First Nations, including the impact on business developments being advanced by First Nations on lands off-reserve,
- 2) Prepare a discussion paper analysing other adverse tax policies affecting First Nations;

And request that the representative Chiefs Committee report to the next UBCIC Chiefs Council in November 2009 with recommendations.

**Moved:** Chief Ko'waintco Michel, Nooaitch Indian Band  
**Seconded:** Chief Joe Dennis, Lower Similkameen Indian Band  
**Disposition:** Carried  
**Date:** September 18, 2009

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