

## **CHAPTER 20 TAXATION<sup>1</sup>**

(tracked changes relative to federal draft dated September 15, 2010)

### **Definitions**

“Dehcho Capital” means all land, cash and other assets transferred to or recognized as owned by the Dehcho First Nations Government or a Dehcho Community Government under the Final Agreement.

“Direct” has the same meaning, for purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*.

“Person” includes an individual, a partnership, a corporation, a trust, a joint venture, an unincorporated association, a government or an agency or subdivision of a government, and their respective heirs, executors, administrators and other legal representatives.

### **Direct Taxation Powers**

1. The Final Agreement will provide that theThe Dehcho Government may make laws in relation to:
  - a) direct taxation of Dehcho Citizens, within Dehcho Ndehe and Dehcho Communities<sup>2</sup>, in order to raise revenue for Dehcho Government purposes; and
  - b) the implementation of any taxation agreement entered into between it and Canada or Northwest Territories, or both.<sup>3</sup>
2. The Final Agreement will provide that theThe Dehcho Government law-making authority under section 1 does shall not limit the taxation powers of Canada or Northwest Territories.
- 2.3. Any Dehcho Law made under this chapter or any exercise of power by the Dehcho Government is subject to and shall conform with Canada’s International Legal Obligations in respect of taxation.

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<sup>1</sup> Use of defined terms such as Dehcho Citizens, Dehcho Government, Dehcho Community Government, Dehcho Communities, Dehcho Community Lands, to be reviewed in light of the Interpretation Chapter.

<sup>2</sup> Reference to “Dehcho Communities” is only necessary if Dehcho Ndehe does not include the Dehcho Communities. Definition of “Dehcho Communities” to be discussed, but “Dehcho Communities” is intended to include only those specific communities where the Dehcho Government has many other self-government jurisdictions (i.e., the tax jurisdiction is one of many other jurisdictions that can be exercised in such communities).

<sup>3</sup> Tax powers of community governments to be discussed.

## **Taxation Powers Agreements**

- 3.4. The Final Agreement will provide that fFrom time to time, at the request of the Dehcho Government, Canada and Northwest Territories, together or separately, may negotiate and attempt to reach agreement with the Dehcho Government respecting:
- a) the extent to which the Direct taxation law-making authority of the Dehcho Government under paragraph 1(a) may be extended to apply to Persons other than Dehcho Citizens, within Dehcho Ndehe or Dehcho Communities; and
  - b) the manner in which the Dehcho Government law-making authority under paragraph 1(a), as extended by the application of paragraph 3(a), will be coordinated with existing federal or territorial tax systems, including:
    - i. the amount of tax room that Canada or Northwest Territories may be prepared to vacate in favour of taxes imposed by the Dehcho Government, and
    - ii. the terms and conditions under which Canada or Northwest Territories may administer, on behalf of the Dehcho Government, taxes imposed by the Dehcho Government.<sup>4</sup>
5. Notwithstanding the [Justice] chapter, an agreement under 4 may provide for an alternative approach to the appeal, adjudication or enforcement of matters related to a Dehcho Law in respect of taxation.

## **Dehcho Lands<sup>5</sup>**

6. The Final Agreement will provide that The Dehcho Government would is not be subject to taxation of Dehcho Ndehe or Dehcho Community Lands or interests in Dehcho Ndehe or Dehcho Community Lands on which there is no improvement or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose.
- 4.7. A Dehcho Community Government is not subject to taxation of its Dehcho Community Lands or interests in its Dehcho Community Lands on which there is no improvement or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose.

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<sup>4</sup> Alternative paragraph (b): “the manner in which taxation by the Dehcho Government will be coordinated with federal and territorial tax systems.”

<sup>5</sup> Similar provisions to be added for community governments.

- 5.8. The Final Agreement will provide that fFor federal and territorial income tax purposes, proceeds of disposition received by the Dehcho Nation or a Dehcho Community Government on expropriation of Dehcho Lands or Dehcho Community Lands in accordance with the Expropriation chapter will not be taxable

### **Transfer of Dehcho Capital**

- 6.9. The Final Agreement will provide that aA transfer under this Agreement of Dehcho Capital and recognition of ownership of Dehcho Capital under this Agreement is not taxable.<sup>6</sup>
- 7.10. The Final Agreement will provide that fFor purposes of section 6, an amount paid to a Dehcho Dene Citizen is deemed to be a transfer of Dehcho Capital under this Agreement if the payment:
- a) reasonably can be considered to be a distribution of a Capital Transfer received by the Dehcho NationGovernment; and
  - b) becomes payable to the Dehcho Dene Citizen within 90 days and is paid to the Dehcho Dene Citizen within 270 days from the date that the Dehcho GovernmentNation receives the Capital Transfer.
- 8.11. The Final Agreement will provide that fFor federal and territorial income tax purposes, Dehcho Capital is deemed to have been acquired by the Dehcho Nation Government or a Dehcho Community Government, as the case may be, at a cost equal to its fair market value on the latest of:
- a) the Effective Date; and
  - b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.<sup>7</sup>

### **Indian Act Tax Exemption and Transitional Exemption**

- 9.12. The Final Agreement will provide that section 87 of the *Indian Act* will not apply to the Dehcho Nation, Dehcho Dene or any Dehcho Lands as of the Effective Date.
- 10.13. The Final Agreement may provide for transitional tax measures to address the fact that section 87 of the *Indian Act* will no longer apply as of the Effective Date.

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<sup>6</sup> Similar provision to be added for community governments.

<sup>7</sup> Similar provision to be added for community governments.

### **Tax Treatment Agreement**

11.14. Prior to the Final Agreement, the Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date. The tax treatment agreement will address the following subject matters:

- a) The income tax treatment of the Dehcho Government and its entities;
- b) The sales tax treatment of the Dehcho Government and its entities;
- c) The tax treatment of the transfer of Dehcho Capital between the Dehcho Government and its subsidiaries;
- d) The tax treatment of a Dehcho settlement trust;
- e) Donations, including artefacts, made to the Dehcho Government; and
- f) Any other matters agreed to by the Parties.

### **Other taxation matters**

12. Prior to the Final Agreement, the Parties will negotiate and attempt to reach agreement in respect of the following:

- a) International Legal Obligations in respect of taxation;
- b) Appeals, enforcement, judicial review and adjudication of Dehcho laws made under this chapter; and
- c) Jurisdiction of the Dehcho Government in respect of fine and penalty.<sup>8</sup>

### **Agreements under this chapter**

13. Any taxation power agreement or tax treatment agreement negotiated in accordance with this chapter would not be part of the Final Agreement, nor be a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act*, 1982.

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<sup>8</sup> Specific provisions regarding these matters may be included in the AIP, once other chapters of the AIP have been further negotiated.